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G.S.

ADVERTISEMENT.

This edition comprises every alteration in the law and practice of Parliament, and all material precedents relating to public and private business, since the publication of the sixth edition, and contains upwards of fifty pages of new matter. The work has been greatly extended by successive additions, illustrative of the history and proceedings of Parliament: but, for the sake of convenient reference, it has been deemed expedient still to continue its publication in a single volume.

It may be added, that several questions of constitutional law and history, of which an extended notice was not compatible with the design of this work, will be found more fully treated in the Author's "Constitutional History of England, since the Accession of George III., 1760–1860."

August 1873.

PREFACE TO THE FIRST EDITION.

It is the object of the following pages to describe the various functions and proceedings of Parliament, in a form adapted, as well to purposes of reference, as to a methodical treatment of the subject. The well-known work of Mr. Hatsell abounds with Parliamentary learning, and, except where changes have arisen in the practice of later years, is deservedly regarded as an authority upon all the matters of which it treats. Other works have also appeared, upon particular branches of Parliamentary practice; or with an incidental rather than direct bearing upon all of them: but no general view of the proceedings of both Houses of Parliament, at the present time, has yet been published; and it is in the hope of supplying some part of this acknowledged deficiency, that the present Treatise has been written.

A theme so extensive has only been confined within the limits of a single volume, by excluding, or rapidly passing over, such points of constitutional law and history as are not essential to the explanation of proceedings in Parliament; and by preferring brief statements of the general result of precedents, to a lengthened enumeration of the precedents themselves. Copious references are given, throughout the work, to the Journals of both houses, and to other original sources of information: but quotations have been restricted to resolutions and standing orders, to pointed authorities, and to precedents which serve to elucidate any principle or rule of practice better than a more general statement in the text.

The arrangement of the work has been designed with a view to advance from the more general to the particular and distinct proceedings of Parliament, to avoid repetition, and to prevent any confusion of separate classes of proceedings; and each subject has been treated, by itself, so as to present, first, the rules or principles; secondly, the authorities, if any be applicable; and, thirdly, the particular precedents in illustration of the practice.

As the last edition of Mr. Hatsell's work was published in 1818, the precedents of proceedings in the House of Commons have generally been selected from the Journals of the last five and twenty years, except where those of an earlier date were obviously more appropriate: but as the precedents of the House of Lords had not been collected in any previous work, no limitation has been observed in their selection.

It only remains to acknowledge the kind assistance which has been rendered by many gentlemen, who have communicated their knowledge of the practice of Parliament, in their several official departments, with the utmost courtesy: while the Author is under peculiar obligations to Mr. Speaker, with whose encouragement the work was undertaken, and by whose valuable suggestions it has been incalculably improved.

House of Commons,
May 2, 1844.

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Introductory Remarks.

THE present constitution of Parliament has been the growth of many centuries. Its origin and early history, though obscured by the remoteness of the times, and the imperfect records of a dark period in the annals of Europe, have been traced back to the free councils of our Saxon ancestors. The popular character of these institutions was subverted, for a time, by the Norman Conquest; but the people of England were still Saxons by birth, in language, and in spirit, and gradually recovered their ancient share in the councils of the State. Step by step the Legislature has assumed its present form and character; and after many changes, its constitution is now defined by—

> "The clear and written law,—the deep-trod footmarks
> "Of ancient custom."

No historical inquiry has greater attractions than that which follows the progress of the British Constitution from

6

the earliest times, and notes its successive changes and development; but the immediate object of this work is to display Parliament in its present form, and to describe its various operations under existing laws and custom. For this purpose the history of the past will often be adverted to; but more for the explanation of modern usage, than on account of the interest of the inquiry itself. Apart from the immediate functions of Parliament, the general constitution of the British Government is not within the design of this Treatise; and however great the temptation may be to digress upon topics which are suggested by the proceedings of Parliament, such digressions will rarely be admitted. Within these bounds an outline of each of the constituent parts of Parliament, with incidental reference to their ancient history and constitution, will properly introduce the consideration of the various attributes and proceedings of the Legislature.

Constituent parts of Parliament.

The Parliament of the United Kingdom of Great Britain and Ireland is composed of the King or Queen, and the three estates of the realm, viz. the Lords Spiritual, the Lords Temporal, and the Commons. These several powers collectively make laws that are binding upon the subjects of the British empire; and as distinct members of the supreme legislature, enjoy privileges and exercise functions peculiar to each.

I. The King or Queen.

I. The Crown of these realms is hereditary, being subject, however, to special limitations by Parliament; and the kings or queens[1] have ever enjoyed various prerogatives, by prescription, custom, and law, which assign to them the chief place in Parliament, and the sole executive power. But as the collective Parliament is the supreme legislature, the right of succession and the prerogatives of

[1] For statutory confirmation of the ancient right of females to inherit the Crown, see 1 Mar. St. 2, c. 1; and 1 Mar. St. 3, c. 1; 1 Eliz. c. 3. For the form in which the accession of a Sovereign is recognised, see 92 Com. J. 488.

the Crown itself are subject to limitations and change by the consent and authority of the king or queen for the time being, and the three estates of the realm in Parliament assembled. To the changes that have been effected, at different times, in the legal succession to the Crown, it is needless to refer, as the Revolution of 1688 is a sufficient example. The power of Parliament over the Crown is distinctly affirmed by the statute law, and recognised as an important principle of the constitution.

Coronation oath.

All the kings and queens since the Revolution have taken an oath at their coronation, by which they have "promised and sworn to govern the people of this kingdom, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same."[1] The Act 12 & 13 William III. c. 2, affirms "that the laws of England are the birthright of the people thereof; and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their officers and ministers ought to serve them respectively according to the same." And the statute 6 Anne, c. 7, declares it high treason for any one to maintain and affirm, by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof."

Limitations of prerogative.

Nor was this a modern principle of constitutional law, established, for the first time, by the Revolution of 1688. If not admitted in its whole force, so far back as the great charter of King John, it has been affirmed by Parliament in very ancient times. In the 40th Edward III. the pope had demanded homage of that monarch for the kingdom of England and land of Ireland, and the arrears of 1,000

[1] 1 Will. & Mary, c. 6. Form and Order of H. M. Coronation.

marks a year that had been granted by King John to Innocent III. and his successors. The king laid these demands before his Parliament, and it is recorded that "The prelates, dukes, counts, barons, and commons, thereupon, after full deliberation, answered and said, with one accord, that neither the said King John, nor any other, could put himself, or his kingdom or people, in such subjection without their assent; and as it appears, by several evidences, that if this was done at all, it was done without their assent, and against his own oath on his coronation," they resolved to resist the demands of the pope with all their power.[1]

From the words of this record it would appear, that whether the charter of King John submitted the royal prerogatives to Parliament or not, it was the opinion of the Parliament of Edward III. that even King John had been bound by the same laws which subsisted in their own time.[2]

The same principle had been laid down by the most venerable authorites of the English law, before the limits of the constitution had become defined. Bracton, a judge in the reign of Henry III., declared that "the king must not be subject to any man, but to God and the law, because the law makes him king."[3] At a later period, the learned Fortescue, the Lord Chancellor of Henry VI., thus explained the royal prerogative to the king's son whose banishment he shared: "A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only regal, but political." He can neither make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange impositions."[4] Later still, during the reign of Elizabeth, who did not suffer the royal prerogative to be impaired in her time,

[1] 2 Rot. Parl. 290.

[2] See also coronation oath of Edw. II. in 1307, Fœdera, vol. ii., p. 36; Book of Oaths, 1689, p. 195.

[3] Bracton, lib. 1, c. 8.

[4] De Laudibus, Leg. Ang. c. 9.

Sir Thomas Smyth affirmed that "the most high and absolute power of the realm of England consisteth in the Parliament;"[1] and then proceeded to assign to the Crown exactly the same place in Parliament as that acknowledged by statute, since the Revolution.

Not to multiply authorities, enough has been said to prove that the Revolution defined, rather than limited, the constitutional prerogatives of the king, and that the Bill of Rights[2] was but a declaration of the ancient law of England.[3]

Profession of the Protestant faith.

An important principle of constitutional law was introduced at the Revolution, by which the sovereign is bound to an adherence to the Protestant faith, and to the maintenance of the Protestant religion, as established by law. He is required to swear, at his coronation, to maintain "the true profession of the Gospel, and the Protestant reformed religion established by law."[4] By the Bill of Rights,[5] and the Act of Settlement,[6] any person professing the popish religion, or who shall marry a papist, is incapable of inheriting or possessing the Crown, and the people are absolved from their allegiance. This exclusion is further confirmed by the second article of the Act of Union with Scotland;[7] and, in addition to the coronation oath, every king or queen is required to make the declaration against the doctrines of the Roman Catholic Church prescribed by the 30th Charles II. st. 2, either on the throne in the House of Lords, in the presence of both houses, at the first meeting of the first Parliament after the accession, or

[1] De republicâ Anglorum, book 2, c. 1, by Sir Thomas Smyth, knt.

[2] "That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal." "That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal."—1st, 2nd, and 4th Articles of the Bill of Rights.

[3] See Allen's Rise and Growth of Royal Prerogative in England.

[4] Coronation oath, 1 Will. & Mary sess. 1, c. 6.

[5] 1 Will. & Mary, sess. 2, c. 2, s. 9

[6] 12 & 13 Will. III. c. 2, s. 2.

[7] 5 & 6 Ann. c. 8.

at the coronation, whichever shall first happen. By similar sanctions the sovereign is also bound to maintain the Protestant religion and Presbyterian church government in Scotland.[1]

Prerogative in connexion with Parliament.

The prerogatives of the Crown, in connexion with the legislature, are of paramount importance and dignity. The legal existence of Parliament results from the exercise of royal prerogative. As "supreme governor, as well in all spiritual or ecclesiastical things or causes as temporal,"[2] the Queen virtually appoints all archbishops and bishops, who form one of the three estates of the realm, and, as "lords spiritual," hold the highest rank, after princes of the blood royal, in the House of Lords. All titles of honour are the gift of the Crown, and thus the "lords temporal" also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the Royal will: but their hereditary titles have long since been held to confer a right to sit in Parliament. To a Queen's writ, also, even the House of Commons owe their election as the representatives of the people. To these fundamental powers are added others, of scarcely less importance, which will be noticed in their proper place.

II. The House of Lords.

II. The Lords Spiritual and Temporal sit together, and jointly constitute the House of Lords, which is the second branch of the legislature in rank and dignity.

I. Lords spiritual.

1. The lords spiritual are the archbishops and bishops of the Church of England having seats in Parliament by ancient usage, and by statute. Before the Conquest, the lords spiritual held a prominent place in the great Saxon councils, which they retained in the councils of the Norman kings; but the right

[1] Act of Union, 5 & 6 Ann. c. 8, s. 2; 3 & 4 Ann. c. 7; Scotch Act, 5 Ann. c. 6 (for securing the Protestant religion and Presbyterian church government).

[2] Act 1 Eliz. c. 1, s. 19; Gibson's Codex, i. 45.

or tenure by which they have held a place in Parliament since the Conquest has not been agreed upon by constitutional writers. In the Saxon times there is no doubt that they sat, as bishops, by virtue of their ecclesiastical office; but, according to Selden, William the Conqueror, in the fourth year of his reign, first brought the bishops and abbots under the tenure by barony;[1] and Blackstone, adopting the same view, states that "William the Conqueror thought proper to change the spiritual tenure of frank-almoign, or free alms, under which the bishops held their lands under the Saxon government, into the feudal or Norman tenure by barony; and in right of succession to those baronies, which were inalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords."[2] Lord Hale was of opinion that the bishops sit by usage; and Hallam maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conquest did not overturn.[3] It has also been suggested, that before the dissolution of the monasteries the mitred abbots had a seat in Parliament solely by virtue of their tenures as barons; but that the bishops sat in a double capacity, as bishops and as barons.[4] By the Constitutions of Clarendon, 10 Henry II., there is a legislative declaration that the bishops shall hold their lands as baronies, and attend the king's court; but it is quite clear that the bishops sat in Parliament, in virtue of their episcopal dignities, before they were thus brought under the tenure *per baroniam*. By subjecting their lands to the feudal services incident to the tenure *per baroniam*, including the duty of attending the king's court when summoned, their

[1] Tit. of Hon. part 2, s. 20.

[2] 1 Comm. p. 156.

[3] 2 Middle Ages, 138.

[4] Elsynge says, "ratione episcopalis dignitatis et tenuræ." Hody's Treatise on Convocations, p. 126. See also Burn's Eccl. Law, 216 *et seq.*

prior right to sit as members of the legislature would not have been prejudiced; and if not, they would appear to have attended afterwards in both capacities. Their presence in Parliament, however, except during the Commonwealth,[1] has been uninterrupted, and their right to sit there unquestioned, whatever nominal changes may have been effected in the nature of their tenure.

There are two achbishops (of Canterbury and York) and twenty-four of the English bishops having seats in Parliament.[2] By the Act 10 & 11 Vict. c. 108, it was enacted, that the number of lords spiritual shall not be increased by the creation of the bishopric of Manchester; and whenever there shall be a vacancy, by the avoidance of any one of the sees of Canterbury, York, London, Durham, or Winchester, or of any other see filled by the translation of a bishop already sitting, such vacancy shall be supplied by the issue of a writ of summons to the bishop elected to the same see; but if the vacancy be caused by the avoidance of any other see, such vacancy shall be supplied by the issue of a writ of summons to that bishop who shall not have previously become entitled to such writ; and no bishop elected to any see, not being one of the five sees aboved named, shall be entitled to a writ of summons, unless in the order and according to the conditions above prescribed. To the estate of lords spiritual were added four bishops on the part of Ireland, on the union of that country with Great Britain, who sat by rotation of sessions, and represented the whole episcopal body of Ireland in Parliament.[3] But, on the disestablishment of the Irish Church, in 1869, the Bishops

[1] They were excluded by Act 16 Car. I. c. 27, and did not resume their seats, after the Restoration, in the Convention Parliament, but were restored in the next Parliament, by statute 13 Car. II. c. 2.

[2] The Bishop of Sodor and Man has no seat in Parliament. The late bishop, Lord Auckland, sat as a peer amongst the barons.

[3] 39 & 40 Geo. III. c. 67 (Act of Union, art. 4); 40 Geo. III. (Irish) c. 29; 3 & 4 Will. IV. c. 37, s. 51, 52.

of that Church were deprived of their seats in Parliament after the 1st January 1871.[1]

2. Lords temporal.

2. The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons, whose titles are of different degrees of antiquity and honour. The title of duke, though first in rank, is by no means the most ancient in this country. It was a feudal title of high dignity in all parts of Europe, in very early times, and among the Saxons, *duces* (or leaders) are frequently mentioned; but the title was first conferred, after the Conquest, by Edward III., upon his son Edward the Black Prince, whom he created Duke of Cornwall.[2] Before that time the title had often been used as synonymous with that of *comes* and *ealdorman*.[3]

Dukes.

Marquesses.

Marquesses were originally lords of the marches or borders, and derived their title from the offices held by them. In the German empire the counts or *graves* of those provinces which were on the frontiers had the titles of *marchio* and *marggravius* in Latin, of *markgraf* in German, and *marchese* in Italian. In England similar offices and titles were anciently enjoyed without being attached to any distinct dignity in the peerage. The noblemen who governed the provinces on the borders of Wales and Scotland were called *marchiones*, and claimed certain privileges by virtue of their office; but the earliest creation of marquess, as a title of honour, was in the ninth year of Richard II. Robert de Vere, Earl of Oxford, was then created Marquess of Dublin for life; and the rank assigned to him in Parliament, by right of this new dignity, was immediately after the dukes, and before the earls.[4] In the same reign, John, Earl of Somerset, was created Marquess of Dorset, but was deprived of the title by Henry IV. In the fourth year of the latter reign, the Parliament prayed the king to restore this dignity; but the Earl begged to decline

[1] 32 & 33 Vict. c. 42.

[2] Seld. Tit. of Hon. part 2, s. 9. 29, &c.

[3] See a comparison of these titles, Kemble, Saxons, ii. p. 127, *notes*.

[4] Seld. Tit. of Hon. part 2, s. 47.

its acceptance, because the name was so strange in this kingdom.[1]

Earls.

The title of Earl, in England, is equivalent to that of the Roman *comes*, or count in other countries of Europe. Amongst the Saxons there were *ealdormen*, to whom the civil, military, and judicial administration of shires was committed, but whose titles were official and not hereditary,[2] although the office was frequently held by the heads of the same family in succession.[3] That title was often used by writers indifferently with *comes*, on account of the similarity of character and dignity denoted by those names. When the Danes had gained ascendency in England, the ancient Danish title of *eorle*, which signified "noble by birth," and was also used to indicate a similar dignity, was gradually substituted for that of *ealdorman*.[4] At the Norman Conquest the title of eorle or earl was in universal use, and was so high a dignity, that in the earliest charters of William the Conqueror he styles himself, in Latin, "Princeps Normannorum," and in Saxon, Eorle or Earl of Normandy.[5] After the Conquest, the Norman name of count distinguished the noblemen who enjoyed this dignity, from whence the shires committed to their charge have ever since been called counties.[6] In the course of time the original title of earl was revived: but their wives, and peeresses of that rank in their own right, have always retained the French or Norman name of countesses.

Viscounts.

Between the dignities of earl and baron no rank intervened, in England, until the reign of Henry VI.: but in France the title of viscount, as subordinate to that of count, was very ancient. The great counts of that kingdom,

[1] 3 Rot. Parl. 488.

[2] West, Inquiry into the Manner of creating Peers, 3, 4. Spelman, on Feuds and Tenures, p. 13. Rep. on Dignity of the Peerage, 1820, p. 17. Kemble, Saxons, ii. p. 131–150.

[3] Palgrave, Engl. Com. 592 *et seq.*

[4] Palgrave, Engl. Com. 11. 118. 326, 327. Kemble, Saxons in England, ii. 132. See also 2 Hallam, Middle Ages, p. 65, 9th edit.

[5] Seld. Tit. of Hon. part 2, s. 2.

[6] Rep. on Dignity of the Peerage, 86.

holding large territories in feudal sovereignty, appointed governors of parts of their possessions, who were called viscounts, or *vicecomites*. These, either by feudal gift or by usurpation, often obtained an inheritance in the districts confided to them, and transmitted the lands and dignity to their posterity.[1] In England, the title of viscount was first conferred upon John Beaumont, Viscount Beaumont, by Henry VI., in the eighteenth year of his reign; and a place was assigned to him in Parliament, the council, and other assemblies, above all the barons.[2] The French origin of this dignity was exemplified, immediately afterwards, by the grant of the viscounty of Beaumont, in France, to the same person, by King Henry, who then styled himself king of France and England. The rank and precedence of a viscount were more distinctly defined by patent, in the 23d of Henry VI., to be above the heirs and sons of earls, and immediately after the earls themselves.

Barons. Barons are often mentioned in the councils of the Saxon kings, and in the laws of Edward the Confessor were classed with the archbishops, bishops, and earls: but the name bore different significations, and no distinct dignity was annexed to it, as in later times. After the Conquest, every dignity was attached to the possession of lands, which were held immediately of the king, subject to feudal services. The lands which were granted by William the Conqueror to his followers, descended to their posterity, and those who held lands of the Crown *per baroniam* were ennobled by the dignity of baron. By the feudal system, every tenant was bound to attend the court of his immediate superior; and hence it was the duty of the barons, as tenants *in capite* of the king, to attend the king's court or council: but although their obligation to attend the king's council was one of the services incident to their tenure, they received writs of summons from the king, when their attendance was required. At length, when the lands

[1] Seld. Tit. of Hon. part 2, s. 19. [2] Ib. s. 30.

became subdivided, and the tenants *per baroniam* were consequently more numerous and poor, some of them only were summoned by writ, and thus they were gradually separated into greater and lesser barons: of whom the former continued to receive particular writs of summons from the king, and the latter a general summons only through the sheriffs. The feudal tenure of the baronies afterwards became unnecessary to create the dignity of a baron, and the king's writ or patent, and occasionally an Act of Parliament, or creation "in pleno Parliamento," conferred the dignity and the seat in Parliament.[1] The condition of the lesser barons, after their separation from their more powerful brethren, will be presently explained.

Representative peers of Scotland.

On the union of Scotland, in 1707, the Scottish peers were not admitted, as a class, to seats in the British Parliament: but, in pursuance of the provisions of several statutes,[2] they elect for each Parliament sixteen representatives from their own body. The representative peers of Scotland enjoy all the privileges of Parliament, including the right of sitting upon the trials of peers; and all peers of Scotland are peers of Great Britain, and have rank and precedency immediately after the peers of the like orders and degrees in England, at the time of the union, and before all peers of Great Britain of the like orders and degrees, created since the union, and are to be tried as peers, and enjoy all privileges as peers, except the right of sitting in Parliament, or upon the trials of peers.[3] The Scottish peerage consists exclusively of the descendants of peers before the union, as no provision was made for any subsequent creation of Scottish peers by the Crown. An authentic list of the peerage was entered in the roll of peers, by order of the

[1] 3 Selden's Works, 713–743. West, Inquiry into the Manner of creating Peers, 6. 14. 30, 31. 36. 70, 71. 3 Rep. Dign. of Peerage, 97, &c. 2 Hallam, Middle Ages, 261.

[2] Act of Union, 5 & 6 Ann. c. 8, art. xxii. & xxiii. Act of the Parliament of Scotland, 5 Ann. c. 8. 6 Ann. c. 23. 10 & 11 Vict. c. 52. 14 & 15 Vict. c. 87. 15 & 16 Vict. c. 35.

[3] Act of Union, 5 Ann. c. 8, art. xxiii.

House of Lords, on the 12th February 1708, to which other peerages have since been added by order of that house, when claims have been established; and in order to prevent the assumption of dormant and extinct peerages, it is provided, by 10 & 11 Victoria, c. 52, that no title standing in that roll, in right of which no vote has been given since 1800, shall be called over at an election, without an order of the House of Lords. The House of Lords, when they have disallowed any claim, may also order that such title shall not be called over at any future election. A Scotch representative peer, on being created a peer of Great Britain, ceases to be one of the representatives of the peerage of Scotland.[1]

Under the Act for the legislative union with Ireland,[2] which came into operation in 1801, the Irish peers elect twenty-eight representatives for life from the peerage of Ireland. By that Act, the power of the Queen to add to the number of Irish peers is subject to limitation. She may make promotions in the peerage at all times: but she can only create a new Irish peer as often as three of the peerages of Ireland, which were in existence at the time of the union, have become extinct.[3] But if it should happen that the number of Irish peers,—exclusive of those holding any peerage of the United Kingdom, which entitles them to an hereditary seat in the House of Lords,—should be reduced to one hundred, then one new Irish peerage may be created as often as one of such hundred peerages becomes extinct, or as often as an Irish peer becomes entitled, by descent or creation, to an hereditary seat in Parliament. The object of that article of union was to keep up the Irish peerage to the number of one hundred, exclusive of Irish

And Ireland.

[1] Cases of the Duke of Queensberry and the Marquis of Abercorn, 37 Lords J. 594, b. 26 Parl. Hist. 585. 595.

[2] 39 & 40 Geo. III. c. 67; 40 Geo. III. c. 38, I.

[3] See Fermoy Peerage case, 1856; 140 Hans. Deb., 3d Ser. 698. 88 Lords' J. 150 (Judges' opinions), 336.

peers who may be entitled, by descent or creation, to an hereditary seat in the House of Lords of the United Kingdom. The representative peers of Ireland are entitled to the privileges of Lords of Parliament, and all the peers of Ireland have privilege of peerage.[1] They may be elected, as members of the House of Commons, for any place in Great Britain: but while sitting there, they do not enjoy the privilege of peerage.[2]

These, then, are the component parts of the House of Lords, of whom all peers and lords of Parliament, whatever may be their title, have equal voice in Parliament. By a standing Order of the House of Lords, no peer is permitted to sit in the House until he is twenty-one years of age; and by the Act of Union the representative peers of Scotland are required to be of full age.[3]

Life peerages.

The titles of all temporal peers are now hereditary. Life peerages were formerly not unknown in our constitution;[4] and in 1856 Her Majesty, having been advised to revive the dignity, with a view to improve the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters patent, Baron Wensleydale, "for and during the term of his natural life."[5] But the House of Lords referred these letters patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion "that neither the said letters patent, nor the said letters patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parliament."[6] The House concurred in this opinion, and Lord Wensleydale, therefore, did not offer to take the oaths and his seat, but was

[1] See Coates *v.* Lord Hawarden, 7 Barn. & Cr. 388.

[2] Fourth art. of Union.

[3] Lords' S. O. No. 54. 5 Ann. c. 8, art. xxv, s. 12.

[4] See cases collected by Committee of Privileges, 1856.

[5] Letters Patent, 16th Jan. 1856.

[6] Report of Committee of Privileges, 1856, No. 18.

shortly afterwards created an hereditary baron, in the usual form.[1]

Lords spiritual and temporal form one body.

The two estates of lords spiritual and lords temporal, thus constituted, may originally have had an equal voice in all matters deliberated upon, and had separate places for their discussion: but at a very early period they are found to constitute one assembly; and for many centuries past, though retaining their distinct character and denominations, they have been, practically, but one estate of the realm. Thus the Act of Uniformity, 1st Elizabeth, c. 2, was passed by the queen, the lords temporal, and the commons, although the whole estate of the lords spiritual dissented. The lords temporal are the hereditary peers of the realm, whose blood is ennobled, and whose dignities can only be lost by attainder, or taken away by Act of Parliament:[2] but the bishops, not being ennobled in blood, are lords of Parliament only, and not peers.[3] This distinction having been expressly declared by the House of Lords, in 1692, must be held conclusive of the fact that bishops are not peers, although in more ancient times such a distinction appears to have been unknown. The votes of the spiritual and temporal lords are intermixed, and the joint majority of the members of both estates determine every question; but they sit apart, on separate benches, the place assigned to the lords spiritual being the upper part of the house, on the right hand of the throne.

The House of Lords is now[4] composed of 477 members,

[1] 140 Hans. Deb., 3d Ser. 263, 1290, &c.

[2] 12 Rep. 107. 12 Mod. 56. 3 Rep. Dig. Peerage, 93. In 1679, during the debates concerning Lord Danby's plea of a Royal pardon in bar of his impeachment, an accommodation was proposed by the Court, to avoid his attainder, that he should be banished and degraded from his peerage by Act of Parliament.—2 Burnet's Own Times, 202.

[3] See Lords' S. O., No. 79. "It would be resolved what privilege noblemen and peers have, betwixt which this difference is to be observed, that bishops are only lords of Parliament, but not peers, for they are not of tryal by nobility."

[4] In February, 1873. Roll of Lords spiritual and temporal.

comprising the several orders, spiritual and temporal, of which it is constituted.

III. The House of Commons.

III. The third estate is that of the Commons of the realm, represented in Parliament by the knights, citizens, and burgesses. The date of their admission to a place in the legislature, has been a subject of controversy among historians and constitutional writers; of whom some have traced their claims up to the Saxon period, while others deny them any share in the government, until long after the Conquest. Without entering minutely upon a subject, which, although of the deepest interest, is no longer of constitutional import, a brief statement will serve to unfold the ancient character of the House of Commons, and to render its present constitution the more intelligible.

Saxon Institutions.

It is agreed by many writers of learning and authority, that the Commons formed part of the great synods or councils before the Conquest; but how they were summoned or selected, and what degree of power they possessed, is a matter of doubt and obscurity. Under the Saxon kings, all the forms of local government were undoubtedly popular. The shire-gemót was a kind of county Parliament, over which the ealdorman, or earl of the shire, presided, with the bishop, the shire-gerieve, or sheriff, and the assessors appointed to assist their deliberations upon points of law. A shire-gemót was held at least twice a year in every county, when the magistrates, thanes, and abbots, with all the clergy and landholders, were required to be present; and a variety of business was transacted: but the proceedings of these assemblies generally partook more of the character of a court of justice, than of a legislative body.

Shire-gemót.

Witena-gemót.

That the constitution of the witena-gemót, or national council, was equally popular, cannot be affirmed with any confidence. Although the smaller proprietors of land may not have been actually disqualified by law from taking part in the proceedings; yet the distance of the council

from their homes, and the absence of sufficient means or inducement to undertake a difficult and dangerous journey, must practically have prevented them from attending. It has been conjectured that they were represented by their tithing men, and the inhabitants of towns by their chief magistrates: but notwithstanding the learning and ingenuity which have been devoted to the inquiry, no system of election or political representation, properly so called, can be distinctly traced back to that time.

The clergy may have been virtually represented by the bishops and abbots, and the absent laity of each shire by the ealdorman, the sheriff, and such of the rich proprietors of land as may have been able to attend the gemót.[1] The people may thus have been held to be present at the making of laws, and their name accordingly introduced into the records. That they were actually present on some occasions, is certain; but that they had any right to attend, either by themselves or by elected representatives, may indeed be fairly conjectured, but has not yet been historically proved.[2]

The Conquest.

But whatever may have been the position of the people in the Saxon government, the Conquest, and the strictly feudal character of the Norman institutions, must have brought them completely under the subjection of their feudal superiors. From the haughty character of the Norman barons, and the helpless condition of a conquered people, it is probable that the commonalty, as a class, were not admitted to any share in the national councils, until some time after the Conquest, but were bound by the acts of their feudal lords; and that the Norman councils were formed of the spiritual lords, and mainly, if not exclusively, of the tenants in chief of the Crown, who held by military service.[3]

[1] Kemble, Saxons in England, ii. 193–201.

[2] See Sir F. Palgrave's English Commonwealth, 314. 631. 634–658, and Proofs, ccxxix. ccclxxxv. Turner, Hist. of the Anglo-Saxons, iii. 180. 184. Thorpe's Leg. Sax. i. 358. Chron. Sax. An. 1020. Ingulfus, 863.

[3] Rep. Dignity of Peerage, 34.

This inference is confirmed by the peculiar character of feudal institutions, which made the revenue of the early Norman kings independent of the people. As feudal superiors they were entitled to receive various services, fines and pecuniary aids from their tenants, who held under them all the lands in the kingdom. These sources of revenue were augmented by pecuniary commutations of feudal services, and by customs levied upon corporate towns, in return for commercial privileges, which were, from time to time, conceded to them. Wars were the principal causes of expense, when it was natural for kings to seek the advice of the chief barons, upon whose military services they depended. Nor had they any interest in consulting the people, from whom they had no taxes to demand, and whose personal services in war were already due to their feudal lords. In the absence of any distinct evidence, it is not, therefore, probable that the Norman kings should have summoned representatives of the people until these sources of revenue had failed, and the commonalty had become more wealthy.

Knights of the shire.

Consistently with the feudal character of the Norman councils, the first knights of the shire are supposed to have been the lesser barons, who, though still summoned to Parliament, gradually forebore to attend, and selected some of the richest and most influential of their body to represent them. The words of the charter of King John favour this position; for it is there promised that the greater barons shall be summoned personally by letters from the king, and all other tenants in chief under the Crown, by the sheriffs and bailiffs. The summons to the lesser barons being thus only general, no peculiar obligation of personal attendance was imposed; and, as their numbers increased, and their wealth was subdivided, they were naturally reluctant to incur the charge of distant journeys, and the mortification of being held in slight esteem by the greater barons. This position receives confirmation from the ancient law of Scot-

land,[1] in which the small barons and free tenants were classed together, and jointly required to send representatives. To the tenants in chief by knight's service were added, from time to time, the representatives of the richer cities and borough; and this addition to the legislature may be regarded as the origin of the Commons, as a distinct estate of the realm in Parliament. Citizens and burgesses.

It is not known at what time these important changes in the constitution of Parliament occurred, for no mention is made of the Commons in any of the early records after the Conquest. William the Conqueror, in the fourth year of his reign, summoned, by the advice of his barons, a council of noble and wise men, learned in the law of England, and twelve were returned out of every county to show what the customs of the kingdom were:[2] but this assembly, although, in the opinion of Lord Hale, it was "as sufficient and effectual a Parliament as ever was held in England,"[3] bore little resemblance to a legal summons of the commonalty, as an estate of the realm.[4]

After this period, the laws and charters of William and his immediate successors constantly mention councils of bishops, abbots, barons, and the chief persons of the kingdom, but are silent as to the Commons. But in the 22nd year of Henry II. (A.D. 1176), Benedict Abbas relates, that about the feast of St. Paul, the king came to Northampton, and there held a great council concerning the statutes of his realm, in the presence of the bishops, earls, and barons of his dominions, and with the advice of his knights and *men*. This is the first chronicle which appears to include the Commons in the national councils: but it would be too vague to elucidate the inquiry, even if its authority were of a higher order. And again, in the 15th of King John (A.D. 1213), a writ was directed to the sheriff of each county, "to send four discreet knights to confer with

[1] 1427, c. 102.
[2] 1 Hoveden, 343.
[3] 1 Hale, Hist. of the Common Law, 202.
[4] See 2 Hallam, Mid. Ages, 146.

us concerning the affairs of our kingdom:" but it does not appear whether they were elected by the county, or picked, at pleasure, by the sheriff.[1]

Magna Charta of King John.

Two years afterwards, the great charter of King John defined the constitution of Parliament more clearly than any earlier record: but even there the origin of the representative system is left in obscurity. It reserves to the city of London, and to all other cities, boroughs, and towns, and to the cinque ports, and other ports, all their ancient liberties and free customs. But whether the summons to Parliament which is there promised was then first instituted, or whether it was an ancient privilege confirmed and guaranteed for the future, the words of the charter do not sufficiently explain. From this time, however, may be clearly traced the existence of a Parliament, similar to that which has continued to our own days.

"The main constitution of Parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons personally, and all other tenants in chief under the Crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary."

Notwithstanding the distinctness of this promise, the charters of Henry III. omitted the engagement to summon the tenants in chief by the sheriff and bailiffs; and it is doubtful whether they were summoned or not, in the early part of that reign. But a writ of the 38th year (A.D. 1254) is extant, which involves the principle of representation more distinctly than any previous writ or charter. It requires the sheriff of each county "to cause to come before the king's council two good and discreet knights of his county, *whom the men of the county shall have chosen for this purpose*, in the stead of all and each of them, to consider,

[1] 2 Prynne's Register, 16. See also Palgrave's English Commonwealth, chap. IX.

along with the knights of other counties, what aid they will grant the king."[1] This, however, was for a particular occasion only; and to appear before the council is not to vote as an estate of the realm. Moreover, the practice of summoning citizens and others before the council, for particular purposes, continued long after the regular summons of members to Parliament from cities and boroughs, had commenced.[2] Nevertheless, representation of some kind then existed, and it is interesting to observe how early the people had a share in granting subsidies. Another writ, in 1261, directs the sheriffs to cause knights to repair, from each county, to the king at Windsor.[3] At length, in the 49th Henry III. (A.D. 1265), writs were issued to the sheriffs by Simon de Montfort, Earl of Leicester, directing them to return two knights for each county, and two citizens or burgesses for every city and borough; and from this time may be clearly dated the recognition of the Commons, as an estate of the realm in Parliament.[4] It is true that they were not afterwards summoned without intermission: but there is evidence to prove that they were repeatedly assembled by Edward I., especially in the 11th, the 21st, 22nd, and 23rd years of his reign.[5] Passing over less prominent records of the participation of the Commons in the government, the statute of the 25th Edward I., "De tallagio non concedendo," must not be overlooked. It was there declared that "no tallage or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights,

[1] 2 Prynne's Register, 23.

[2] For instances in the reign of Edward III. and Richard II. see Rep. Dig. Peerage, App. I. 450. 457, 458. 469. 474. 741. Rym. Fœd. 186.

[3] 2 Prynne's Register, 27.

[4] See Lord Lyttelton's Hist. of Henry II. ii. 276; iv. 79 *et seq.*

[5] See Table of Writs, Rep. Dig. Peerage, 489. Writs of Summons to Parliament, by Palgrave, 1827–1834. Parry's Parliaments and Councils of England, Intr.; and 49–69. Ruffhead, Pref. to Statutes. The writ of the 22nd Edw. I. is for knights only. Lord Colchester's Diary, iii. 27. 40. 47. 54–66.

burgesses, and other freemen of the land." This statute acknowledges the right of the Commons to tax themselves; and a few years later a general power of legislation was also recognised as inherent in them. A statute was passed in the 15th Edward II. (1322), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed.*"

In reference to this statute Hallam justly observes, "that it not only establishes by a legislative declaration the present constitution of Parliament; but recognises it as already standing upon a custom of some length of time."[1] It may be added, in conclusion, that during the reign of Edward III. the Commons were regularly mentioned in the enacting part of the statutes, having been rarely mentioned there in previous reigns.[2]

Lords and Commons originally sat in one Chamber.

So far the constituent parts of Parliament may be traced; and the three estates of the realm originally sat together in one chamber. When the lesser barons began to secede from personal attendance, as a body, and to send representatives, they continued to sit with the greater barons as before: but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that they should have consulted with the other representatives, although they continued to sit in the same chamber as the Lords. The ancient treatise, "De modo tenendi Parliamentum," if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together: but that when any

[1] 1 Const. Hist. 4, *n.* For a fuller review of the progress of our representative system, see also Histoire des origines du Gouvernement Représentatif en Europe, par M. Guizot, 1851; and Sir Roger Twysden's Tract, Camden Soc. Pub. 1849.

[2] 2 Hallam, Midd. Ages, 180. Hakewel, 101. Cotton's Abridgment, Pref.

difficult and doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard II., and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the fact as there stated; and the former alleged that he had seen a record of the 30th Henry I. (1130), of the degrees and seats of the Lords and Commons as one body; and that the separation took place at the desire of the Commons.[1]

The union of the two houses is sometimes deduced from the supposed absence of a speaker of the Commons in early times: but Sir Edward Coke is in error when he infers that the Commons had no speaker so late as the 28th of Edward I.;[2] for in the 44th of Henry III., Peter de Montfort signed and sealed an answer of the Parliament to Pope Alexander after the Lords, "vice totius communitatis."[3] Nor can any decided opinion be formed from the fact of speakers of the Commons not having been mentioned in earlier times; for if they consulted apart from the Lords, a speaker would have been as necessary to preside over their deliberations, as when a more complete separation ensued. The first speaker of the Commons to whom that title was expressly given was Sir T. Hungerford, in the 51st Edward III.[4]

It appears from several entries in the rolls of Parliament in the early part of the reign of Edward III., that after the cause of summons had been declared by the king to the three estates collectively, the prelates with the clergy consulted by themselves; the earls and barons by themselves; and the Commons, and sometimes even the citizens and

[1] 13 Howell's St. Trials, 1130.
[2] 4th Inst. 2.
[3] Elsynge, 155. Hakewel, 200.
[4] 2 Rot. Parl. 374. 2 Hatsell, 212, *n.* 2 Hallam, Middle Ages, 190.

burgesses,[1] by themselves; and that they all delivered their joint answer to the king.[2]

The inquiry, however, is of little moment, for whether the Commons sat with the Lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the Commons intermixed with the Lords, in their votes, as one assembly. Their chief business was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the Commons again a separate subsidy for themselves. The Commons could not have had a voice in the grants of the other estates; and although the authority of their name was used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the Lords; and it is well known that down to the reign of Henry VI., no laws were actually written and enacted until the end of the Parliament.

When separated.

Various dates have been assigned for the formal separation of the two houses, some as early as the 49th Henry III.,[3] and others so late as the 17th Edward III.:[4] but as it is admitted that they often sat apart for deliberation, particular instances in which they met in different places will not determine whether their separation, at those times, was temporary or permanent. When the Commons deliberated apart, they sat in the chapter-house of the abbot of West-

[1] In the 46 Edw. III., after the Parliament had granted supplies, and the petitions of the Commons had been read and answered, the knights of the shire had leave to depart, and writs for their wages and expenses were made out for them by the chancellor's order; but he commanded the citizens and burgesses to stay, who being again assembled before the prince, prelates, and lords, granted for the safe conveying their ships and goods 2 *s.* on every tun of wine imported or exported out of the kingdom, and 6 *d.* in the pound on all their goods and merchandise for one year.—2 Rot. Parl. 310.

[2] Rot. Parl. 5 & 6 Edw. III. 4 Inst. 2. Elsynge, 102.

[3] Per Lord Ellenborough, in Burdett *v.* Abbot.

[4] Carte's Hist. 451.

minster, and they continued their sittings in that place, after their final separation.[1]

Number of the Commons at different times.

The number of members admitted to the House of Commons has varied considerably at different periods. In addition to those boroughs which appear from the first to have returned burgesses to Parliament, many others had that privilege conferred upon them by charter, or by statute, in succeeding reigns; while some were omitted by the negligence or corruption of sheriffs, and others were discharged from what they considered a heavy burthen,—the expense of maintaining their members. In the time of Edward III. 4 *s.* a day were allowed to a knight of the shire, and 2 *s.* to a citizen or burgess;[2] and this charge was, in the case of poor and small communities, too great an evil to be compensated by the possible benefit of representation. In the reign of Henry VI., there were not more than 300 members of the House of Commons, being about 25 more than in the reign of Edward I., and 50 more than in the reign of Edward III. The legislature added 27 for Wales,[3] and four for the county and city of Chester,[4] in the reign of Henry VIII., and four for the county and city of Durham in the reign of Charles II.;[5] while 180 new members were added by royal charter between the reigns of Henry VIII. and Charles II.[6]

Wages of members.

Union of Scotland and Ireland.

Forty-five members were assigned to Scotland, as her proportion of members in the British Parliament, on the union of that kingdom with England;[7] and one hundred to

[1] Elsynge, 104. 1 Parl. Hist. 91. 2 Rot. Parl. 289. 351.

[2] 4 Inst. 16. Prynne's 4th Register, p. 53. 495.

[3] 27 Hen. VIII. c. 26.

[4] 34 Hen. VIII. c. 13.

[5] 25 Car. II. c. 9.

[6] Christian's Notes to Blackstone. 2 Hatsell, 413.

[7] The election of representatives by the freeholders in Scotland had been recognised by the statute law so far back as the reign of James I. By Act 1425, c. 52, all freeholders were required to give personal attendance in Parliament, and not by a procurator; from which it is evident that representation was then the custom. Nor was it possible to restrain it by law, for two years afterwards it was authorised, and the constitution of the House of Commons defined. By Act 1427, c. 102, it was declared, "that the small barons and free tenants need not come

Ireland at the commencement of the present century, when her Parliament became incorporated with that of the United Kingdom. By these successive additions the number was increased to 658; and notwithstanding the changes effected in the distribution of the elective franchise by the Reform Acts in 1832, that number continued unaltered until the disfranchisement of Sudbury, in 1844.

Reform Acts for England and Wales, 1832 and 1867.

The object of the English reform act of 1832,[1] as stated in the preamble, was to correct divers abuses that had long prevailed in the choice of members; to deprive many inconsiderable places of the right of returning members; to grant such privilege to large, populous, and wealthy towns; to increase the number of knights of the shire; to extend the elective franchise to many of his Majesty's subjects who have not heretofore enjoyed the same, and to diminish the expense of elections. To effect these changes, 56 boroughs in England and Wales were entirely disfranchised, and 30 which had previously returned two members were restricted to one member; while 42 new boroughs were created, of which 22 were each to return two members, and 20 a single member. Several small boroughs in Wales were united for the purpose of contributing to return a member.

The result of these and other local arrangements which it is not necessary to describe, was that the two universities and the several cities and boroughs contributed 341 citizens and burgesses for England and Wales.[2]

By the Reform act of 1867, the boroughs of Totnes, Reigate, Yarmouth, and Lancaster, were disfranchised; 38

to parliaments; provided that, at the head court of every sheriffdom, two or more wise men be chosen, according to the extent of the shire, who shall have power to hear, treat, and finally to determine all causes laid before Parliament; and to chuse a speaker, who shall propose all and sundry needs and causes pertaining to the commons in Parliament."

[1] 2 & 3 Will. IV. c. 45.

[2] Until 1872, the ancient terms for knights, citizens, and burgesses, barons of the cinque ports and burgesses of the universities, were used in the writs and returns; but by the Parliamentary and Municipal Elections Act, 1872, these distinctions were discontinued, and all are alike termed members, in the writs and returns.

boroughs previously returning two members were reduced to one. Manchester, Liverpool, Birmingham, and Leeds, each received a third member; Merthyr Tydfil and Salford each a second member; the Tower Hamlets were divided into two boroughs, each returning two members; 10 new boroughs were created, of which Chelsea returned two members, and every other borough one only. By these arrangements the representatives for boroughs were reduced by 26; and the University of London became entitled to return one member. But before this act came into operation, seven English boroughs were disfranchised by the Scotch reform act of 1868, and the seats added to Scotland.

Several of the counties were divided, by the Reform act of 1832, into electoral districts or divisions, by which the number of knights of the shire was increased to 162. And, again, by the Reform act of 1867, 13 counties were further divided, and received an addition of 25 members.

For Scotland, 1832 and 1868;

The number of members for Scotland was increased by the Scotch reform act of 1832[1] from 45 to 53; 30 of whom were commissioners of shires, and 23 commissioners of burghs, representing towns, burghs, or districts of small burghs. And again, by the Scotch reform act of 1868, the number of members for Scotland was increased to 60; three new members being given to shires, two to the universities, and two to cities and burghs.

And Ireland, 1832 and 1868.

By the Irish reform act of 1832,[2] the number of representatives for Ireland in the Imperial Parliament was increased from 100 to 105; 64 being for counties, 39 for cities and boroughs, and two for the University of Dublin. By the Irish reform bill of 1868, no change was made in the number of members representing that part of the United Kingdom, nor in the distribution of seats; but the two disfranchised boroughs of Sligo and Cashel were still left without representation.

[1] 2 & 3 Will. IV. c. 65. [2] Ib. c. 88.

Constituency of English counties.

The classes of persons by whom these representatives are elected may be described, generally, in few words, if the legal questions connected with the franchise, which are both numerous and intricate, be avoided. To begin with the English counties. Before the 8th of Henry VI. all freeholders or suitors present at the county court[1] had a right to vote (or, as is affirmed by some, all freemen): but by a statute passed in that year (c. 7), the right was limited to "people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of 40*s.* by the year, at the least, above all charges." By the Reform Act of 1832 this franchise of a 40*s.* freehold of inheritance was not disturbed; but limitations were imposed upon freehold tenures for life. No person, if not seised at the passing of the act, was entitled to vote in respect of such tenures, unless he was in *bonâ fide* occupation of lands and tenements, or unless they came to him by marriage, marriage-settlement, devise, or promotion to any benefice or office, or unless they were of the clear yearly value of 10*l.*, which value was reduced to 5*l.* by the Reform Act of 1867. Copyholders having an estate of 10*l.* a year; leaseholders of land of that value whose leases were originally granted for 60 years; leaseholders of 50*l.*, with 20 years' leases; and tenants-at-will occupying lands or tenements paying a rent of not less than 50*l.* a year, had the right of voting conferred upon them by the Reform Act of 1832; and the Act of 1867 reduced the franchise of copyholders and leaseholders from 10*l.* to 5*l.*, and the occupation franchise from 50*l.* to 12*l.*

Of cities and boroughs.

In cities and boroughs the right of voting formerly varied according to the ancient custom prevailing in each. With certain modifications, some of these ancient rights were retained by the Reform Act of 1832, as that of freemen, and other corporate qualifications: but all occupiers of houses of the clear yearly value of 10*l.* were enfranchised by that Act.

[1] See Act 7 Hen. IV. c. 15.

The Reform Act of 1867 extended the borough franchise to all occupiers of dwelling-houses who have resided for twelve months on the 31st July, in any year, and have been rated to the poor rates as ordinary occupiers, and have, on or before the 20th July, paid such rates up to the preceding 5th January,[1] and to lodgers who have occupied, for the same period, lodgings of the annual value, unfurnished, of 10*l.* By the 32 & 33 Vict. c. 41, owners may pay the rates upon houses under 20*l.*, without disqualifying the occupier; and vestries may rate the owner instead of the occupier.

Registration.

From whatever right these various classes of persons claim to vote, either for counties or for cities and boroughs, it is necessary that they shall be registered in lists prepared by the overseers of each parish. On certain days courts are held, by barristers appointed by the Lord Chief Justice of England and the Senior Judge of each Summer Circuit, to revise these lists, when claims may be made by persons omitted, and objections may be offered to any name inserted by the overseers. If an objection be sustained, the name is struck off the list; and in ordinary cases the claimant will have no right to vote at any ensuing election unless he shall succeed, at a subsequent registration, in establishing his claim: but on points of law there is an appeal to the Court of Common Pleas from the decisions of revising barristers;[2] and the register is corrected in accordance with the judgment of that court.

In Scotland.

The Scotch reform act of 1832[3] reserved the rights of all persons then on the roll of freeholders of any shire, or who were entitled to be put upon it, and extended the franchise to all owners of property of the clear yearly value of 10*l.*, and to certain classes of leaseholders. In cities, towns, and burghs, the Act substituted a 10*l.* household franchise for the system of electing members by the town councils, which had previously existed. By the Scotch reform act of

[1] 30 & 31 Vict. c. 102, s. 3. [2] See 2 & 3 Will. IV. c. 45, and 6 & 7 Vict. c. 18.
[3] 2 & 3 Will. IV. c. 65.

1868, the county franchise was extended to owners of lands and heritages of five pounds yearly value, and to occupiers of the rateable value of fourteen pounds; and the borough franchise to all occupiers of dwelling-houses paying their rates; and to tenants of lodgings of 10*l.* clear annual value, unfurnished.

In Ireland.

In Ireland various classes of freeholders and leaseholders were invested with the county franchise, by the Reform act of 1832,[1] to whom were added, by the 13 & 14 Vict. c. 69, occupiers of land, rated for the poor rate at a net annual value of 12*l.*; and persons entitled to estates in fee, or in tail, or for life, of the rated value of 5*l.* And by the latter Act, in addition to the borough constituency under the Reform Act, the occupiers of lands or premises rated at 8*l.* were entitled to vote for cities and boroughs. By 16 & 17 Vict. c. 58, provision was made for the annual revision of the lists of voters for the city of Dublin. By the Irish Reform act of 1868, the borough franchise was extended to occupiers of houses rated at four pounds, and of lodgings of the annual value of ten pounds, unfurnished. No change was made in the qualification of county voters.[2]

Qualification of voters.

It has not been attempted to explain, in detail, all the distinctions of the elective franchise; neither is it proposed to state all the grounds upon which persons may be disqualified from voting. Aliens, persons under 21 years of age, of unsound mind, in receipt of parochial relief, or convicted of certain offences, are incapable of voting. Many officers, also, who are concerned in the collection of the revenue are disqualified.[3]

Property qualification of members abolished.

The legal qualifications and disqualifications for sitting and voting in Parliament may now be briefly enumerated. The

[1] 2 & 3 Will. IV. c. 88.

[2] The law of registration in Ireland was also amended by a separate Act 31 & 32 Vict. c. 112.

[3] By Act 31 & 32 Vict. c. 73, revenue officers disfranchised by 7 & 8 Geo. III. c. 53, 22 Geo. III. c. 41, and 43 Geo. III. c. 25, were restored to the right of voting.

property qualification which, since the reign of Queen Anne,[1] had been required for members sitting for places in England and Ireland, was in the year 1858 entirely abolished.

Qualifications and disqualifications.

Formerly it was necessary that the member chosen should himself be one of the body represented.[2] The law, however, was constantly disregarded, and in 1774 was repealed.[3] An alien is disqualified to be a member of either House of Parliament.[4] The Act 12 & 13 Will. III. c. 2, declared that "no persons born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents), shall be capable to be of the privy council, or a member of either House of Parliament." The 1st George I., stat. 2, c. 4, in order to enforce the provisions of the Act of William, required a special clause of disqualification to be inserted in every Naturalization Act: but as no clause of this nature could bind any future Parliament, occasional exceptions were permitted, as in the cases of Prince Leopold in 1816, and Prince Albert in 1840;[5] and this provision of the 1st George I. has since been altogether repealed by the 7 & 8 Vict. c. 66, s. 2. Later Naturalization Acts have since been passed, without such a disqualifying clause.[6] And by the 33 & 34 Vict. c. 14, an alien to whom a certificate of naturalization is granted by the Secretary of State, becomes entitled to all political and other rights, powers, and privileges, and is subject to all the obligations of a British subject.[7]

Aliens.

[1] By 9 Anne, c. 5; 33 Geo. II. c. 20; 1 & 2 Vict. c. 48.

[2] 1 Peck. 19. 1 Hen. V. c. 1. 8 Hen. VI. c. 7. 10 Hen. VI. c. 2. 23 Hen. VI. c. 15.

[3] 14 Geo. III. c. 58.

[4] 7 & 8 Vict. c. 66, s. 6.

[5] In 1765 the judges were unanimously of opinion, "That an alien married to a King of Great Britain is, by operation of the law of the Crown (which is part of the common law), to be deemed as a natural-born person from the time of such marriage, so as not to be disabled by the Act 12 Will. III." 31 Lords' J. 174.

[6] Lowther's Naturalisation Act 1866; Bischoffsheim, Baron de Ferrieres, and Lange's Acts, 1867; Bolckow's Act, 1868.

[7] See also 33 & 34 Vict. c. 102; 35 & 36 Vict. c. 39.

Minors.

By the 7 & 8 Will. III. c. 25, s. 8, a minor was disqualified to be elected. Before the passing of that Act, several members were notoriously under age, yet their sitting was not objected to. Sir Edward Coke said that they sat "by connivance: but if questioned would be put out;"[1] yet on the 16th of December 1690, on the hearing of a controverted election, Mr. Trenchard, though admitted by his counsel to be a minor, was declared upon a division to be duly elected.[2] On the 18th of December 1667, however, the House of Lords had declared, "That according to the law of the realm, and the ancient constitution of Parliament, minors ought not to sit nor vote in Parliament."[3] In 1717, Sir Wilfrid Lawson, returned for Cockermouth, on a double return, withdrew his petition against the other sitting member, admitting that he was a minor at the time of his election.[4] But even after the passing of the Act of Will. III., some minors sat "by connivance." Charles James Fox was returned for Midhurst when he was 19 years and four months old, and sat and spoke before he was of age.[5]

Members already sitting.

By the law of Parliament a member already returned for one place, is ineligible for any other, until his first seat is vacated; and hence it is the practice for a member desiring to represent some other place to accept the Chiltern Hundreds, or other similar office under the Crown, in order to render himself eligible at the election.

Mental imbecility.

Mental imbecility is a disqualification; and should a member, who was sane at the time of his election, afterwards become a lunatic, his seat may be avoided, as in the case of Grampound in 1566:[6] but the house will require proof that the malady is incurable.[7] English peers are

Peers and judges.

[1] 10 March 1623; 1 Com. J. 681.
[2] 2 Hatsell, 9; 10 Com. J. 508.
[3] 12 Lords' J. 174.
[4] 18 Com. J. 672.
[5] 1 Memorials of Fox, 51.
[6] D'Ewes, 126. 1 Com. J. 75. Rogers, 57.
[7] Mr. Alcock's case in 1811; 66 Com. J. 226. 265. App. (687). There is a curious entry in the Journal of

ineligible to the House of Commons, as having a seat in the upper house; and Scotch peers, as being represented there, by virtue of the Act of Union:[1] but Irish peers, unless elected as one of the representative peers of Ireland, may sit for any place in *Great Britain*.[2] The English, Scotch, and Irish judges (with the exception of the Master of the Rolls in England) are disqualified,[3] together with the holders of various offices, particularly excluded by statutes.[4] A large class of offices which incapacitate the holders for Parliament are *new offices*, or places of profit under the Crown, created since the 25th of October 1705, as defined by the 6th of Anne, c. 7;[5] and also new offices in Ireland under the 33rd Geo. III., c. 41.

Offices.

The sheriff of a county has been held ineligible for that county; and also for any city or borough to which his precept extended:[6] but he is eligible for any other county, or for any county of a city or borough within his county, or elsewhere, provided the writ for the election is directed to some other returning officer, and not to himself.[7] And no

Sheriffs and returning officers.

14th Feb. 1609, "Hassard—69—incurable—bed-rid—a new writ;" 1 Com. J. 392. See also complaint that Mr. A. Steuart, a certified lunatic patient, had voted in a division 13th May 1861; 162 Hans. Deb., 3rd Ser. 1941.

[1] The provisions of the law are sufficiently distinct upon that point; and there are numerous precedents of new writs issued in the room of members becoming peers of Scotland; *e.g.*, Earl of Dysert, 10th Nov. 1707; Lord Galloway, 13th Jan. 1774; Earl of Lauderdale, 22nd Jan. 1790; Earl of Eglinton, 3rd Nov. 1796; Marquess of Queensberry, 3rd Feb. 1857, &c.

[2] Act of Union, 39 & 40 Geo. III. c. 67.

[3] The English judges by the law of Parliament, 1 Com. J. 257; the Scotch judges, by 7 Geo. II. c. 16; the Irish judges, by 1 & 2 Geo. IV. c. 44; the judge of the Admiralty Court, by 3 & 4 Vict. c. 66. See Debate on the Judges' Exclusion Bill, 1st June 1853.

[4] That all the special disqualifications for Parliament cannot be enumerated within the limits of this chapter, will be believed, when it is stated that they are to be collected from at least 116 statutes. (See Pamphlet by the Author, on the Consolidation of the Election Laws, 1850.)

[5] See Rogers on Elections, 187; and General Journal Indexes, tit. Elections (writs); and *infra*, Ch. XXII.

[6] But the application of this law has been much restricted by the 16 & 17 Vict. c. 68, which requires writs to be directed to the returning officers of boroughs instead of to the sheriff.

[7] 2 Hatsell, 30–34. 4 Dougl. 87. 123.

returning officer is capable of being elected for his own city or borough.[1] By the Scotch Reform Act (s. 36), no sheriff substitute, sheriff clerk, or deputy sheriff clerk is entitled to be elected for his own shire; nor any town clerk, or deputy town clerk, for his own city, borough, town or district.

Clergy.

By the 41 Geo. III., c. 63, which arose out of Mr. Horne Tooke's election, it is declared that "no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is capable of being elected;" and that if he should sit or vote, he is liable to forfeit 500 *l.* for each day, to anyone who may sue for the same. It is doubtful whether, before the passing of this Act, persons in holy orders had not been disqualified by the law of Parliament. The precedents collected upon the subject in 1801[2] were obscure and inconclusive; and there was much difference of opinion, amongst legal and parliamentary authorities, as to the existing state of the law. The House of Commons refused to declare Mr. Horne Tooke ineligible; and, having been already elected, he was excepted from the operation of the Act.[3] The Roman Catholic clergy are also excluded by 10 Geo. IV., c. 7, s. 9. But by the 33 & 34 Vict. c. 91, when a person has relinquished his office of priest and deacon under that Act, he is discharged from all disabilities and disqualifications, including that of 41 Geo. III., c. 63, and is therefore eligible to sit in Parliament.

Contractors.

Government contractors, being supposed to be liable to the influence of their employers, are disqualified from serving in Parliament. The Act 22 Geo. III., c. 45, declares that any person who shall, directly or indirectly, himself, or by any one in trust for him, undertake any contract with a government department, shall be incapable of being elected,

[1] 9 Com. J. 725 (Thetford Case). Wakefield Case, Barron & Austin, 295. Rogers on Elections, 184.

[2] See Reports of Precedents: 35 Parl. Hist. 1343. 8 Com. J. 341. 346. 1 Com. J. 27 (13 Oct. 1553). 1 Com. J. 513 (8 Feb. 1620). 2 Hatsell, 12.

[3] 35 Parl. Hist. 1402. 1414. 1542. 1544.

or of sitting or voting during the time he shall hold such contract, or any share thereof, or any benefit or emolument arising from the same: but the Act does not affect incorporated trading companies, contracting in their corporate capacity. The penalties for violations of the Act are peculiarly severe. A contractor sitting or voting is liable to forfeit 500 *l.* for every day on which he shall sit or vote, to any person who may sue for the same; and every person against whom this penalty shall be recovered, is incapable of holding any contract. The Act goes still further (s. 10), and even imposes a penalty of 500 *l.* upon any person who admits a member of the House of Commons to a share of a contract.[1] The Act 41 Geo. III., s. 52, disqualifies in the same manner, and under similar penalties, all persons holding contracts with any of the government departments in Ireland.

Loan contractors.

But the provisions of these Acts have been held not to apply to contractors for government loans. In June 1855, the attention of the house was directed to the fact that Messrs. Rothschild had entered into a contract with the government for a loan of 16,000,000 *l.* for the public service; and a committee was appointed to inquire whether Baron Lionel Nathan de Rothschild, who was a partner in that house, had vacated his seat by reason of this contract. The committee, after hearing Baron Rothschild by counsel, reported their opinion, that there was no contract, agreement, or commission between Messrs. R. and the Treasury within the true intent and meaning of the 22nd Geo. III., c. 45;[2] and in order to avoid future doubts upon this question, a clause has been introduced into the Acts which have since been passed for raising loans, providing that the Act of Geo. III. shall not be construed to extend to any subscriber or contributor to the loan.[3]

Bankrupts,

Originally by the 52 Geo. III. c. 144, and now by the

[1] See Report 15th March 1869, on case of Sir Sydney Waterlow.

[2] Report 1855 (401).

[3] 19 & 20 Vict. c. 5, 6. 21.

Bankruptcy Act 1869, s. 121-124, if a member of the House of Commons is adjudged bankrupt, he shall be for one year from the date of the order of adjudication, incapable of sitting and voting, unless within that time the order is annulled, or the creditors are fully paid or satisfied. At the expiration of that time the court is required to certify the bankruptcy to the speaker; when the seat of the member is vacant, and a new writ is issued.[1] As no penalty attaches to a bankrupt for sitting and voting, and as no official notice of his bankruptcy is required to be given to the speaker for a year, he may sit with impunity in the meantime, unless the House take notice of his sitting, and order him to withdraw. On the 15th June 1858, a copy of the record of adjudication of bankruptcy against Mr. Townsend, a member, which had been ordered and presented, was read. The Acts 52 Geo. III., c. 144; and 12 & 13 Vict., c. 106, s. 5 (Bankrupt Law Consolidation), were also read; and a motion being made, and question proposed, "That Mr. John Townsend, the member for the borough of Greenwich, having on the 29th day of March last been found, declared, and adjudged a bankrupt, has since been, and still is, by law incapable of sitting and voting in this house," Mr. Townsend was heard in his place, and withdrew; when the question was put, and agreed to. The house then ordered, "that the said Mr. John Townsend do withdraw from this house until his bankruptcy shall have been superseded or annulled, or until his creditors proving their debts shall have been paid or satisfied to the full amount of their debts." And notice being taken, that Mr. Townsend had, since his bankruptcy, voted in several divisions, it was ordered that the said votes be disallowed.[2] It appears, however, that a member whose estate is under liquidation, pursuant to the 24th section of the Bankruptcy Act, 1869, is in a different position from that of a

[1] See 85 Com. J. 3, for the form of proceeding in such cases.

[2] 113 Com. J. 229.

bankrupt. The estate of a member had been under liquidation, upon his own petition, since the 9th March 1870; but he continued to sit and vote in Parliament. On the 26th March 1872, a creditor applied to the Court of Bankruptcy to issue a certificate to the Speaker of the House of Commons, stating that after more than a year this member's debts had not been fully paid and satisfied, so as to vacate his seat. But the registrar, holding that liquidation by arrangement was quite distinct from an adjudication of bankruptcy, refused the application, with costs.[1] This decision was afterwards affirmed, upon appeal, by the Lords Justices.[2] It does not appear that disqualification arises in the case of a Scotch sequestration. By the Bankruptcy Act, 1869, s. 120, if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with in like manner as if he had not such privilege.

Bankrupt peers.

On the 7th July 1870, it was adjudged, upon appeal, by the House of Lords, that a peer of the realm enjoying the privileges of Parliament, was subject, in 1869 (before the passing of the Bankruptcy Act of that year), to an adjudication in bankruptcy, under the 24 & 25 Vict. c. 134.[3] The Act of 1869 more distinctly set aside the privileges of Parliament in cases of bankruptcy; and in 1871 the disqualification for sitting and voting was extended to the House of Lords. By 34 & 35 Vict. c. 50, "Every peer who becomes a bankrupt shall be disqualified from sitting or voting in the House of Lords, or on any Committee thereof; and further, if a peer of Scotland or Ireland, shall be disqualified from being elected to sit and vote in the House of Lords." In England, he becomes bankrupt, when an order has been made under any Act, adjudging him a bankrupt; or when a special resolution has been passed, in pursuance of the Bankruptcy Act, 1869, declaring that his affairs are to be

[1] "Times," 27 March 1872.
[2] "Weekly Reporter," XX, 735. 7 Chancery Appeal Cases, 519.
[3] 102 Lords' J. 397.

liquidated by arrangement: in Scotland, when sequestration of his estate has been awarded: in Ireland, when he is adjudged bankrupt, or has filed a petition for an arrangement. When a bankruptcy has been determined in the manner prescribed by the Act, these disqualifications cease. The seat of a representative peer for Scotland and Ireland, unless his bankruptcy is determined within one year, is vacated at the end of the year, and a new election is to be held. A disqualified person who sits or votes, or attempts to sit or vote, is guilty of a breach of privilege.

The Court is to certify the bankruptcy to the Speaker of the House of Lords, and the Clerk of the Crown. A writ of summons is not to be issued to any peer, for the time being disqualified; but a disqualified peer is not deprived of his privileges of peerage, or entitled to be elected to, or to sit in, the House of Commons. And this Act has since been applied to three peers who had come within its provisons.[1]

Persons attainted.

A person attainted,[2] or adjudged guilty[3] of treason or felony, is disqualified: but an indictment for felony causes no disqualification until conviction;[4] and even after conviction a new writ will not be issued, where a writ of error is pending, until the judgment has been affirmed.[5]

These are the chief but not the only grounds of disqua-

[1] April 9th and 25th, 1872; 104 Lords' J. 138. 206. June 4th and 25th, 1872; Ib. 321, 322. 342. 429.

[2] Lord Coke, 4th. Inst. 47.

[3] W. Smith O'Brien, 1849. O'Donovan Rossa, 10th Feb. 1870. In the latter case, as the person had been convicted and sentenced to imprisonment under the Treason-felony Act, 11 & 12 Vict. c. 12, it was contended that, not being attainted, there was no disqualification; but the House determined that he was disqualified. The resolution in this case was that, J. O'D. R. "having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence, has become, and continues incapable of being elected or returned as a member of this House."

[4] 21st Jan. 1580; 1 Com. J. 118, 119, "A motion was made to know the mind of this House touching a burgess of this House standing indicted of felony, whether he ought in that case to remain a member of this House; or else to be removed: it was adjudged, he ought to remain still of this House, unless he were convicted." 1 Com. J. 119.

[5] Case of Mr. S. O'Brien, 104 Com. J. 319.

lification for sitting in the House of Commons. Many others will be found collected in the various works upon election law, where those also which have been touched upon, in this place, are more fully detailed.[1]

To these explanations concerning the persons of whom Parliament is composed, it is not necessary to add any particulars as to the mode of election; further than that the elections are held by the sheriffs or other returning officers, in obedience to the Queen's writ out of Chancery,[2] and are determined by the majority of registered electors. By the Parliamentary and Municipal Elections Act 1872, the public nomination of candidates was discontinued, and the votes of electors are taken by ballot. In the case of a county, the Returning Officer is to give notice of the day of election within two days after he receives the writ, and in a borough, on the day on which he receives the writ, or the following day. In the of case a county or district borough election, the day of election is to be fixed by the Returning Officer, not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in a borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the notice and the election.[3]

[1] Rogers, Shepherd, Stephens, Montagu & Neale, Wordsworth, &c. See also Chapter XXII.

[2] By 16 & 17 Vict. c. 68, writs are now directed to the returning officers of boroughs instead of to the sheriff of the county. The poll at the universities is also restricted to five days. By 24 & 25 Vict. c. 53, and amended by 31 & 32 Vict. c. 65, voting papers are allowed in University elections. By 16 Vict. c. 15, s. 28, the poll at county elections in England and Wales and Scotland, was reduced to one day. By 25 & 26 Vict. c. 62 and 92, similar provision was made for Ireland. By the Parliamentary and Municipal Elections Act, 1872, a new form of writ was introduced, and the present mode of conducting elections, and the several duties of returning officers, are prescribed.

[3] 1st Schedule, 1, 2.

CHAPTER II.

POWER AND JURISDICTION OF PARLIAMENT COLLECTIVELY.—RIGHTS AND POWERS OF EACH OF ITS CONSTITUENT PARTS.

Legislative authority of Parliament, collectively.

THE legislative authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions; and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey, or their power to resist. Unlike the legislatures of many other countries, it is bound by no fundamental charter or constitution; but has itself the sole constitutional right of establishing and altering the laws and government of the empire.

In the ordinary course of government, Parliament does not legislate directly for the colonies; and the introduction of responsible government has necessarily limited the occasions for such legislation. For some colonies the queen in council legislates, while others have legislatures of their own, which propound laws for their internal government, subject to the approval of the queen in council; but these may afterwards be repealed or amended by statutes of the Imperial Parliament; for their legislatures and their laws are both subordinate to the supreme power of the mother country.[1] For example, the constitution of Lower Canada was suspended in 1838; and a provisional government, with legislative functions and great executive powers, was established by the British Parliament.[2] Slavery, also, was

[1] "Parliamentary legislation on any subject of exclusively internal concern to any British colony possessing a representative assembly, is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception."—Lord Glenelg. (Parl. Pap. 1839 (118), p. 7.)

[2] 1 & 2 Vict. c. 9; 2 & 3 Vict. c. 53.

abolished by an Act of Parliament, in 1833, throughout all the British possessions, whether governed by local legislatures or not: but certain measures for carrying into effect the intentions of Parliament were left for subsequent enactment by the local bodies, or by the queen in council. In 1838, the house of assembly of Jamaica had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes; when Parliament immediately interposed and passed a statute for that purpose.[1] The assembly, resenting the interference of the mother country, withheld the supplies, and otherwise neglected their functions; but Parliament reduced them to submission by an Act to suspend the colonial constitution, unless within a given time they should resume their duties.[2] And again, in 1846, that ancient constitution was surrendered by acts of the local legislature, confirmed by an Act of the Imperial Parliament.[3] In 1849 the constitutions of the Australian colonies were defined by statute: but the colonial government councils were permitted to amend them.[4] The vast territories of British India, which until recently had been subject to the anomalous government of the East India Company, have been transferred by statute to the Crown, and are under the immediate legislative authority of Parliament.

There are some subjects upon which Parliament, in familiar language, is said to have no right to legislate: but the constitution has assigned no limits to its authority. Many laws may be unjust, and contrary to sound principles of government: but Parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the power of Parliament "is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds."[5]

[1] 1 & 2 Vict. c. 67. [2] 2 & 3 Vict. c. 26. [3] 29 & 30 Vict. c. 12.
[4] 13 & 14 Vict. c. 59. [5] 4 Inst. 36.

This being the authority of Parliament collectively, the laws and usage of the constitution have assigned peculiar powers, rights, and privileges to each of its branches, in connexion with their joint legislative functions.

Prerogatives of the Crown in reference to the Parliament.

It is by the act of the Crown alone that Parliament can be assembled. The only occasions on which the Lords and Commons have met by their own authority, were, previously to the restoration of King Charles II., and at the Revolution in 1688. The first act of Charles the Second's reign declared the Lords and Commons to be the two houses of Parliament, notwithstanding the irregular manner in which they had been assembled; and all their acts were confirmed by the succeeding Parliament summoned by the king, which however qualified the confirmation of them, by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner, the first act of the reign of William and Mary declared the convention of Lords and Commons to be the two houses of Parliament, as if they had been summoned according to the usual form; and the succeeding Parliament recognised the legality of their acts.

Annual meeting of Parliament.

But although the queen may determine the period for calling Parliaments, her prerogative is restrained within certain limits; as she is bound by statute[1] to issue writs within three years after the determination of a Parliament; while the practice of providing money for the public service by annual enactments, renders it compulsory upon her to meet Parliament every year.

The annual meeting of Parliament, now placed beyond the power of the Crown by a system of finance rather than by distinct enactment, had, in fact, been the law of England from very early times. By the statute 4 Edw. III., c. 14, "it is accorded that Parliament shall be holden every year

[1] 16 Chas. II., c. 1, and 6 & 7 Will. & Mary, c. 2.

once, [and] [or] more often if need be."[1] And again in the 36 Edw. III., c. 10, it was granted "for redress of divers mischiefs and grievances which daily happen [a Parliament shall be holden or] be the Parliament holden *every year*, as another time was ordained by statute."[2]

It is well known that by extending the words "if need be," to the whole sentence instead of to the last part only, to which they are obviously limited,[3] the kings of England constantly disregarded these laws. It is impossible, however, for any words to be more distinct than those of the 36th Edward III., and it is plain from many records that they were rightly understood at the time. In the 50th Edward III., the Commons petitioned the king to establish, by statute, that a Parliament should be held each year; to which the king replied: "In regard to a Parliament each year, there *are* statutes and ordinances made, which should be duly maintained and kept."[4] So also to a similar petition in the 1st Richard II., it was answered, "So far as relates to the holding of Parliament each year, let the statutes thereupon be kept and observed; and as for the place of meeting, the king will therein do his pleasure."[5] And in the following year the king declared that he had summoned Parliament, because at the prayer of the Lords and Commons it had been ordained and agreed that Parliament should be held each year.[6]

In the preamble of the Act 16 Chas. I., c. 1, it was also distinctly affirmed, that "by the laws and statutes of this realm, Parliament ought to be holden at least once every year for the redress of grievances: but the appointment of the time and place of the holding thereof hath always belonged,

[1] Record Comm. Statutes of the Realm.

[2] Ib.

[3] By an ordinance in the 5th Edw. III., the object of the law had been more clearly explained; viz., "Qe le roi tiegne Parlement une foiz p an', ou deu foiz si mestier soit." 1 Rot. Parl. 285.

[4] 2 Rot. Parl. 335.

[5] 3 Ib. 23.

[6] Ib. 32.

as it ought, to his majesty and his royal progenitors."[1] Yet by the 16th Chas. II., c. 1, a recognition of these ancient laws was withheld: for the Act of Charles I. was repealed as "derogatory of his majesty's just rights and prerogative;" and the statutes of Edward III. were incorrectly construed to signify no more than that "Parliaments are to be held very often." All these statutes, however, were repealed, by implication, by this Act, and also by the 6 & 7 Will. & Mary, c. 2, which declares and enacts "that from henceforth Parliament shall be holden once in three years, at the least."

Summons.

The Parliament is summoned by the queen's writ or letter issued out of Chancery, by advice of the privy council. By the 7 & 8 Will. III., c. 25, it was required that there shall be forty days[2] between the teste and the return of the writ of summons; and since the union with Scotland, it had been the invariable custom to extend this period to fifty days,[3] such being the period assigned in the case of the first Parliament of Great Britain after the Union. But by the 15 Vict., c. 23, this period has been reduced to thirty-five days after the proclamation appointing a time for the first meeting of the Parliament. The writ of summons has always named the day and place of meeting, without which the requisition to meet would be imperfect and nugatory.

Demise of the Crown.

The demise of the Crown is the only contingency upon which Parliament is required to meet, without summons in the usual form. By the 6 Anne, c. 7, on the demise of the Crown, Parliament, if sitting, is immediately to proceed to act; and, if separated by adjournment or prorogation, is immediately to meet and sit. Before the passing of this Act, Parliament met on a Sunday, 8th March, 1701, on the

[1] "Act for preventing of inconvenience happening from long intermission of Parliaments."

Forty days were assigned for the period of the summons by the great charter of King John, in which are these words: "Faciemus summoneri . . . . ad certum diem, scilicet ad terminum quadraginta dieum ad minus, et ad certum locum."

[3] See 22 Art. of Union, 5th Anne, c. 8. 2 Hatsell, 290.

death of William III.;[1] and has since met three times, on similar occasions, on Sunday.[2] By the 37 Geo. III., c. 127, in case of the demise of the Crown after the dissolution or expiration of a Parliament, and before the day appointed by the writs of summons for assembling a new Parliament, the last preceding Parliament is immediately to convene and sit at Westminster, and be a Parliament for six months, subject in the meantime to prorogation or dissolution. In the event of another demise of the Crown during this interval of six months, before the dissolution of the Parliament thus revived, or before the meeting of a new Parliament, it is to convene again and sit immediately, as before, and to be a Parliament for six months from the date of such demise, subject, in the same manner, to be prorogued or dissolved. If the demise of the Crown should occur on the day appointed by the writs of summons for the assembling of a new Parliament, or after that day and before it has met and sat, the new Parliament is immediately to convene and sit, and be a Parliament for six months, as in the preceding cases. This statute, however, needs revision in reference to the latest enactment concerning the demise of the Crown.[3]

Causes of summons.

As the queen appoints the time and place of meeting, so also at the commencement of every session she declares to both houses the causes of summons, by a speech delivered to them in the House of Lords by herself in person, or by commissioners appointed by her. Until she has done this, neither house can proceed with any business; but the causes of summons, as declared from the throne, do not bind Parliament to consider them alone, nor to proceed at once to the consideration of any of them. After the speech, any business may be commenced; and both houses,[4] in order to

[1] 13 Com. J. 782.

[2] Queen Anne, 18 Com. J. 3; George II., 28 ib. 929. 933; George III., 75 ib. 82. 89. For other occasions of the demise of the Crown, see 20 ib. 866 (George I.); 85 ib. 589 (George IV.); 92 ib. 490 (William IV.)

[3] See *infra*, p. 51.

[4] This is done in the Lords in compliance with a standing order (No. 8), and in the Commons by usage.

assert their right to act without reference to any authority but their own, invariably read a bill a first time, *pro formâ*, before they take the speech into consideration. Other business may also be transacted at the same time. In the Commons new writs are issued for places which have become vacant during a recess; returns are ordered, and even addresses are presented on matters unconnected with the speech. In 1840, a question of privilege, arising out of the action of Stockdale against the printers of the house, was entertained before any notice was taken of her majesty's speech.

On two occasions, during the illness of George III., the name and authority of the Crown were used for the purpose of opening the Parliament, when the sovereign was personally incapable of exercising his constitutional functions. On the first occasion, Parliament had been prorogued till the 20th November 1788, then to meet for the despatch of business. When Parliament assembled on that day, the king was under the care of his physicians, and unable to open Parliament, and declare the causes of summons. Both houses, however, proceeded to consider the measures necessary for a regency; and on the 3rd February 1789, Parliament was opened by a commission, to which the great seal had been affixed by the lord chancellor, without the authority of the king. Again in 1810, Parliament stood prorogued till the 1st November, and met at a time when the king was incapable of issuing a commission. His illness continued, and on the 15th January, without any personal exercise of authority by the king, Parliament was formally opened, and the causes of summons declared in virtue of a commission under the great seal, and "in his majesty's name."[1]

It may here be incidentally remarked, that the Crown has also an important privilege in regard to the delibera-

[1] For a full statement of these proceedings, see May's Constitutional History, i. 175–195 (4th Ed.)

tions of both houses. The speaker of the Lords is the lord high chancellor or lord keeper of the great seal, an officer more closely connected with the Crown than any other in the state; and even the speaker of the Commons, though elected by them, is submitted to the approval of the Crown.

Prorogation and adjournment.

Parliament, it has been seen, can only commence its deliberations at the time appointed by the queen; neither can it continue them any longer than she pleases. She may prorogue Parliament by having her command signified, in her presence, by the lord chancellor or speaker of the House of Lords, to both houses; by writ under the great seal,[1] by commission, or by proclamation. Prior to 1867, a proclamation for the prorogation of Parliament from the day to which it stood summoned or prorogued to any further day, was followed by a writ or commission under the great seal: but by the 30th & 31st Vict., c. 81, the royal proclamation alone prorogues the Parliament, except at the close of a session.[2] The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and writs of error and appeals before the House of Lords. Every bill must be renewed after a prorogation,[3] as if it had never been introduced, though the prorogation be for no more than a day. William III. prorogued Parliament from the 21st to the 23rd of October, 1689, in order to renew the Bill of Rights, concerning which a difference

[1] But Parliament is never prorogued by writ after its first meeting. In 1847, Parliament stood prorogued by writ till Thursday, 11th Nov. On that day it was again prorogued by writ till Thursday, 18th Nov., *i. e.*, one week; to assemble and be held, and sit for the despatch of divers urgent and important affairs.

[2] See also *infra*, Chap. VII.

[3] By 1 Geo. IV., c. 101, an Indian divorce bill is excepted from this rule, in certain cases. And by the 11 & 12 Vict. c. 98, election committees are not dissolved by a prorogation.

had arisen between the two houses, that was fatal to its progress.[1] As it is a rule that a bill of the same substance cannot be passed in either house twice in the same session, a prorogation has been resorted to, in other cases, to enable another bill to be brought in.[2]

Parliament assembled by proclamation.

When Parliament stands prorogued to a certain day, her majesty is empowered by Act 37 Geo. III., c. 127, amended by 33 & 34 Vict., c. 81, to issue a proclamation, giving notice of her royal intention that Parliament shall meet for the despatch of business on any other day, not less than six days from the date of the proclamation; and Parliament then stands prorogued to that day, notwithstanding the previous prorogation. Parliament was assembled by proclamation, pursuant to the first of these Acts, in September 1799;[3] and again on the 12th December 1854, Parliament then standing prorogued to the 14th; and lastly, in 1857, Parliament having been prorogued on the 6th November to the 17th December following, it became necessary, in consequence of the suspension of the Bank Act of 1844 by the Government, to assemble Parliament immediately; and accordingly, on the 16th November, a proclamation was issued assembling Parliament on the 3rd December.[4] And other Acts[5] have provided, that whenever the Crown shall cause the supplementary militia to be raised and enrolled, or drawn out and embodied, either in England or Scotland, when Parliament stands prorogued or adjourned for more than fourteen days, the queen shall issue a proclamation for the meeting of Parliament within fourteen days. In compliance with this law, on the 1st December 1792, Parliament, which stood prorogued till the 1st January was summoned by proclamation to meet on the 13th December.

Proclamation prior to prorogation.

When her majesty, by the advice of her privy council,

[1] 10 Com. J. 271.

[2] Viz., in 1707, 1721, and 1831. See Chap. X.

[3] 54 Com. J. 745; 55 Ib. 3.

[4] See Appendix.

[5] 42 Geo. III., c. 90, s. 147, and c. 91, s. 142; also 15 & 16 Vict. c. 50, s. 31.

has determined upon the prorogation of Parliament, a proclamation is issued, declaring that on a certain day Parliament will be prorogued until a day mentioned; and when it is intended that Parliament shall meet on that day, for despatch of business, the proclamation states that Parliament will then "assemble and be holden for the despatch of divers urgent and important affairs." It was formerly customary to give forty days' notice, by proclamation, of a meeting of Parliament for despatch of business:[1] but under the 37 George III., c. 127, amended by 33 & 34 Vict., c. 81, a notice of six days is sufficient for that purpose; and since the time for assembling a new Parliament has been reduced to thirty-five days, a longer notice may generally be deemed unnecessary.

When Parliament has been dissolved and summoned for a certain day, it meets on that day for despatch of business, if not previously prorogued, without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation of the dissolution, and the writs then issued.

Adjournment. Adjournment is solely in the power of each house respectively. It has not been unusual, indeed, for the pleasure of the Crown to be signified in person, by message, commission, or proclamation, that both houses should adjourn; and in some cases such adjournments have scarcely differed from prorogations.[2] But although no instance has occurred in which either house has refused to adjourn, the communication might be disregarded. Business has frequently been transacted after the king's desire has been made known; and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment, and division.[3]

[1] 2 Hatsell, 230. 3 Chatham Corr., 126, *n.*

[2] In 1621, an adjournment for five months was directed by a royal commission, and agreed to. 1 Com. 639; 2 Rapin's Hist., 205. 9 Com. J. 158.

[3] 2 Hatsell, 312. 316, 317. 1 Com. J. 807, 808, 809; 10 Ib. 694; 17 Ib. 26. 275. In 1799, 55 Ib. 49; 34 Parl. Hist. 1196, Lord Colchester's Diary, i. 192.

Under these circumstances it is surprising that so many instances of this practice should have occurred in comparatively modern times. Both houses adjourn at their own discretion, and daily exercise their right. Any interference on the part of the Crown is therefore impolitic, as it may chance to meet with opposition; and unnecessary, as ministers need only assign a sufficient cause for adjournment, when each house would adjourn, of its own accord, and for any period, however extended, which the occasion may require.[1] The pleasure of the Crown was last signified on the 1st March 1814;[2] and it is probable that the practice will not be revived.

A power of interfering with adjournments, in certain cases, has been conceded to the Crown by statute. The 39 & 40 Geo. III., c. 14, amended by 33 & 34 Vict., c. 81, enacts that when both houses of Parliament stand adjourned for more than fourteen days, the queen may issue a proclamation, with the advice of her privy council, declaring that the Parliament shall meet on a day not less than six days from the proclamation; and the houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been made by either house, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

Dissolution.

The queen may also close the existence of Parliament by a dissolution. She is not, however, entirely free to define the duration of a Parliament. Before the Triennial

[1] In 1785, there was an adjournment from the 2nd August to the 27th October, in order to give time to the Irish Parliament to consider the commercial resolutions. 25 Parl. Hist., 934. In 1799, an adjournment extended from the 12th October to the 21st January; and in 1813, from the 20th December to the 1st March. In 1820, while the bill of pains and penalties against the Queen was pending in the House of Lords, the Commons adjourned, by four successive adjournments, from the 26th July to the 23rd November, when Parliament was prorogued.

[2] 49 Lords' J. 747. 69 Com. J. 132.

Act, 6th of William and Mary, c. 2, there was no constitutional limit to the continuance of a Parliament but the will of the Crown: but under the Statute 1 Geo. I., c. 38, commonly known as the Septennial Act, it ceases to exist after seven years from the day on which, by the writ of summons, it was appointed to meet. Before the Revolution of 1689, a Parliament was dissolved by the demise of the Crown:[1] but by the 7th & 8th Will. III., c. 15, and by the 6th Anne, c. 37, a Parliament was determined six months after the demise of the Crown,[2] and so the law continued until, by the Reform Act of 1867, it was wisely provided that the Parliament in being, at any future demise of the Crown, shall not be determined by such demise, but shall continue as long as it would have otherwise continued, unless dissolved by the Crown.[3]

Parliament is usually dissolved by proclamation under the great seal, after having been prorogued to a certain day. This proclamation is issued by the queen, with the advice of her privy council; and announces that the queen has given order to the lord chancellor of great Britain and the lord chancellor of Ireland to issue out writs in due form, and according to law, for calling a new Parliament; and that the writs are to be returnable on a certain day.

Since the dissolution of the 28th March 1681, by Charles II., the sovereign had not dissolved the Parliament in person until the 10th June 1818, when it was dissolved by the prince regent in person.[4] Parliament has not since been dissolved in that form; but proceedings not very dissimilar have occurred in recent times. On the 22nd April 1831, the king, having come down to prorogue Parliament, said, "I have come to meet you for the purpose of pro-

[1] Blackstone Com. i. 177.

[2] Even the Privy Council expired at the demise of the Crown, and its members were re-appointed in the new reign, and Queen Anne omitted the names of the Whig chiefs, Somers, Halifax, and Orford. Lord Stanhope, Reign of Anne, p. 44.

[3] 30 & 31 Vict. c. 102, s. 51.

[4] 73 Com. J. 427.

roguing Parliament, with a view to its *immediate dissolution;*"[1] and Parliament was dissolved by proclamation on the following day. On the 17th July 1837, Parliament was prorogued and dissolved on the same day.[2] On the 23rd July 1847, the Queen, in proroguing Parliament, announced her intention immediately to dissolve it; and it was accordingly dissolved by proclamation on the same day, and the writs were despatched by that evening's post.[3] The same course has also been adopted on later occasions, and is now the ordinary practice.[4]

Assembling of Parliament after dissolution.

The interval between a dissolution and the assembling of the new Parliament varies according to the period of the year, the state of public business, and the political conditions under which an appeal to the people may have become necessary. When the session has been concluded, and no question of ministerial confidence or responsibility is at issue, the recess is generally continued, by prorogations, until the usual time for the meeting of Parliament.[5]

In addition to these several powers of calling a Parliament, appointing its meeting, directing the commencement of its proceedings, determining them from time to time by prorogation, and finally of dissolving it altogether, the Crown has other parliamentary powers, which will hereafter be noticed in treating of the functions of the two houses.

House of Lords.

Peers of the realm enjoy rights and exercise functions in five distinct characters: First, they possess, individually, titles of honour which give them rank and precedence;

[1] 86 Com. J. 517.

[2] 92 Ib. 671; 93 Ib. 3.

[3] 102 Ib. 960; 103 Ib. 3.

[4] 21st March 1857. 88 Lords' J. 577. 579. In 1859; and 6th July 1865.

[5] In 1807, Parliament was dissolved on 27th May, and met 27th November. In 1818, Parliament was dissolved 10th June, and met for despatch of business 14th January. In 1826, Parliament was dissolved 2nd June, and met 14th November. In 1847, Parliament was dissolved 25th July, and was not intended to meet until February, but was assembled 18th November, in consequence of the commercial crisis. In 1865, Parliament was dissolved 6th July, and met 1st February. In 1868, Parliament was dissolved on the 11th November, and met on the 10th December.

secondly, they are, individually, hereditary counsellors of the Crown; thirdly, they are, collectively, together with the lords spiritual, when not assembled in Parliament, the permanent council of the Crown; fourthly, they are, collectively, together with the lords spiritual, when assembled in Parliament, a court of judicature; and lastly, they are, conjointly with the lords spiritual and the Commons, in Parliament assembled, the legislative assembly of the kingdom, by whose advice, consent, and authority, with the sanction of the Crown, all laws are made.[1] Peers of the realm.

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers; and another in claims of peerage and offices of honour, under references from the Crown, but not otherwise.[2] Since the union with Scotland, they have also had a judicature for controverted elections of the sixteen representative peers of Scotland;[3] and since the union with Ireland all questions touching the rotation or election of lords spiritual or temporal of Ireland are to be decided by the House of Lords:[4] but, in addition to these special cases, they have a general judicature as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient *consilium regis*, which, assisted by the judges, and with the assent of the King, administered justice in the early periods of English law.[5] Their appellate jurisdiction would also appear to have received statutory confirmation from the 14 Edw. III., c. 5, A.D. 1340. In the 17th century they assumed a jurisdiction, in many points, which has Judicature of the Lords.

[1] See 1 Rep. Dig. of Peerage, 14.

[2] See Knolly's case, 12 St. Tr. 1167-1207. 1 Lord Raym. 10. Salk. 509. Carth. 297. 2 Lord Campbell's Lives of Ch. Just. 148. Lord Campbell's Speeches, 326. But see Debates and Proceedings upon the Wensleydale Peerage, 1856.

[3] Act of the Parl. of Scotland, 5 Ann. c. 8. 6 Ann. c. 23. 10 & 11 Vict. c. 52.

[4] 4th Art of Union. 89 Lords' J. 289. 295. 329, &c.

[5] Hale's Jurisdiction of the House of Lords, c. 14. Barrington on the Statutes, 244.

since been abandoned.[1] They claimed an original jurisdiction in civil causes, which was resisted by the Commons, and has not been enforced for the last century and a half. They claimed an original jurisdiction over crimes, without impeachment by the Commons: but that claim was also abandoned.[2] Their claim to an appellate jurisdiction over causes in equity, on petition to themselves, without reference from the Crown, has been exercised since the reign of Charles I.; and in spite of the resistance of the Commons in 1675,[3] they have since been left in undisputed possession of it. They have, at the present time, a jurisdiction over causes brought, on writs of error, from the courts of law, originally derived from the Crown, and confirmed by statute,[4] and to hear appeals from courts of equity on petition: but appeals in ecclesiastical, maritime, or prize causes, and colonial appeals, both at law and in equity, are determined by the privy council.[5] The powers which are incident to them, as a court of record, will claim attention in other places.

Judges' opinions.

A valuable part of the ancient constitution of the *consilium regis* has never been withdrawn from the Lords, viz. the assistance of the judges, the Master of the Rolls, the attorney and solicitor general, and the queen's learned counsel being serjeants, who are still summoned to attend the House of Lords by writs from the Crown, and for whom places are assigned on the woolsacks:[6] but the opinion of the judges alone is now desired, on points of law on which the Lords wished to be informed.

Impeachments.

In passing Acts of attainder and of pains and penalties, the judicature of the entire Parliament is exercised; and there is another high parliamentary judicature in which

[1] See 5 Howell, St. Tr. 711. 4 Parl. Hist. 431. 443. 3 Hatsell, 336.

[2] 8 Com. J. 38.

[3] See 6 Howell, St. Tr. 1121.

[4] 27 Eliz. c. 8. See also Intr. to Sugden's Law of Real Prop. 2. A limitation of their appellate jurisdiction is now under the consideration of Parliament (May 1873).

[5] Hargrave's Preface to Hale's Jurisdiction of the Lords.

[6] 31 Hen. VIII. c. 10. s. 8. Lords' S. O. Nos. 4, 5, 6. 4th Inst. 4.

both houses also have a share. In impeachments the Commons, as a great representative inquest of the nation, first find the crime, and then, as prosecutors, support their charge before the Lords; while the Lords, exercising at once the functions of a high court of justice and of a jury, try and adjudicate upon the charge preferred.

Impeachment by the Commons is a proceeding of great importance, involving the exercise of the highest judicial powers by Parliament; and though in modern times it has rarely been resorted to, in former periods of our history it was of frequent occurrence. The earliest recorded instance of impeachment by the Commons at the bar of the House of Lords was in 1376, in the reign of Edward III. Before that time, the Lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the Commons. During the next four reigns, cases of regular impeachment were frequent; but no instances occurred in the reigns of Edward IV., Henry VII., Henry VIII., Edward VI., Queen Mary, or Queen Elizabeth. "The institution had fallen into disuse," says Hallam, "partly from the loss of that control which the Commons had obtained under Richard II., and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of Parliament against an obnoxious subject."[1]

Prosecutions also in the Star Chamber, during that time, were perpetually resorted to by the Crown for the punishment of state offenders. In the reign of James I., the practice of impeachment was revived, and was used with great energy by the Commons, both as an instrument of popular power, and for the furtherance of public justice. Between the year 1620, when Sir Giles Mompesson and Lord Bacon were impeached, and the revolution in 1688, there were about 40 cases of impeachment. In the reigns

[1] 1 Const. Hist. 357.

of William III., Queen Anne, and George I., there were 15; and in the reign of George II., none but that of Lord Lovat, in 1746, for high treason. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville in 1805. A description of the proceedings of both houses, in cases of impeachment, is reserved for a later part of this treatise.[1]

The Commons: their right of voting supplies.

The most important power vested in any branch of the legislature, is the right of imposing taxes upon the people, and of voting money for the exigencies of the public service. It has been already noticed that the exercise of this right by the Commons, is practically a law for the annual meeting of Parliament for redress of grievances; and it may also be said to give to the Commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power; but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure, is one of absolute supremacy. The mode in which the Commons exercise their right, and the proceedings of Parliament generally in matters of supply, will be more conveniently explained in another chapter.[2]

Right of determining elections.

Another important power peculiar to the Commons, is that of determining all matters touching the election of their own members. This right had been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters had been ordinarily determined in chancery. Their exclusive right to determine the legality of returns, and the conduct of returning officers in making them, was fully recognised in the case of Barnardiston *v.* Soame, by the Court of Exchequer Chamber in 1674,[3] by the House of Lords in 1689,[4] and also by the courts, in the cases of Onslow in 1680,[5] and of

[1] See Chap. XXIII.

[2] See Chap. XXI.

[3] 6 Howell, St. Tr. 1092.

[4] 6 Howell, St. Tr. 1119.

[5] 2 Vent. 37. 3 Lev. 39.

Prideaux *v.* Morris in 1702.[1] Their jurisdiction in determining the right of election was further acknowledged by Statute 7 Will. III., c. 7: but in regard to the rights of electors, a memorable contest arose between the Lords and Commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against William White and others the returning officers of that borough, for having refused to permit him to give his vote at an election. A verdict was obtained by him: but it was moved in the Court of Queen's Bench, in arrest of judgment, "that this action did not lie;" and in opposition to the opinion of Lord Chief Justice Holt, judgment was entered for the defendant, but was afterwards reversed by the House of Lords upon a writ of error. Upon this the Commons declared that "the determination of the right of election of members to serve in Parliament is the proper business of the House of Commons, which they would always be very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election without determining the right of the electors; and if electors were at libery to prosecute suits touching their right of giving voices, in other courts, there might be different voices in other courts, which would make confusion, and be dishonourable to the House of Commons; and that therefore such an action was a breach of privilege." In addition to the ordinary exercise of their judisdiction, the Commons relied upon the Act 7, Will. III., c. 7, by which it had been declared that "the last determination of the House of Commons concerning the right of elections is to be pursued." On the other hand, it was objected that "there is a great difference between the right of the electors and the right of the elected: the one is a temporary right to a place in Parliament, *pro hâc vice;* the other is a freehold or a franchise. Who has a right to sit

Case of Ashby and White.

[1] 2 Salk, 502. 1 Lutw. 82. 7 Mod. 13.

Prideaux *v.* Morris in 1702.[1] Their jurisdiction in determining the right of election was further acknowledged by Statute 7 Will. III., c. 7: but in regard to the rights of electors, a memorable contest arose between the Lords and Commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against William White and others the returning officers of that borough, for having refused to permit him to give his vote at an election. A verdict was obtained by him: but it was moved in the Court of Queen's Bench, in arrest of judgment, "that this action did not lie;" and in opposition to the opinion of Lord Chief Justice Holt, judgment was entered for the defendant, but was afterwards reversed by the House of Lords upon a writ of error. Upon this the Commons declared that "the determination of the right of election of members to serve in Parliament is the proper business of the House of Commons, which they would always be very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election without determining the right of the electors; and if electors were at libery to prosecute suits touching their right of giving voices, in other courts, there might be different voices in other courts, which would make confusion, and be dishonourable to the House of Commons; and that therefore such an action was a breach of privilege." In addition to the ordinary exercise of their judisdiction, the Commons relied upon the Act 7, Will. III., c. 7, by which it had been declared that "the last determination of the House of Commons concerning the right of elections is to be pursued." On the other hand, it was objected that "there is a great difference between the right of the electors and the right of the elected: the one is a temporary right to a place in Parliament, *pro hâc vice;* the other is a freehold or a franchise. Who has a right to sit

Case of Ashby and White.

[1] 2 Salk, 502. 1 Lutw. 82. 7 Mod. 13.

with the courts of law. Complaints, however, have been made to the house, of proceedings in courts of law, having reference to elections;[1] and in 1767, certain electors of the county of Pembroke having brought actions of trespass on the case against the high sheriff for refusing their votes, were ordered to attend the house: but having discontinued their actions, no further proceedings were taken against them.[2] In 1857, a complaint was made, by petition, that certain voters had brought actions against the returning officer of the Borough of Sligo for refusing their votes at the last election: but the committee to whom the matter was referred, reported that there were no circumstances affecting the privileges of the house.[3] In 1784, Mr. Fox obtained a verdict, with damages, against the high bailiff of Westminster, for vexatiously withholding his return when he had a majority of votes; and this proceeding, being clearly free from any question of privilege, did not call for the interposition of Parliament.[4] The Commons continued to exercise (what was not denied to them by the House of Lords) the sole right of determining whether electors had the right to vote, while inquiring into the conflicting claims of candidates for seats in Parliament; and specific modes for trying the right of election by the house were prescribed by statutes, and its determination declared to be final and conclusive.[5] Meanwhile the various rights of election which formerly rested upon the decision of the house, were defined by the statute law; and, at length, the house has surrendered its jurisdiction, in controverted elections, to the courts of law.[6]

Although all writs are issued out of Chancery, every

New writs issued by order of the House of Commons.

[1] Rye case, 17th November 1704; 14 Com. J. 425; Penryn case, 22nd February 1710; 16 Com. J. 514 (no further proceedings on these cases).

[2] 31 Com. J. 211. 279. 293. See also cases of the Mayor of Hastings, Easter Term, 1786, and the Mayor of Abingdon, 1847; Price *v.* Fletcher, 4 C. P. Rep.

[3] 146 Hans. Deb., 3rd Ser., 1557; 112 Com. J. 310. 314. 340.

[4] 3 Hughes' Hist. 245.

[5] 9 Geo. IV. c. 22, s. 54, &c.

[6] Election Petitions Act, 1868.

vacancy after a general election is supplied by the authority of the Commons. The speaker is empowered to issue warrants to the clerk of the crown to make out new writs; and when it has been determined that a return should be amended, the clerk of the crown is ordered to attend the house, and amend it accordingly. During the sitting of the house, vacancies are supplied by warrants issued by the speaker, by order of the house; and during a recess, after a prorogation or adjournment, he is required to issue warrants, in certain cases, without an order.[1]

Expulsion of members does not create disability.

But notwithstanding their extensive jurisdiction in regard to elections, the Commons have no control over the eligibility of candidates, except in the administration of the laws which define their qualifications. No power exercised by the Commons is more undoubted than that of expelling a member from the house, as a punishment for grave offences; yet expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next Parliament (3rd February 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th of February, "that, having been in this session of Parliament expelled this house, he was and is incapable of being elected a member to serve in this present Parliament."[2] The election was declared void: but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now tried: Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and, being defeated, petitioned the house against the return of his opponent. The house resolved that, al-

[1] 24 Geo. III. sess. 2, c. 26. 52 Geo. III. c. 144. 21 & 22 Vict. c. 110. See also Chap. XXII.

[2] 32 Com. J. 229.

though a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. The whole of these proceedings were, at the time, severely condemned by public opinion, and proved by unanswerable arguments[1] to be illegal; and on the 3rd of May 1782, the resolution of the 17th of February 1769 was ordered to be expunged from the journals, as "subversive of the rights of the whole body of electors of this kingdom."[2]

Disabilities formerly inflicted by the Commons.

Expulsion and perpetual disability had been part of the punishments inflicted upon Arthur Hall in 1580; and on the 27th May 1641, Mr. Taylor, a member, was expelled, and adjudged to be for ever incapable of being a member of the house.[3] And in the same year, Mr. Benson was resolved to be "unfit and incapable ever to sit in Parliament, or to be a member of this house hereafter;"[4] and Mr. Trelawny was "disabled from sitting as a member of this house during this Parliament."[5] During the Long Parliament, incapacity for serving in the Parliament then assembled, was frequently part of the sentence of expulsion."[6] On the Restoration, in 1660, the house went so far as to expel Mr. Wallop, and resolve him to be "made incapable of bearing any office or place of public trust in this kingdom."[7] In 1711, Mr. Robert Walpole, on being re-elected after his expulsion, was declared incapable of serving in the present Parliament, having been expelled for an offence.[8] But all these cases can only be regarded as examples of an excess of their jurisdiction by the Commons; for one house of Parliament cannot create a disability unknown to the law.

[1] See particularly the speech of Mr. Wedderburn, 1 Cavendish Deb. 352. See also 2 May's Const. Hist. 2–26 (4th Ed.).

[2] 38 Com. J. 977.

[3] 2 Ib. 158.

[4] 2 Com. J. 301.

[5] 2 Ib. 473.

[6] 2 Ib. 700, &c.

[7] 8 Ib. 60.

[8] 17 Ib. 128.

On the 27th April 1641, Mr. Hollis, a member, was suspended the house during the session ;[1] a sentence of a more modified character, and one in which the rights of electors were no more infringed, than if the house had exercised its unquestionable power of imprisonment.

Grounds of expulsion.

Expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit upon Parliament itself. Members have been expelled, as being in open rebellion ;[2] as having been guilty of forgery ;[3] of perjury ;[4] of frauds and breaches of trust ;[5] of misappropriation of public money ;[6] of conspiracy to defraud ;[7] of corruption in the administration of justice,[8] or in public offices,[9] or in the execution of their duties as members of the house ;[10] of conduct unbecoming the character of an officer and a gentleman ;[11] and of libels, and various other offences committed against the house itself.[12]

Evidence of offences.

Where members have been legally convicted of any such offences, it has been customary to require the record of conviction to be laid before the house.[13] In other cases, the proceedings have been founded upon reports of commissions, or committees of the house, or other sufficient evidence.[14] And it has been customary to order the member

[1] 2 Com. J. 128. See also other cases, 8 Ib. 289; 9 Ib. 105; 10 Ib. 846.

[2] Mr. Foster and Mr. Carnegy, 1715; 18 Com. J. 336. 467.

[3] Mr. Ward, 1726; 20 Ib. 702.

[4] Mr. Atkinson, 1783; 39 Ib. 770.

[5] South Sea Directors, 1720; 19 Com. J. 406. 412, 413. Commissioners of Forfeited Estates, 1732; 21 Ib. 871. Benjamin Walsh, 1812; 67 Ib. 176; Lord Colchester's Diary, ii. 373.

[6] Earl of Ranelagh, 1702; 14 Com. J. 171. Mr. Hunt, 1810; 65 Ib. 433.

[7] Lord Cochrane and Mr. Cochrane Johnstone, 1814; 69 Ib. 433.

[8] Sir J. Bennet, 1621; 1 Ib. 588.

[9] Mr. Walpole and Mr. Carbonell, 1711; 17 Ib. 30. 97.

[10] Mr. Ashburnham, 1667; 9 Com. J. 24. Sir J. Trevor (Speaker), 1694; 11 Ib. 274; 5 Parl. Hist. 900-910. Mr. Hungerford, 1695; 11 Com. J. 283.

[11] Col. Cawthorne, 1796; 51 Com. J. 552.

[12] 1 Com. J. 917; 2 Ib. 301. 537; 9 Ib. 431; 17 Ib. 513; 18 Ib. 411; 20 Ib. 391. See also Report of Precedents, 1807.

[13] 39 Com. J. 770; 67 Ib. 176; 69 Ib. 433.

[14] 11 Com. J. 283; 20 Ib. 141. 391; 21 Ib. 870; 65 Ib. 433, &c.

to attend in his place, before an order is made for his expulsion.[1]

A member has also been expelled who has fled from justice, without any conviction, or judgment of outlawry. On the 18th July 1856, a true bill was found against James Sadleir for fraud, and a warrant was then issued for his apprehension. On the 24th, a motion was made for his expulsion, on the ground of his having absconded, which being considered premature, the house refused to entertain. But on the 16th February 1857, when the reports of the crown solicitor and officers of the constabulary, showing the measures which had since been ineffectually taken to apprehend Mr. Sadleir, and bring him to trial, had been laid before the house, he was expelled, as having fled from justice.[2]

[1] 51 Com. J. 661; 65 Ib. 399; 67 Ib. 176; 69 Ib. 433; 111 Ib. 367.

[2] 143 Hans. Deb. 3rd Ser. 1386; 144 Ib. 702; 111 Com. J., 379; 112 Ib. 48.

CHAPTER III.

GENERAL VIEW OF THE PRIVILEGES OF PARLIAMENT: POWER OF COMMITMENT BY BOTH HOUSES, FOR BREACHES OF PRIVILEGE. CAUSES OF COMMITMENT CANNOT BE INQUIRED INTO BY COURTS OF LAW: NOR THE PRISONERS BE ADMITTED TO BAIL. ACTS CONSTRUED AS BREACHES OF PRIVILEGE. DIFFERENT PUNISHMENTS INFLICTED BY THE TWO HOUSES.

Privileges enjoyed by the law and custom of Parliament and by statute.

BOTH houses of Parliament enjoy various privileges in their collective capacity, as constituent parts of the High Court of Parliament; which are necessary for the support of their authority, and for the proper exercise of the functions entrusted to them by the constitution. Other privileges, again, are enjoyed by individual members; which protect their persons and secure their independence and dignity.

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because "they have place and voice in Parliament;"[1] but a practice has obtained with the Commons, that would appear to submit their privileges to the royal favour. At the commencement of every Parliament since the 6th of Henry VIII., it has been the custom for the speaker,

Speaker's petition.

"In the name, and on behalf of the Commons, to lay claim by humble petition to their ancient and undoubted[2] rights and privi-

[1] Hakewel, 82.

[2] See the memorable protestation of the Commons, in answer to James I., who took offence at the words used by the speaker in praying for their privileges as "their antient and undoubted right and inheritance." 5 Parl. Hist. 512; 2 Proceedings and Debates the Commons, 1620–1, 359.

leges ; particularly that their persons and servants[1] might be free from arrests and all molestations ; that they may enjoy liberty of speech in all their debates ; may have access to Her Majesty's royal person whenever occasion shall require ; and that all their proceedings may receive from Her Majesty the most favourable construction."

To which the Lord Chancellor replies, that

"Her Majesty most readily *confirms* all the rights and privileges which have ever been granted to or conferred upon the Commons, by Her Majesty or any of her royal predecessors."[2]

The authority of the Crown, in regard to the privileges of the Commons, is further acknowledged by the report of the speaker to the house, "that their privileges have been confirmed in as full and ample a manner as they have been heretofore *granted* or *allowed* by Her Majesty, or any of her royal predecessors."[3]

This custom probably originated in the ancient practice of confirming laws in Parliament, that were already in force, by petitions from the Commons, to which the assent of the king was given, with the advice and consent of the Lords. In Atwyll's case, 17 Edward IV., the petition of the Commons to the king, states that their "liberties and franchises your highness to your lieges, called by your authority royal to this your high Court of Parliament, for the shires, cities, burghs, and five ports of this realm, by your authority royal, at commencement of this Parliament, graciously have ratified and confirmed to us, your said Commons, now assembled by your said royal commandment in this your said present Parliament."[4]

But whatever may have been the origin and cause of this custom, and however great the concession to the Crown may appear, the privileges of the Commons are nevertheless independent of the Crown, and are enjoyed

[1] The claim of privilege in respect of their *estates* was omitted for the first time in 1853. The claim for servants was retained, as it was doubtful whether certain privileges might not attach to the servants of members, in attendance at the house ; and the officers and servants of the house are still privileged, within its precincts. 108 Com. J. 7; 2 Hatsell, 225; Lord Colchester's Diary, i. 64.

[2] 73 Lords' J. 571 ; 80 Ib. 8.

[3] 112 Com. J., 119, &c.

[4] 6 Rot. Parl. 191.

irrespectively of their petition. Some have been confirmed by statute, and are, therefore, beyond the control either of the Crown or of any other power but Parliament; while others, having been limited or even abolished by statute, cannot be granted or allowed by the Crown.

Every privilege will be separately treated, beginning with such as are enjoyed by each house collectively, and proceeding thence to such as attach to individual members; but, before these are explained, two of the points enumerated in the speaker's petition may be disposed of, as being matters of courtesy rather than privilege. The first of these is "freedom of access to Her Majesty;" and the second "that their proceedings may receive a favourable construction."

Freedom of access for the Commons.

1. The first request for freedom of access to the sovereign is recorded in the 28th Henry VIII.; "but," says Elsynge, "it appeareth plainly they ever enjoyed this, even when the kings were absent from Parliament;" and in the "times of Richard II., Henry IV., and downwards, the Commons, with the speaker, were ever admitted to the king's presence in Parliament to deliver their answers; and oftentimes, under Richard II., Henry IV., and Henry VI., they did propound matters to the king which were not given them in charge to treat of."[1] The privilege of access is not enjoyed by individual members of the House of Commons, but only by the house at large, with their speaker; and the only occasion on which it is exercised, is when an address is presented to Her Majesty by the whole house. Without this privilege it is undeniable that the queen might refuse to receive such an address presented in that manner; and that so far as the attendance of the whole house may give effect to an address, it is a valuable privilege. But addresses of the house may be communicated by any members who have access to Her Majesty as privy councillors; and thus the same constitutional effect

[1] Elsynge, 175, 176.

may be produced, without the exercise of the privilege of the house.

The only right claimed and exercised by individual members, in availing themselves of the privilege of access to Her Majesty, is that of accompanying the speaker with addresses, and entering the presence of royalty, in their ordinary attire. Such a practice is, perhaps, scarcely worthy of notice, but it is probably founded upon the concession to the House of Commons, of a free access to the throne, which may be supposed to entitle them, as members, to dispense with the forms and ceremonies of the court.[1]

Free access for peers.

Far different is the privilege enjoyed by the House of Peers. Not only is that house, as a body, entitled to free access to the throne, but each peer, as one of the hereditary counsellors of the Crown, is individually privileged to have an audience of Her Majesty.[2]

Favourable construction of the Commons' proceedings.

2. That all the proceedings of the Commons may receive from Her Majesty the most favourable construction, is conducive to that cordial co-operation of the several branches of the legislature which is essential to order and good government; but it cannot be classed among the privileges of Parliament. It is not a constitutional right, but a personal courtesy; and if not observed, the proceedings of the house are guarded against any interference, on the part of the Crown, not authorised by the laws and constitution of the country. The occasions for this courtesy are also limited; as by the law and custom of Parliament the Queen cannot take notice of anything said or done in the house, but by the report of the house itself.[3]

Privileges of each house collectively.

Each House, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by any separate right peculiar to each, but solely by virtue of the law and custom of Par-

[1] See also Chap. XVII., On Addresses.

[2] See 3 Lord Colchester's Diary, 604. 606, 607.

[3] 4 Inst. 15. See also *infra*, Chap. IV., On Freedom of Speech.

liament. There are rights or powers peculiar to each, as explained in the last chapter: but all privileges, properly so called, appertain equally to both houses. These are declared and expounded by each house; and breaches of privilege are adjudged and censured by each: but still it is the law of Parliament that is thus administered.

Law and custom of Parliament.

The law of Parliament is thus defined by two eminent authorities: "As every court of justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs, so the High Court of Parliament hath also its own peculiar law, called the *lex et consuetudo Parliamenti*."[1] This law of Parliament is admitted to be part of the unwritten law of the land, and as such is only to be collected according to the words of Sir Edward Coke, "out of the rolls of Parliament and other records, and by precedents and continued experience; to which it is added, that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere."[2]

Hence it follows that whatever the Parliament has constantly declared to be a privilege, is the sole evidence of its being part of the ancient law of Parliament. "The only method," says Blackstone, "of proving that this or that maxim is a rule of the common law, is by showing that it hath always been the custom to observe it;" and "it is laid down as a general rule that the decisions of courts of justice are the evidence of what is common law."[3] The same rule is strictly applicable to matters of privilege, and to the expounding of the unwritten law of Parliament.

New privileges may not be created.

But although either house may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. In 1704, the Lords communicated a resolution to the Commons at a conference,

[1] 4 Inst. 15. 1 Bl. Comm. 163. [2] 4 Inst. 15.
[3] 1 Comm. 68. 71.

"That neither house of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;"[1] which was assented to by the Commons.[2]

In treating of the privileges of individual members, it will be shown that in the earlier periods of parliamentary history, the Commons did not always vindicate their privileges by their own direct authority: but resorted to the King, to special statutes, to writs of privilege, and even to the House of Lords, to assist them in protecting their members. It will be seen in what manner they gradually assumed their just position, as an independent part of the legislature, and at length established the present mode of administering the law of Parliament.

Breach of privilege a contempt of the High Court of Parliament.

Both houses now act upon precisely the same grounds in matters of privilege. They declare what cases, by the law and custom of Parliament, are breaches of privilege; and punish the offenders by censure or commitment, in the same manner as courts of justice punish for contempt.[3] The modes of punishment may occasionally differ, in some respects, in consequence of the different powers of the two houses: but the principle upon which the offence is determined, and the dignity of Parliament vindicated, is the same in both houses.

Commitment.

The right to commit for contempt, though universally acknowledged to belong equally to both houses, is often regarded with jealousy when exercised by the Commons. This has arisen partly from the powers of judicature inherent in the Lords, which have endowed that house with the character of a high court of justice, and partly from the more active political spirit of the lower house. But the acts of the House of Lords, in its legislative capacity, ought not to be confounded with its judicature; nor should the political composition of the House of Commons be a ground

[1] 14 Com. J. 555. [2] Ib. 560.

[3] Grey's Debates, 232.

for limiting its authority. The particular acts of both houses should, undoubtedly, be watched with vigilance when they appear to be capricious or unjust: but it is unreasonable to cavil at privileges, in general, which have been long established by law and custom, and which are essential to the dignity and power of Parliament.

So essential to the functions of a legislature is the right to judge contempts of its authority, and to punish them, that in the United States, where the constitution is silent upon this subject, it has been repeatedly exercised, not only by the House of Representatives, but also by local legislatures; and has been upheld by the Supreme Court, on the ground of inherent right and necessity. Here there was no prescription or ancient custom to rely upon; and the silence of the constitution, whence all powers are derived, was a fact undoubtedly adverse to the claim.[1] The same power has also been exercised by colonial legislatures.[2]

By the Lords.

The power of the House of Lords to commit for contempt was questioned in the cases of the Earl of Shaftesbury,[3] in 1675, and of Flower,[4] in 1779: but was admitted without hesitation by the Court of King's Bench.

By the Commons.

The power of commitment by the Commons is established upon the ground and evidence of immemorial usage.[5] It was admitted, most distinctly, by the Lords, at the conference between the two houses, in the case of Ashby and White, in 1704,[6] and it has been repeatedly recognised by the courts of law: viz. by 11 of the judges, in the case of the Aylesbury men;[7] by the Court of King's Bench, in

[1] See 2 Story's Comm. 305–317, and notes.

[2] Journ. of Leg. Assy. of Canada, 20th and 23rd April 1846; 12th March 1849; vol. 5, p. 119. 150; vol. 7, p. 148. 282. Journ. of House of Assy. of Prince Edward Island, 17th Feb. 1836; 19th March and 9th April 1846, &c.

[3] 6 Howell, St. Tr. 1269 *et seq.*

[4] 8 Durnf. & East, 314.

[5] Mr. Wynn states that nearly 1,000 instances of its exercise have occurred since 1547, the period at which the Journals commence (*Argument*, p. 7); and numerous cases have occurred since the publication of Mr. Wynn's treatise.

[6] 17 Lords' J. 714.

[7] 2 Lord Raym., 1105; 3 Wils. 205.

Murray's case;[1] by the Court of Common Pleas, in Crosby's case;[2] by the Court of Exchequer, in the case of Oliver (1771);[3] by the Court of King's Bench, in Burdett's case, in 1811;[4] in the case of Mr. Hobhouse, in 1819;[5] and in the case of the Sheriff of Middlesex, in 1840;[6] and lastly, by the Court of Exchequer Chamber, in Howard's case, in 1846.[7] The power is also virtually admitted by the Statute 1 James I., c. 13, s. 3, which provides that nothing therein shall "extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person."

Authority and protection of officers in executing orders of either house.

The right of commitment being thus admitted, it becomes an important question to determine what authority and protection are acquired by officers of either house, in executing the orders of their respective courts.

Any resistance to the serjeant-at-arms, or his officers, or others acting in execution of the orders of either house, has always been treated as a contempt; and the parties, in numerous instances, have suffered punishment accordingly.

Lords

The Lords will not suffer any persons, whether officers of the house or others, to be molested for executing their orders,[8] or the orders of a committee,[9] and will protect them from actions.

On the 28th November 1768, the house being informed that an action had been commenced against Mr. Hesse, a justice of the peace for Westminster, who had acted under the immediate orders of the house in suppressing a riot at the doors of the house, in Palace-yard, Biggs, the plaintiff, and Aylett, his attorney, were ordered to attend. On the 1st December, Biggs, was attached, but afterwards discharged out of custody, with a reprimand, upon his signing a release to Mr. Hesse. Aylett was sent to Newgate, whence he

[1] 1 Wils. 299 (1751).
[2] 3 Wils. 203 (1771).
[3] Ib.
[4] 14 East, 1.
[5] 2 Chit. Rep. 207; Barn & Ald. 420.
[6] 11 Adolphus and Ellis, 273.
[7] Printed Papers, 2nd Report, 1845 (305), (397); 1847 (39).
[8] 13 Lords' J. 104; 15 Ib. 565; 21 Ib. 190; 38 Ib. 649; 45 Ib. 340. 610.
[9] 13 Ib. 412.

was discharged on the 9th December, on his petition expressing contrition for his offence.[1]

On the 26th June 1788, Aldern, a constable, complained that, in pursuance of an order of the house, he had refused Mr. Hyde admittance to Westminster Hall during the trial of Warren Hastings, for which he had been indicted for an assault, and put to much expense. Mr. Hyde was ordered to attend, and committed for his offence. On the 30th June he was discharged, with a reprimand, on submitting himself to the house.[2]

The last case of the kind was that commonly known as "the umbrella case." On the 26th March 1827, complaint was made that John Bell had served F. Plass, a doorkeeper, when attending his duty in the house, with process from the Westminster Court of Requests, first to appear, and afterwards to pay a debt and costs awarded against him by that court, for the loss of an umbrella which had been left with the doorkeeper during a debate. Bell, and the clerks of the Court of Requests were summoned: the former was admonished, and the latter, not being aware of the nature of the complaint, were directed to withdraw.[3]

Commons.

In the case of Ferrers, in 1543, the Commons committed the sheriffs of London to the Tower, for having resisted their serjeant-at-arms, with his mace, in freeing a member who had been imprisoned in the Compter.[4]

In 1681, after a dissolution of Parliament, an action was brought against Topham, the serjeant-at-arms attending the Commons, for executing the orders of the house in arresting certain persons. Topham pleaded to the jurisdiction of the court, but his plea was overruled, and judgment was given against him. The house declared this to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the case, to the custody of the serjeant-at-arms. This case will be referred to again for

[1] 32 Lords' J. 187. 197.
[2] 38 Ib. 249, 250, 251.
[3] 59 Ib. 199. 206.
[4] 1 Hatsell, 53.

another purpose: but here it is adduced as a precedent of the manner in which officers have been supported by the house, in the execution of its orders.

In 1771, the House of Commons had ordered Miller, one of the printers concerned in publishing the debates, to be taken into custody; and he was arrested by a messenger, by virtue of the speaker's warrant. The messenger was charged with an assault, and brought before the Lord Mayor and two aldermen at the Mansion-house, who set the prisoner at liberty, and committed the messenger of the house for an assault.[1] For this obstruction to the orders of the house, Mr. Alderman Oliver and the Lord Mayor (Brass Crosby), were committed to the Tower.[2]

Assistance of the civil power.

It cannot, indeed, be supposed that when the house has ordered the serjeant to execute a warrant, it will not sustain his authority, and punish those who resist him.[3] But a question still arises concerning the authority with which he is invested by law, when executing a warrant, properly made out by order of the house, and the assistance he is entitled to demand from the civil power. Both houses have always considered every branch of the civil government as bound to assist, when required, in executing their warrants, and orders, and have repeatedly required such assistance.

In 1640, all mayors, justices, &c. in England and Ireland were ordered by the Commons, to aid in the apprehension of Sir G. Ratcliffe.[4] In 1660, the serjeant was expressly empowered "*to break open a house* in case of resistance, and to call to his assistance the sheriff of Middlesex, and all other officers, as he shall see cause; and who are required to assist him accordingly."[5] And on the 23rd October 1690, the Lords authorised the black rod to break open the doors of any house, in the presence of a constable, and there search for and seize Lord Keveton.[6]

[1] 33 Com. J. 263; and Report of Committee, 1771.

[2] 33 Com. J. 285. 289. See also 1 May's Const. Hist. 429.

[3] See other Cases, 9 Com. J. 341. 587; 13 Ib. 826.

[4] 2 Ib. 29.

[5] 8 Ib. 222.

[6] 14 Lords' J. 530.

On the 24th January 1670, the House of Commons ordered a warrant to be issued for apprehending several persons who had resisted the deputy serjeant, and resolved, "That the high sheriff of the county of Gloucester, and other officers concerned, are to be required by warrant from the speaker, to be aiding and assisting in the execution of such warrant."[1] And again, on the 5th April 1679, it was ordered, "That the speaker do issue out his warrant, requiring all sheriffs, bailiffs, constables, and all other his Majesty's officers and subjects, to be aiding and assisting to the serjeant-at-arms attending this house."[2]

The Lords also have frequently required the assistance of the civil power in a similar manner.[3]

And at the present time, by every speaker's warrant to the serjeant-at-arms for taking a person into custody, "all mayors, sheriffs, under-sheriffs, bailiffs, constables, headboroughs, and officers of the house, are required to be aiding and assisting in the execution thereof."

Before the year 1810, however, no case arose in which the legal consequences of a speaker's warrant, and the powers and duties of the serjeant-at-arms in the execution of it, were distinctly explained and recognised by a legal tribunal, as well as by the judgment of Parliament, in punishing resistance.

Breaking open outer doors.

In the case of Sir Francis Burdett, in 1810, a doubt arose concerning the power of the serjeant-at-arms to break into the dwelling-house of a person against whom a speaker's warrant had been issued. The serjeant-at-arms having, in execution of a warrant, been resisted and turned out of Sir Francis Burdett's private dwelling-house by force, required the opinion of the attorney-general,

"whether he would be justified in breaking open the outer or any inner door of the private dwelling-house of Sir F. Burdett, or of any

[1] 9 Com. J. 193.

[2] 8 Com. J. 586. See also 2 Ib. 371; 9 Ib. 353.

[3] 21st December 1678, 13 Lords' J. 429; 21st and 23rd October 1690, 14 Ib. 527. 530; 21st May 1747, 27 Ib. 118.

other person in which there is reasonable cause to suspect he is concealed, for the purpose of apprehending him; and whether he might take to his assistance a sufficient civil or military force for that purpose, such force acting under the direction of a civil magistrate; and whether such proceedings would be justifiable during the night as well as in the day-time."[1]

The attorney-general answered all these questions, except the last, in the affirmative;[2] and acting upon his opinion, the serjeant-at-arms forced an entrance into Sir F. Burdett's house, down the area, and conveyed his prisoner to the Tower, with the assistance of a military force. Sir F. Burdett subsequently brought actions against the speaker and the serjeant-at-arms, in the Court of King's Bench. The house directed the attorney-general to defend them. The causes were both tried, and verdicts were obtained for the defendants.

Burdett *v.* Abbot.
Burdett *v.* Colman.

With respect to the authority of the serjeant-at-arms to break open the outer door of Sir F. Burdett's house, Lord Ellenborough said,

"Upon authorities the most unquestionable this point has been settled, that where an injury to the public has been committed, in the shape of an insult to any of the courts of justice, on which process of contempt is issued, the officer charged with the execution of such process may break open doors, if necessary, in order to execute it; and it cannot be contended that the houses of legislature are less strongly armed in point of protection and remedy against contempts towards them, than the courts of justice are."[3]

The opinion of the attorney-general, upon which the serjeant had acted, was thus confirmed. This judgment was afterwards affirmed, on a writ of error, by the Exchequer Chamber,[4] and ultimately by the House of Lords.[5]

But although the serjeant-at-arms may force an entrance, he is not authorised to remain in the house, if the party be from home, in order to await his return. Mr. Howard, a

Howard *v.* Gosset.
1st Action 1842.

[1] 65 Com. J. 264; Ann. Reg. 1810, p. 344, &c. Hans. Deb. xvi. 257. 454, &c. Lord Colchester's Diary, ii. 245, &c.

[2] This opinion is printed in the Journal, and in the earlier editions of this work.

[3] 14 East, 157.

[4] 4 Taunt. 401.

[5] 5 Dow. 165

solicitor, brought an action of trespass against certain officers of the House of Commons, who, in executing a speaker's warrant for his apprehension, had stayed several hours in his house. The trial came on before Lord Denman, in the sittings at Westminster after Michaelmas term, 1842, when it appeared in evidence that the messengers had remained for several hours in the house, awaiting the return of Howard, after they knew that he was from home.

The attorney-general, who appeared for the defendants, admitted that, although they had a right to enter Howard's house, and to be in his house for a reasonable time to search for him, yet that they had no right to stay there until he returned; and Lord Denman directed the jury to say what just and reasonable compensation the officers should make for their trespass, which their warrant from the House of Commons did not authorise. A verdict was consequently given for the plaintiff on the second count, with 100*l.* damages.[1] The verdict proceeded entirely upon the ground of the defendants having exceeded their authority, and without any reference to the jurisdiction of the House of Commons: but if the officer should not exceed his authority, he will be protected by the courts, even if the warrant should not be technically formal, according to the rules by which the warrants of inferior courts are tested.

Howard *v.* Gosset. 2nd Action 1843.

In 1843, Mr. Howard commenced another action of trespass against Sir W. Gosset, the serjeant-at-arms, and the Court of Queen's Bench gave judgment for the plaintiff, on the ground that the warrant was technically informal, and did not justify the acts of the serjeant. This judgment, however, was reversed by the Court of Exchequer Chamber, by whom the broader grounds on which they upheld the privileges of Parliament, were thus expounded: "They construe the warrant as they would that of a magistrate; we construe it as a writ from a superior court; the authorities relied upon by them relate to the warrants and com-

[1] Carrington & Marshman, 382. Adol. & Ellis, 209.

mitments of magistrates; they do not apply to the writs and mandates of superior courts, still less to those of either branch of the High Court of Parliament:" "Writs issued by a superior court, not appearing to be out of the scope of their jurisdiction, are valid of themselves, without any further allegation, and a protection to all officers and others in their aid, acting under them; and that although on the face of them they be irregular, as a *capias* against a peeress (Countess of Rutland's case, 6 Coke's Rep. 54*a*), or void in form, as a *capias ad respondendum* not returnable the next term (Parsons *v.* Loyd, 3 Wilson, 341); for the officers ought not to examine the judicial act of the court, whose servants they are, nor exercise their judgment touching the validity of the process in point of law, but are bound to execute it, and are therefore protected by it."[1]

Lines *v.* Russel. Warrant of Chairman of Election Committee.

In 1852, Mr. Lines, who had been committed to custody, by a warrant of the chairman of the St. Alban's Election Committee, brought an action of trespass against Lord Charles Russell, the serjeant-at-arms. By the "Election petitions Act 1848," s. 83, if any witness before an election committee "give false evidence, or prevaricate, or otherwise misbehave, in giving or refusing to give evidence, the chairman, by their direction," may commit him for a limited time. In this case the committee were of opinion that Mr. Lines had prevaricated, and he was committed by virtue of the following warrant:—

"Whereas a select committee appointed to try and determine the merits of the petition complaining of an undue election and return for the borough of St Alban's, have this day resolved that William Lines, of St. Alban's, having been guilty of prevarication and misbehaviour before the said committee, be committed to the custody of the serjeant-at-arms attending this house. Now, these presents are therefore to require you to take into your custody the body of the said William Lines, and to keep him in such custody until twelve of the clock on Tuesday next."

It was argued that this warrant was invalid, as it did not state that Lines was a witness summoned to give evidence;

[1] Shorthand writer's notes, 1847 (39), p. 166. 168.

nor that he had been sworn and examined; nor that he had prevaricated and misbehaved in giving evidence. It was also urged that the warrant ought not to be judged in the same manner as a warrant issued by the House of Commons, or any superior court: but as the warrant of a tribunal of inferior and limited jurisdiction, constituted by Act of Parliament.

The Lord Chief Baron, however, having consulted some of the judges, was of opinion that the warrant was "entitled to precisely the same respect that would be paid to a warrant, order, or rule of the highest court in the country," and, "in reading the warrant, could entertain no reasonable doubt that the plaintiff was before the committee as a witness." He therefore directed the jury to find a verdict for the defendant. A bill of exceptions was tendered, but afterwards waived, and a rule moved to show cause why there should not be a new trial on the ground of misdirection. It appeared to be the opinion of the court that the warrant was to be regarded as proceeding from "a part of a superior court;" but a rule *nisi* was granted, which was subsequently discharged without any decision upon the question raised.[1]

Causes of commitment cannot be inquired into by the courts of law.

The power of commitment, with all the authority which can be given by law, being thus established, it becomes the key-stone of parliamentary privilege. Either house may adjudge that any act is a breach of privilege and contempt; and if the warrant recite that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot inquire into the grounds of the judgment, but must leave him to suffer the punishment awarded by the High Court of Parliament, by which he stands committed.

Habeas Corpus.

The Habeas Corpus Act[2] is binding upon all persons whatever, who have prisoners in their custody; and it is

[1] Shorthand writer's notes, 25th June, 3rd and 13th November 1852. 16 Justice of the Peace, 491. 19 Law Times, 364.

[2] 31 Car. II. c. 2.

therefore competent for the judges to have before them persons committed by the Houses of Parliament for contempt. There have been cases, indeed, in which writs of habeas corpus have been resisted: as in 1675, when the House of Commons directed the lieutenant of the Tower to make no return to any writ of habeas corpus relating to persons imprisoned by its order;[1] and in 1704, when similar directions were given to the serjeant-at-arms.[2] But these orders arose from the contests raging between the two houses; the first in regard to the judicature of the Lords, and the second concerning the jurisdiction of the Commons in matters of election; and it has since been the invariable practice for the serjeant-at-arms and others, by order of the house, to make returns to writs of habeas corpus.[3]

Prisoners cannot be bailed.

But although the return is made according to law, the parties who stand committed for contempt cannot be admitted to bail, nor the causes of commitment inquired into, by the courts of law. It had been so adjudged by the courts, during the Commonwealth,[4] in the cases of Captain Streater[5] and Sir Robert Pye.[6] The same opinion was expressed in Sheridan's case, by many of the first lawyers in the House of Commons, shortly after the passing of the Habeas Corpus Act;[7] and it has been confirmed by resolutions of the House of Commons[8] and by numerous subsequent decisions of the courts of law; of which the following are some of the most remarkable.

Earl of Shaftesbury's case.

In 1675, Lord Shaftesbury, who had been committed by

[1] 9 Com. J. 356.

[2] 14 Com. J. 565.

[3] 95 Com. J. 25, 24th January 1840. 51 Hans. Deb. 3rd S. 550. 106 Com. J. 147.

[4] By order of the House of Commons, 23rd June 1647, the serjeant and keepers of persons are directed to make returns to writs of habeas corpus, with the causes of detention; but the Judges are not to proceed to bail or discharge the prisoners without notice to the House. 5 Com. J. 221. See also 2 Ib. 960.

[5] 5 Howell, St. Tr. 365. Styles, 415.

[6] 5 Howell. St. Tr. 948.

[7] A. D. 1680; 4 Hans. Parl. Hist. 1262.

[8] 9 Com. J. 356, 357; 12 Ib. 174; 14 Ib. 565. 599.

the House of Lords for a contempt, was brought before the Court of King's Bench, but remanded. In that case Lord Chief Justice Rainsford said,—

"He is in execution of the judgment given by the Lords for contempt; and therefore if he should be bailed, he would be delivered out of execution." And again, "This court has no jurisdiction of the cause; and therefore the form of the return is not considerable."[1]

Paty's case.

In the case of the Queen *v.* Paty,[2] objections had been taken to the form of the warrant, but Mr. Justice Gould said, "if this had been a return of a commitment by an inferior court, it had been naught, because it did not set out a sufficient cause of commitment; but this return being of a commitment by the House of Commons, which is superior to this court, it is not *reversible for form.*" And Mr. Justice Powys, relying upon the analogy of commitments by the House of Commons and by the superior courts, said, "The House of Commons is a great court, and all things done by them are to be intended to have been *rite actæ*, and the matter need not be so specially recited in their warrants, by the same reason as we commit people by a rule of court of two lines; and such commitments are held good, because it is to be intended that we understand what we do." And in the record of this case it is expressed, that he was remitted to custody, "quod cognitio causæ captionis et detentionis prædicti Johannis Paty non pertinet ad curiam."

Murray's case.

In 1751, Mr. Murray was committed to Newgate by the Commons for a contempt, and was brought up to the Court of King's Bench by a habeas corpus. The court refused to admit him to bail, Wright, J., saying,—

"It need not appear to us what the contempt was for; if it did appear, we could not judge thereof; the House of Commons is superior to this court in this particular. This court cannot admit to bail a person committed for a contempt in any other court in Westminster Hall."[3]

[1] 6 Howell, St. Tr. 1269. 1 Freem. 153. 1 Mod. 144. 3 Keble, 792.

[2] 2 Lord Raymond, 1109. Salk. 503.

[3] 1 Wils. 200.

In Brass Crosby's case, in 1771, De Grey, C. J., said,— Brass Crosby's case.

"When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence, an execution; and no court can discharge or bail a person that is in execution by the judgment of any other court." And again, "Courts of justice have no cognisance of the acts of the Houses of Parliament, because they belong 'ad aliud examen.'"[1]

Again, in the case of Flower, who had been committed by the House of Lords for a libel on the Bishop of Llandaff, the prisoner applied in vain to the King's Bench to be admitted to bail; and Lord Kenyon, adopting the same view as other judges before him, said, "We were bound to grant this habeas corpus; but having seen the return to it, we are bound to remand the defendant to prison, because the subject belongs to 'aliud examen.'"[2] Flower's case.

In the case of Mr. Hobhouse, Lord Chief Justice Abbott said,— Hobhouse's case.

"The power of commitment for contempt is incident to every court of justice, and more especially it belongs to the High Court of Parliament; and therefore it is incompetent for this court to question the privileges of the House of Commons, on a commitment for an offence which they have adjudged to be a contempt of those privileges." And again, "We cannot inquire into the form of the commitment, even supposing it to be open to objection on the ground of informality."[3]

In 1840 occurred the case of the Sheriff of Middlesex, who had been committed for executing a judgment of the Court of Queen's Bench against the printers of the House of Commons. In obedience to an order of the house,[4] the serjeant made a return to the writ, that he had taken and detained the sheriff by virtue of a warrant under the hand of the speaker, which warrant was as follows:— Sheriff of Middlesex.

"Whereas the House of Commons have this day resolved that W. Evans, esq. and J. Wheelton, esq., Sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this house, be committed to the custody of the serjeant-at-arms attending this house; these are therefore to require you to take into your custody

[1] 19 Howell, St. Tr. 1137. 3 Wils. 188. 203.
[2] 8 Durnf. & East, 314.
[3] 2 Chit. Rep. 207. 3 Barn. & Ald. 420.
[4] 95 Com. J. 25.

the bodies of the said W. Evans and J. Wheelton, and them safely to keep during the pleasure of this house; for which this shall be your sufficient warrant."

It was argued that, under the 56 Geo. III., c. 100, s. 3, the judges could examine into the truth of the facts set forth in the return, by affidavit or by affirmation; that the return was bad, because it did not state the facts on which the contempt arose; and that the warrant did not show a sufficient jurisdiction in those who issued it. No one appeared in support of the return, but the judges were unanimously of opinion that the return was good, and that they could not inquire into the nature of the contempt,[1] although it was notorious that the sheriff had been committed for executing a judgment of that court.

Case of W. Lines.

On the 7th April 1851, the serjeant acquainted the house that he had received W. Lines into his custody, by virtue of a warrant from the chairman of the St. Alban's Election Committee; and that he had since been served with a writ of habeas corpus. He was directed to make a return to the writ, that he held the body of W. Lines by virtue of a warrant under the hand of the chairman of the election committee, and to annex the warrant to the return.[2] In the meantime, however, Lines had given his evidence satisfactorily, and had been discharged out of custody before the return was made to the writ; and this fact was accordingly stated in the return.[3]

Parliament claims the same power as the courts.

From these cases it may now be considered as established, beyond all question, that the causes of commitment by either house of Parliament, for breaches of privilege and contempt, cannot be inquired into by courts of law: but that their "adjudication is a conviction, and their commitment, in consequence, an execution." Nor, indeed, could any other rule be adopted consistently with the independence

[1] 11 Adol. & Ellis, 273. [2] 106 Com. J. 147, 148.
[3] The return to the writ is entered, 106 Com. J. 153.

of either house of Parliament. It has been seen that no greater power is claimed by Parliament than is readily conceded by the courts to one another, of which a comparatively recent example may be given. On the 18th November 1845, Mr. William Cobbett was brought before the Court of Common Pleas by the keeper of the Queen's Prison, in obedience to a writ of habeas corpus. It appeared that the prisoner was detained under a writ of attachment which had been issued against him by the Court of Chancery, for a contempt of that court, in not having paid certain costs. Upon which the court said, that "if Mr. Cobbett had any complaint to make against the legality of the detainer (and the court were far from saying that he might not have a just ground for such a complaint), he ought to apply to the Court of Chancery. This court had no right and no power to interfere with the proceedings of a court of co-ordinate jurisdiction, and therefore Mr. Cobbett must be remanded to his former custody."[1]

Commitment for offences beyond the jurisdiction of the house.

One qualification of this doctrine, however, must not be omitted. When it appears, upon the return of the writ, simply that the party has been committed for a contempt and breach of privilege, it has been universally admitted that it is incompetent for the courts to inquire further into the nature of the contempt: but if the causes of commitment were stated on the warrant, and appeared to be beyond the jurisdiction of the house, it is probable that their sufficiency would be examined. Lord Ellenborough, in his judgment in Burdett *v.* Abbot,[2] drew the distinction between such cases in the following manner:—

"If a commitment appeared to be for a contempt of the House of Commons generally, I would, neither in the case of that court nor of any other of the superior courts, inquire further: but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment

[1] See also in *re* W. Dimes, 17 January 1850, 14 Jurist, 198.

[2] 14 East, 1.

palpably and evidently arbitrary, unjust and contrary to every principle of positive law or natural justice; I say, that in the case of such a commitment (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur), we must look at it and act upon it as justice may require, from whatever court it may profess to have proceeded."

And in this opinion Lord Denman appears to have acquiesced, in the case of the Sheriff of Middlesex. The same principle may be collected from the judgment of the Exchequer Chamber in Gosset *v.* Howard, where it is said "it is presumed, with respect to such writs as are actually issued by superior courts, that they are duly issued, and in a case in which they have jurisdiction, *unless the contrary appear on the face of them.*"

Not necessary to express any cause of commitment.

But it is not necesssary that *any* cause of commitment should appear upon the warrant, nor that the prisoner should have been adjudged guilty of contempt. It has been a very ancient practice in both houses, to send for persons in custody to answer charges of contempt;[1] and in the Lords, to order them to be attached and brought before the house to answer complaints of breaches of privilege, contempts, and other offences.[2] This practice is analogous to writs of attachment upon mesne process in the superior courts, and is unquestionably legal.

Persons sent for in custody.

In the judgment of the Court of Exchequer Chamber, in the case of Gosset *v.* Howard, already alluded to, it was stated that

"Writs of attachment from superior courts do not state the previous steps of a charge of contempt, the rule of the court that they should issue, or the nature of the contempt." "It appears, indeed, that if a writ of a superior court *expressed no cause at all*, it would,

[1] 2 Lords' J. 201 (26th Nov. 1597); 2 Ib. 256 (17th Dec. 1601); 2 Ib. 296; and for several other cases, see Calendar to Lords' Journ. (1509–1642), p. 117 *et seq.*, and 257 *et seq.* 11 Lords' J. 252, &c. 1 Com. J. 175, 680 (9th March 1623); 1 Ib. 886 (22nd April 1628); 9 Ib. 351 (2nd June 1675); 17 Ib. 493 (12th March 1713); 21 Ib. 705 (30th March 1731); 23 Ib. 146. 451, 452 (1738–9); 35 Ib. 323 (27 April 1775); 80 Ib. 445 (20th May 1825); 82 Ib. 561 (14th June 1827); 95 Ib. 30. 56. 59 (4th Feb. 1840).

[2] See precedents collected in App. to 2nd Rep. on Printed Papers, 1845 (397), p. 104.

be legal, and the defendant not bailable, according to what Lord Coke says in the Brewers' case, 1 Roll. R. 134. It was a mistake to assert as was done at the bar, that an adjudication of a contempt was a necessary part of every committal for a contempt, and that an attachment would be invalid without it. It is not so in the superior courts of common law, as has been stated, nor in the Court of Chancery, as Lord Lyndhurst has lately decided, after an inquiry into precedents." —(*Ex parte* Van Sandan, 1 Phillips' Rep. 605.)

Arrests without warrant.

In earlier times it was not the custom to prepare a formal warrant for executing the orders of the House of Commons: but the serjeant arrested persons with the mace, without any written authority;[1] and at the present day he takes strangers into custody who intrude themselves into the house, or otherwise misconduct themselves, in virtue of the general orders of the house, and without any specific instructions.[2]

Attachment by the Lords.

The Lords attach and commit persons by order, without any warrant. The order of the house is signed by the clerk of the Parliaments, and is the authority under which the officers of the house and others execute their duty.

Breaches of privilege defined.

Wilful disobedience to orders, within its jurisdiction, is a contempt of any court, and disobedience to the orders and rules of Parliament, in the exercise of its constitutional functions, is treated as a breach of privilege. Insults and obstructions, also, offered to a court at large, or to any of its members, are contempts; and in like manner, by the law of Parliament, are breaches of privilege. It would be in vain to attempt an enumeration of every act which might be construed into a contempt, because the orders of every court must necessarily vary with the circumstances of each case; but certain principles may be collected from the Journals, which will serve as general declarations of the law of Parliament.

Breaches of privilege may be divided into—1. Disobedience to general orders or rules of either house; 2. Dis-

[1] Bainbrigge's case, 29th February 1575. 1 Com. J. 109. 1 Hatsell, 92. 2nd Rep. Printed Papers, 1845, p. vi.

[2] 85 Com. J. 461; 86 Ib. 323; 88 Ib. 246; 102 Ib. 99.

obedience to particular orders; 3. Indignities offered to the character or proceedings of Parliament; 4. Assaults or insults upon members, or reflections upon their character and conduct in Parliament; or interference with officers of the house in discharge of their duty.

Disobedience of general orders and rules.

1. Disobedience to any of the orders or rules which are made for the convenience or efficiency of the proceedings of the house, is a breach of privilege, the punishment of which would be left to the house, by those who are most jealous of parliamentary privilege. But if such orders should appear to clash with the common or statute law of the country, their validity is liable to question, as will be shown in a separate chapter[1] upon the jurisdiction of the courts in matters of privilege.

As examples of general orders, the violation of which would be regarded as breaches of privilege, the following may be sufficient.

Publication of debates.

Lords.

The publication of the debates of either house has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either house desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders. The Lords have a standing order, of the 27th February 1698, by which it is declared,

"That it is a breach of the privilege of this house, for any person whatsoever to print, or publish in print, anything relating to the proceedings of the house without the leave of this house."[2]

Cases.

In 1801, Allan Macleod, a prisoner in Newgate, convicted for a misdemeanour, was fined 100 *l.*, and committed to Newgate for six months after the expiration of his sentence, for publishing certain paragraphs purporting to be a proceeding of the house, which had been ordered to be expunged from the Journal, and the debate thereupon. He was also ordered to be kept in safe custody until he

[1] Chapter VI.

[2] Lords' S. O. No. 22.

should pay the fine.[1] And John Higginbottom, for vending and publishing these paragraphs, was fined 6 *s.* 8 *d.*, and committed to Newgate for six months, and until he should pay the fine.[2] He afterwards presented a petition to be liberated, was brought to the bar, reprimanded and discharged.[3]

In the same year, H. Brown and T. Glassington were committed to the custody of the black rod, for printing and publishing, in the Morning Herald, some paragraphs purporting to be an account of what passed in debate, but which the house declared to be a scandalous misrepresentation.[4]

On the 13th July 1641, it was ordered by the Commons, "That no member shall either give a copy or publish in print anything that he shall speak here, without leave of the house."[5] And on the 22nd, "That all the members of the house are enjoined to deliver out no copy or notes of anything that is brought into the house, propounded or agitated in the house."[6] Commons.

On the 28th March 1642, it was resolved,

"That what person soever shall print (or) sell any act or passages of this house, under the name of a diurnal or otherwise, without the particular license of this house, shall be reputed a high contemner and breaker of the privilege of Parliament, and so punished accordingly."[7]

The Commons have also ordered at different times,

"That no news-letter writers do, in their letters or other papers that they disperse, presume to intermeddle with the debates or any other proceedings of this house."[8] "That no printer or publisher of any printed newspapers do presume to insert in any such papers, any debates or any other proceedings of this house, or of any committee thereof."[9] "That it is an indignity to, and a breach of the privilege

[1] 43 Lords' J. 105.

[2] Ib.

[3] Ib. 115. 225. 230.

[4] 43 Lords' J. 60.

[5] 2 Com. J. 209. This proceeding arose out of the printing of a speech of Lord Digby.

[6] 2 Com. J. 220.

[7] 2 Com. J. 501.

[8] Orders, 22nd Dec. 1694. 11th Feb. 1695. 18th Jan. 1697. 3rd Jan. 1703. 23rd Jan. 1722. 11 Com. J. 193; 11 Ib. 439; 12 Ib. 48; 14 Ib. 270; 20 Ib. 99.

[9] 20 Com. J. 99.

of this house, for any person to presume to give, in written or printed newspapers, any account or minute of the debates or other proceedings. That, upon discovery of the authors, printers, or publishers of any such newspaper, this house will proceed against the offenders with the utmost severity."[1]

Other orders also to the same effect, though not verbally the same, have been repeated at different times.[2] These orders, however, have long since fallen into disuse; debates are daily cited in Parliament from printed reports—galleries have been constructed for the accommodation of reporters—committees have been appointed to provide increased facilities for reporting, and complaints have been repeatedly made, in both houses, that the reports of debates have sometimes not been sufficiently full. But when any wilful misrepresentation of the debates arises; or when on any particular occasion it may be necessary to enforce the restriction, the house will censure or otherwise punish the offender, whether he be a member of the house or a stranger admitted to its debates.[3] But as orders prohibiting the publication of debates are still retained upon the Journals, the formal proceedings of the house, in case of any misrepresentation of its debates, are somewhat anomalous. The ground of complaint is, that a speech has been incorrectly reported; but the motion for the punishment of the printer assumes that the publication of the debate at all is a breach of privilege.[4] The principle, however, by which both houses are governed is now sufficiently acknowledged. So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived; but when they are reported *malâ fide*, the publishers of newspapers are liable to censure. The late Lord Campbell endeavoured, by legislation, to protect reports of parliamentary

[1] 26 Feb. 1728; 21 Com. J. 238.

[2] 13th April 1738. 10th April 1753. 3rd March 1762. 23 Com. J. 148. 26 Ib. 754; 29 Ib. 207.

[3] 67 Com. J. 432. 74 Ib. 537. 88 Ib. 606. See also Chap. VII.

[4] See Debate on Mr. Christie's motion, 12th Feb. 1844; 72 Hans. Deb. 3rd Series, 580. Debate, 1st May 1849; 104 Hans. Deb. 3rd Series, 1054.

proceedings, when published *bonâ fide*, from the law of libel;[1] and the same object has since been pursued by Sir Colman O'Loghlen.[2] In the meantime, the Lord Chief Justice of England has held, in a recent case, that the proprietor of a newspaper is not liable to an action for libel for the publication of a fair and faithful report of a debate in Parliament.[3]

Evidence before committees.

It is declared to be a breach of privilege for a member, or any other person, to publish the evidence taken before a select committee, until it has been reported to the house;[4] and the publisher of a newspaper has been committed for this offence[5] by the House of Commons.

There are various other orders and rules connected with parliamentary proceedings; for example, to prevent the forgery of signatures to a petition;[6] for the protection of witnesses;[7] for securing true evidence before the house or committees; for the correct publication of the votes; and for many other purposes which will appear in different parts of this work. A wilful violation of any of these orders or rules, or general misconduct in reference to the proceedings of Parliament, will be censured, or punished, at the pleasure of the house whose orders are concerned.[8]

Disobedience to particular orders.

2. Particular orders are of various kinds: as for the attendance of persons before the house or committees;[9] the production of papers or records;[10] for enforcing answers to questions put by the house, or by committees;[11] and, in short, for compelling persons to do, or not to do, any acts over which the jurisdiction of the house extends. If orders be

[1] See Report of Lords' Committee on the Privilege of Reports, 1857; 149 Hans. Deb. 947; 13th April 1858.

[2] Libel bills 1867, 1867–8, 1869.

[3] Wason *v.* Walter, 21 Dec. 1867.

[4] 92 Com. J. 282.

[5] 87 Ib. 360. See also Report on Postal Communication with France, 1850 (381).

[6] 34 Com. J. 800.

[7] 22 Com. J. 146.

[8] 4 Lords' J. 705; 37 Ib. 613; 38 Ib. 338. 649. Lords' J., 12th April 1850 (Mr. Nash); 13th August 1850 (Liverpool Corporation Waterworks).

[9] 21 Com. J. 338.

[10] Col. Fairman (Orange Lodges), 90 Com. J. 564. 575; 19th April 1849; 134 Hans. Deb., 3rd Series, 452.

[11] 88 Com. J. 218; 90 Ib. 504.

made beyond its jurisdiction, the house, as already shown, may punish the parties who refuse compliance with, or obstruct the execution of them;[1] but the enforcement of them may become a matter liable to question before the courts of law.

Libels upon the house.

3. Indignities offered to the character or proceedings of Parliament, by libellous reflections, have always been resented and punished as breaches of privilege. Some of the offenders have escaped with a reprimand, or admonition;[2] others have been committed to the custody of the black rod, or the serjeant-at-arms; while many have been confined in the Tower and in Newgate; and in the Lords, fine, imprisonment, and the pillory have been adjudged. Prosecutions at law have also been ordered against the parties.[3] The cases are so numerous, that only a few of the most remarkable need be given.

Lords.

The following extract from the report of a committee of the Lords, 18th May 1716, will serve to show the practice of that house:

"That where offences have been committed against the honour and dignity of the house in general, or any member thereof, the house have proceeded, both by way of fine and corporal punishment, upon such offenders: but in other cases the attorney-general has been ordered to prosecute the offenders according to law; and the committee, on perusal of the several orders directing prosecutions by the attorney-general, do not find that, at any time, addresses have been made to the king for such prosecutions."[4]

Prosecutions by attorney-general.

But for other offences, not directly concerning the house, the House of Lords has repeatedly addressed the Crown to direct the attorney-general to prosecute,[5] and the practice of the House of Commons is substantially the same. In some cases, it orders the attorney-general to prosecute, of its own authority, and in other cases addresses the Crown

[1] See 4 Lords' J. 247, where Harwood and Drinkwater were committed to the Fleet, and pilloried, for disobedience to an order for quieting the possessions of Lord Lindsey; and 6 Ib. 493.

[2] 72 Com. J. 245; 77 Ib. 432, &c.

[3] 34 Lords' J. 330. 11 Com. J. 774; 23 Ib. 546; 26 Ib. 9. 304; 34 Ib. 464; 44 Ib. 463.

[4] 20 Lords' J. 362.

[5] 16 Lords' J. 286; 17 Ib. 114; 21 Ib. 344; 30 Ib. 420; 36 Ib. 143; 52 Ib. 881.

to direct such prosecutions.[1] The principle of this distinction, though not invariably observed, appears to have been, that in offences against the house, or connected with elections, the attorney-general has been directed to prosecute;[2] but in offences of a more general character against the public law of the country, addresses have been presented to the Crown.[3]

Commitment and fines.

Very severe punishments were formerly awarded by the Lords in cases of libel, as fine, imprisonment, and pillory:[4] but in modern times commitment, with or without fine, has been the ordinary punishment.[5] On the 15th December 1756, George King was fined 50 *l.*, and committed to Newgate for six months, for publishing "a spurious and forged printed paper, dispensed and publicly sold as his majesty's speech to both houses of parliament."[6] In 1798, Messrs. Lambert and Perry were fined 50 *l.* each, and committed to Newgate for three months, for a newspaper paragraph highly reflecting on the honour of the house.[7]

Precedents in the Commons.

In the Commons, William Thrower was committed to the custody of the serjeant, in 1559, for a contempt in *words* against the dignity of the house.[8] In 1580, Mr. Arthur Hall, a member, was imprisoned, *fined*,[9] and expelled, for having printed and published a libel containing "matter of infamy of sundry good particular members of the house, and of the whole state of the house in general, and also of the power and authority of the house."[10] In 1628, Henry Aleyn was committed to the custody of the serjeant for a libel on the last Parliament.[11] In 1643, the Archdeacon of Bath was committed for abusing the last Parlia-

[1] 1 Hatsell, 128 *n.*

[2] 96 Com. J. 394. 413; 109 Ib. 159; 112 Ib. 355.

[3] From 1711 to 1852 there were 20 addresses, two only being election cases; and 17 orders to prosecute, all being libel or election cases except one, which was for a riot.

[4] 4 Lords' J. 615; 5 Ib. 241. 244; 20 Lords' J. 363; 22 Ib. 353, 354.

[5] 22 Ib. 351. 367. 380.

[6] 29 Ib. 16; 15 Parl. Hist. 779.

[7] 41 Ib. 506.

[8] 1 Com. J. 60.

[9] See *infra*, p. 102.

[10] 1 Com. J. 126. D'Ewes, 291–298.

[11] 1 Com. J. 925.

ment.[1] In 1701, Thomas Colepepper was committed for reflections upon the last House of Commons; and the attorney-general was directed to prosecute him.[2] The house also resolved, shortly after the last case, "that to print or publish any books or libels reflecting upon the proceedings of the House of Commons, or any member thereof, for or relating to his service therein, is a high violation of the rights and privileges of the House of Commons."[3] In 1805, Peter Stuart was committed for printing, in his paper, libellous reflections on the character and conduct of the house.[4] In 1810, Sir F. Burdett, a member, was sent to the Tower for publishing "a libellous and scandalous paper reflecting upon the just rights and privileges of the house."[5] In 1819, Mr. Hobhouse, having acknowledged himself the author of a pamphlet, was committed to Newgate. The house had previously declared his pamphlet to be "a scandalous libel, containing matter calculated to inflame the people into acts of violence against the legislature, and against this house in particular; and that it is a high contempt of the privileges, and of the constitutional authority of this house."[6] On the 26th February 1838, complaint was made of certain expressions in a speech of Mr. O'Connell, a member, at a public meeting, as containing a charge of foul perjury against members of the house, in the discharge of their judicial duties in election committees. Mr. O'Connell was heard in his place, and avowed that he had used the expressions complained of. He was declared guilty of a breach of privilege, and, by order of the house, was reprimanded in his place by the speaker.[7]

The power of the house to commit the authors of libels was questioned before the Court of King's Bench, in 1811,

[1] 2 Com. J. 63.
[2] 13 Ib. 735.
[3] 13 Ib. 767.
[4] 60 Ib. 113.
[5] 65 Ib. 252.
[6] 75 Com. J. 57. Many other cases are cited in the Appendix to the Second Report on Sir F. Burdett, in 1810.
[7] 93 Ib. 307. 312. 316; 41 Hans. Deb., 3rd Ser., 99. 207.

by Sir F. Burdett, but was admitted by all the judges of that court, without a single expression of doubt.[1]

On the 21st May 1790, a general resolution was passed by the Commons:

"That it is against the law and usage of Parliament, and a high breach of the privilege of this house, to write or publish, or cause to be written or published, any scandalous and libellous reflection on the honour and justice of this house, in any of the impeachments or prosecutions in which it is engaged."[2]

Assaults, insults, or libels upon members.

4. Interference with, or reflections upon members, have always been resented as indignities to the house itself.

Lords.

In the Lords, this offence has been visited with peculiar severity, of which numerous instances are to be found in the earlier volumes of their Journals.[3] Of these only a few of the most remarkable need be particularly mentioned.

On the 22nd March 1623, Thomas Morley was fined 1,000*l.*, sent to the pillory, and imprisoned in the Fleet, for a libel on the lord keeper.[4] On the 9th July 1663, Alexander Fitton was fined 500*l.*, and committed to the King's Bench, for a libel on Lord Gerard of Brandon, and ordered to find sureties for his behaviour during life; and others who had been privy to signing and publishing the libel, were imprisoned in the Fleet, and ordered to find security for their good behaviour during life.[5] On the 18th December 1667, William Carr, for dispersing scandalous and seditious printed papers against the same nobleman, was fined 1,000*l.*, sentenced to stand thrice in the pillory, to be imprisoned in the Fleet, and the papers to be burned by the hand of the hangman.[6] On the 8th March 1688, W. Downing was committed to the Gatehouse, and fined 100*l.* for printing a paper reflecting on the Lord Grey of Wark.[7]

In later times, parties have been attached for libels on peers, as in 1722, for printing libels concerning Lord

[1] Burdett *v.* Abbot, 14 East, 1.
[2] 45 Com. J. 508.
[3] 3 Lords' J. 842. 851; 4 Ib. 131; 5 Ib. 24.
[4] 3 Lords' J. 276.
[5] 11 Ib. 554.
[6] 12 Ib. 174.
[7] 14 Ib. 144.

Strafford,[1] and Lord Kinnoul;[2] and fined and committed, as in the case of Flower, in 1799, for libel on the Bishop of Llandaff.[3]

In 1776, Richard Cooksey was attached for sending an insulting letter to the Earl of Coventry, and afterwards reprimanded, and ordered "to be continued in custody until he find security for his good behaviour."[4]

In 1834, Thomas Bittleston, editor of the Morning Post, was committed to the custody of the usher of the black rod for a paragraph in that newspaper reflecting upon the conduct of Lord Chancellor Brougham, in the discharge of his judicial duties in the House of Lords.[5]

Commons.

In the Commons, on the 12th April 1733, it was resolved, and declared, *nem. con.*,

Assaulting, obstructing, or threatening members.

"That the assaulting, insulting, or menacing any member of this house, in his coming to or going from the house, or upon the account of his behaviour in Parliament, is an high infringement of the privilege of this house, a most outrageous and dangerous violation of the rights of Parliament, and an high crime and misdemeanor."[6]

And again, on the 1st June 1780,

"That it is a gross breach of the privilege of this house for any person to obstruct and insult the members of this house, in the coming to or going from the house, and to endeavour to compel members by force to declare themselves in favour of or against any proposition then depending, or expected to be brought before the house."[7]

And in numerous instances, as well before as after these resolutions, persons assaulting, challenging,[8] threatening, or otherwise molesting members on account of their conduct in Parliament, have been committed or otherwise punished by the house.

On the 22nd June 1781, complaint was made that Sir J. Wrottesley had received a challenge for his conduct as a member of the Worcester election committee; and Swift,

[1] 22 Lords' J. 129.
[2] 22 Ib. 149.
[3] 42 Ib. 181.
[4] 39 Ib. 314. 331.
[5] 66 Ib. 704. 737. 743. 764; Hans. Deb. 27th, 28th, and 30th June 1834.
[6] 22 Com. J. 115.
[7] 37 Ib. 902.
[8] 15 Ib. 405; 16 Ib. 562, &c.

the person complained of, was committed to the custody of the serjeant-at-arms.[1] On the 13th April 1809, Sir Charles Hamilton complained that he had been arrested, and otherwise insulted by Daniel Butler, a sheriff's officer; and Butler was committed to Newgate for his offence.[2]

On the 11th July 1824, the speaker, having received information that a member had been assaulted in the lobby, ordered the serjeant-at-arms to take the person into custody; and doubts being entertained of his sanity, he was ordered to stand committed to the custody of the serjeant.[3]

In 1827, complaint was made of three letters which had been sent to Mr. Secretary Peel, taking notice of his speeches, and threatening to contradict them from the gallery of the house. The letters were delivered in and read, and the writer, H. C. Jennings, was ordered to attend. He acknowledged that the letters were written by him, and was declared guilty of a breach of privilege: but was suffered to escape with a reprimand from the speaker.[4]

Libels on members.

Libels upon members have also been constantly punished: but to constitute a breach of privilege they must concern the character or conduct of members in that capacity. Aspersions upon the conduct of members as magistrates, or officers in the army or navy, or in private life, are within the cognisance of the courts, and are not fit subjects for complaints to the House of Commons. In 1680, A. Yarrington and R. Groome were committed for a libel against a member.[5] In 1689, Christopher Smelt was committed for spreading a false and scandalous report of Peter Rich, a member.[6] In 1696, John Rye was committed for having caused a libel, reflecting on a member, to be printed and delivered at the door.[7] In 1704, James Mellot was committed for false and scandalous reflections upon two mem-

[1] 38 Com. J. 535. 537. [2] 64 Com. J. 210. 213. [3] 79 Com. J. 483.
[4] 82 Ib. 395. 399. [5] 9 Ib. 654. 656. [6] 10 Ib. 244.
[7] 11 Ib. 656.

bers.[1] In 1733, William Noble was committed for asserting that a member received a pension for his voting in Parliament.[2] In 1774, H. S. Woodfall was committed for publishing a letter reflecting on the character of the speaker.[3] In 1821, the author of a paragraph in the John Bull newspaper, containing a false and scandalous libel on a member, was committed to Newgate.[4] In 1832, Messrs. Kidson & Wright, solicitors, were admonished for having addressed to the committee on the Sunderland Dock Bill, a letter reflecting on the conduct of members of the committee, copies of which were circulated in printed handbills.[5]

On the 1st March 1824, Mr. Abercromby made a complaint to the house that the Lord Chancellor in his court had used offensive expressions with reference to what had been said by himself in debate;[6] but, on division, the matter was not allowed to proceed any further.

Other cases, too numerous to mention, have occurred, in some of which the parties have been committed or reprimanded; and in others the house has considered that the remarks did not justify any proceedings against the authors or publishers.[7] In 1844, a member having made charges at a public meeting against two members of the house, was ordered to attend in his place; and after he had been heard, the house resolved that his imputations were wholly unfounded and calumnious, and did not affect the honour and character of the members concerned.[8]

On some occasions the house has also directed prosecutions against persons who have published libels reflecting

[1] 14 Com. J. 565. [2] 23 Com. J. 245.

[3] 34 Ib. 456. [4] 76 Ib. 335.

[5] 87 Ib. 278. 294. For similar cases of libels upon committees, see 72 Com. J. 232. (Police Committee, 1816); 93 Com. J. 436 (Shaftesbury Election); 113 Com. J. 189, &c. (Carlisle and Hawick Railways); 150 Hans. Deb. 1022. 1063. 1198, &c.

[6] 10 Hans. Deb. N. S. 571.

[7] See the head of PRIVILEGES in the General Journ. Ind. 1547–1713, and COMPLAINTS in the other Journal Indexes; and recent cases of Mr. Aston in 1872; and Mr. Plimsoll and "Pall Mall Gazette" in 1873.

[8] Mr. Ferrard's case, 24th and 26th April 1844, 99 Com. J. 235. 239.

upon members, in the same manner as if the publications had affected the house collectively.[1]

Misrepresentation.

Wilful misrepresentation of the proceedings of members is an offence of the same character as a libel.

On the 22nd April 1699, it was resolved,

"That the publishing the names of the members of this house and reflecting upon them, and misrepresenting their proceedings in Parliament, is a breach of the privilege of this house, and destructive of the freedom of Parliament."[2]

Offering bribes to members.

On the 2nd May 1695, it was resolved,

"That the offer of any money, or other advantage, to any member of Parliament, for the promoting of any matter whatsoever, depending or to be transacted in Parliament, is a high crime and misdemeanor, and tends to the subversion of the English constitution."[3]

And in the spirit of this resolution, the offer of a bribe, in order to influence a member in the proceedings of the house, has been treated as a breach of privilege, being an insult not only to the member himself, but to the house.[4]

On the 18th March 1694–5, Mr. Bird was reprimanded for offering a bribe to Mr. Musgrave, a member, and gentleman of the long robe, in the form of a guinea fee, for preparing a petition to the house.[5]

Acceptance of bribes by members.

So also the acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited with the severest punishments. In 1677, Mr. John Ashburnham was expelled for receiving 500 *l.* from the French merchants for business done in the house.[6] In 1694, Sir John Trevor was declared guilty of a high crime and misdemeanor, in having, while speaker of the house, received a gratuity of a thousand guineas from the City of London, after passing the Orphans Bill, and was expelled.[7] In 1695, Mr. Guy, secretary to the treasury was committed to the Tower for taking a bribe of two hundred guineas;[8]

[1] 13 Com. J. 230; 14 Ib. 37.
[2] 12 Ib. 661.
[3] 11 Ib. 331.
[4] 11 Ib. 274, 275; 14 Ib. 474; 17 Ib. 493, 494; 19 Ib. 542.
[5] 5 Parl. Hist. 910.
[6] 9 Com. J. 24.
[7] 11 Ib. 274; 5 Parl. Hist. 900–910.
[8] 5 Parl. Hist. 886.

and in the same year Mr. Hungerford was expelled, as guilty of a high crime and misdemeanor, in receiving twenty guineas for his pains and service as chairman of the committee on the Orphans Bill.[1]

Nor has the law of Parliament been confined to the repression of direct pecuniary corruption. To guard against indirect influence, it has further restrained the acceptance of fees by its members, for professional services connected with proceedings in Parliament.[2] And on the 22nd June 1858, the House of Commons resolved,

"That it is contrary to the usage, and derogatory to the dignity of this house, that any of its members should bring forward, promote, or advocate in this house, any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or reward."[3]

Interference with officers.

Assaults, or interference with officers of the house, while in the execution of their duty, have also been punished as breaches of privilege.[4]

Tampering with witnesses.

To tamper with a witness in regard to the evidence to be given by him before the house, or any committee of the house, is a breach of privilege.[5] On the 9th February 1809, during the inquiry into the conduct of the Duke of York, Mrs. Clarke read a letter she had received from the Rev. W. Williams, and stated that he had proposed that she should leave the country. The inquiry being in committee of the whole house, progress was immediately reported, the doors of the house directed to be secured, and the Rev. W. Williams ordered to be taken into custody. On being afterwards examined in custody, he was closely pressed and obliged to answer all the questions relating to his interviews with Mrs. Clarke, and his objects in giving her advice as to her evidence. He appealed to

[1] 11 Com. J. 283; 5 Parl. Hist. 911.

[2] See *infra*, Chap. XII.

[3] See Hans. Deb. 22nd June 1858. On the 13th April a similar motion had been made, in other terms, and withdrawn. See also proceedings and report on the petition of Edward Coffey, 1858; 148 Hans. Deb. 3rd. Ser. 1855, &c.

[4] 19 Com. J. 366. 370; 20 Ib. 185.

[5] Sessional Order.

the chairman, whether he was bound to answer questions to prove himself guilty of a breach of privilege. No actual decision was given upon this appeal: but throughout his examination, questions of that character had been addressed to him.[1]

On the 19th June 1857, a petition was presented, complaining that Peter Johnson had offered the sum of 50 *l.* to Abraham Rothwell, a witness, who had been served with the speaker's warrant to attend before the Rochdale election committee, to induce him to go to New Orleans for the purpose of avoiding giving evidence before the committee. John Newall, the petitioner, and Abraham Rothwell were ordered to attend the house forthwith; and were examined. Peter Johnson and John Lord were also ordered to attend forthwith; the former absconded, and was ordered into custody, the latter was examined; and a select committee was appointed to continue the inquiry, which resulted, however, in no definite conclusion.

Out of this case there arose, incidentally, a question how far a person accused of a breach of privilege is bound to answer questions tending to criminate himself, on which considerable differences of opinion were entertained.[2]

Persons committed by the speaker.

When the speaker is accompanied by the mace, he has power to order persons into custody for disrespect, or other breaches of privilege committed in his presence, without any previous order of the house. Mr. Speaker Onslow ordered a man into custody who pressed upon him in Westminster Hall;[3] and a case is mentioned by D'Ewes in which a member seized upon an unruly page and brought him to the speaker, by whom he was committed prisoner to the serjeant.[4] In 1675, Sir Edward Seymour, the speaker, seized Mr. Serjeant Pemberton, and delivered

[1] 12 Hans. Deb. 461.

[2] 146 Hans. Deb. 3rd Ser. 97. In 1857, the Congress of the United States passed a bill making it a misdemeanor to refuse to answer questions, put in either House of Legislature.

[3] 2 Hatsell, 241, *n.*

[4] D'Ewes, 629.

him into the custody of a messenger: but in that case Pemberton had already been in custody, and had escaped from the serjeant-at-arms.[1]

Inquiry into alleged breaches of privilege.

In all these classes of offences, both houses will commit, or otherwise punish, in the manner described: but not without due inquiry into the alleged offence.

Lords.

By a standing order of the Lords of 11th January 1699, it is ordered,—

"That in case of complaint by any lord of this house of a breach of privilege, wherein any person shall be taken into custody for the future; if the house, upon examination of the matter complained of, shall judge the same to be no breach of privilege, the lord who made the complaint shall pay the fees and expenses of the person so taken into custody; and that no person shall be taken into custody upon complaint of a breach of privilege, but upon oath made at the bar of this house."[2]

This order was explained, on the 3rd June 1720, "to be understood only of breaches of privilege committed in Great Britain: but that oath made by affidavit, in writing, of a breach of privilege committed in Ireland, may be sufficient ground to take into custody the person thereby proved to have been guilty of such breach of privilege, though no oath be made thereof at the bar of this house."[3]

Before the year 1845, it had been customary for the House of Lords, when inquiring into any alleged breach of privilege, to conduct such inquiries with closed doors:[4] but, in later cases, strangers have not been ordered to withdraw.

Commons.

In the Commons it was resolved, 31st January 1694,

"That no person shall be taken into custody, upon complaint of any breach of privilege of this house, before the matter be first examined:" but it was at the same time resolved and declared, "that the said order is not to extend to any breach of privilege upon the person of any member of this house."[5]

Again, on the 3rd January 1701, it was resolved,

Committee of privileges.

"That no person be taken into custody of the serjeant-at-arms, upon any complaint of a breach of privilege, until the matter of such com-

[1] 9 Com. J. 351. 353. See also 1 Com. J. 157. 210. 972.

[2] Lords' S. O. No. 81.

[3] Ib. No. 82.

[4] Lord Hawarden's case, 31 Jan. 1828; 59 Hans. Deb. 69. The umbrella case, 26 March 1827; 58 Hans. Deb. 35.

[5] 11 Com J. 219.

plaint shall have been examined by the committee of privileges, and reported to the house, and that the same be a standing order of the house."[1]

It is no longer the practice to refer such matters to the committee of privileges, although that committee is still nominally appointed.[2] Its appointment, at the commencement of each session, was discontinued in 1833, together with that of the ancient grand committees: but has since been revived, *pro formâ*. It has not been customary, however, to nominate the committee: but in 1847, a complaint having been made of the interference of a peer in the West Gloucester election, the order for the appointment of the Committee of Privileges was read, and the committee was nominated, consisting of nine members, and of all knights of the shire, gentlemen of the long robe, and merchants in the house.[3] In 1857, a committee, constituted in a similar manner, was appointed to consider the oaths of members, and consisted of twenty-five members, nominated by the house, and all gentlemen of the long robe.[4]

Proceedings upon complaints.

It is the present practice, when a complaint is made, to order the person complained of to attend the house;[5] and on his appearance at the bar, he is examined and dealt with, according as the explanations of his conduct are satisfactory or otherwise; or as the contrition expressed by him for his offence, conciliates the displeasure of the house. If there be any special circumstances arising out of a complaint of a breach of privilege, it is usual to appoint a select committee to inquire into them, and the house suspends its judgment until their report has been presented.[6]

Complaints of newspapers.

When a complaint is made of a newspaper, the newspaper must be produced, in order that the paragraphs com-

[1] 13 Com. J. 648.

[2] 104 Ib. 24; 113 Ib. 4, &c.

[3] 103 Ib. 139.

[4] 112 Ib. 369. This term is understood to comprise all members who, at the time, would be qualified to practise as counsel, according to the rules and usage of the profession, whether actually practising or not.

[5] 112 Com. J. 231; 113 Ib. 189, &c.

[6] Rochdale Election Case, 19th June 1857. 112 Com. J. 232. 146 Hans. Deb. 3rd Ser. 97, &c.

plained of may be read.[1] And a member complaining of the report of his speech in a newspaper, has been stopped by the speaker, where it appeared that he had no copy of the newspaper on which to found his complaint. The member who makes the complaint must also be prepared with the names of the printer or publisher;[2] and it is irregular to make such a complaint, unless the member intends to follow it up with a motion.[3]

Frivolous complaints.

In order to discourage frivolous complaints, a standing order, similar to that of the Lords, was agreed to, on the 11th February, 1768:

"That in case of any complaint of a breach of privilege hereafter to be made by any member of this house, if the house shall adjudge that there is no ground for such complaint, the house will order satisfaction to the person complained of, for his costs and expenses incurred by reason of such complaint."[4]

Offences in a former session.

Either house will punish in one session, offences that have been committed in another.[5] On the 4th and 14th April 1707, it was resolved, by the Commons, *nem. con.*,

"That when any person ordered to be taken into the custody of the serjeant-at-arms, shall either abscond from justice, or having been in custody, shall refuse to pay the just fees, that in either of those cases the order for commitment shall be renewed at the beginning of the next session of Parliament, and that this be declared to be a standing order of the house."[6]

In 1751, Mr. Murray, who had been imprisoned in Newgate until the close of the session, for a libel, was, on the next meeting of Parliament, again ordered to be committed: but he had absconded, in the meantime, to escape a second imprisonment.[7]

It also appears, that a breach of privilege committed against one Parliament may be punished by another; and

[1] 113 Com. J. 189. 150 Hans. Deb. 3rd Ser. 1022. 1063.

[2] Debate 1st May 1849 (Mr. J. O'Connell).

[3] 59 Hans. Deb. 3rd Ser. 507, 17th March 1859 (Mr. Stuart Wortley).

[4] 31 Com. J. 602.

[5] 21 Lords' J. 189. 17 Com. J. 293; 20 Ib. 549; 22 Ib. 210.

[6] 15 Com. J. 376. 386.

[7] 26 Ib. 303.

libels against former parliaments have often been punished.[1] In the debate on the privilege of Sir R. Howard, in 1625, Mr. Selden said, "It is clear that breach of privilege in one Parliament may be punished in another succeeding."[2]

Differences in the punishment inflicted by the Lords and by the Commons.

In all the cases that have been noticed as breaches of privilege, both houses have agreed in their adjudication: but in several important particulars, there is a difference in their modes of punishment. The Lords claim to be a court of record, and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct; and their customary form of commitment is by attachment.[3] The Commons, on the other hand, commit for no specified period, and of late years, have not imposed fines.

There can be no question that the House of Lords, in its judicial capacity, is a court of record: but, according to Lord Kenyon, "when exercising a legislative capacity, it is not a court of record."[4] However this may be, instances too numerous to mention have occurred, in which the Lords have sentenced parties to pay fines.[5] Many have already been noticed in the present chapter, as well as cases in which they have ordered security to be given for good conduct, even during the whole life of the parties.[6] The following is a standing order of the Lords, of the 3rd April 1624:

Fines imposed by the Lords.

"Whereas this high court of the Upper House of Parliament do often find cause in their judicature to impose fines, amongst other punishments, upon offenders, for the good example of justice, and to deter others from like offences; it is ordered and declared, that at the least once before the end of every session, the committees for the orders of the house and privileges of the lords of Parliament, do acquaint the lords with all the fines that have been laid that session, that thereupon their lordships may use that power which they justly have, to take off or mitigate such fines, either wholly or in part, according to

[1] 1 Com. J. 925; 2 Ib. 63; 13 Ib. 735.

[2] 1 Hatsell, 184.

[3] Lords' Minutes, 22nd July and 13th Aug. 1850.

[4] Flower's case, 1779. 8 Durnf. & East, 314.

[5] 3 Lords' J. 276; 11 Ib. 554; 12 Ib. 174; 14 Ib. 144; 30 Ib. 493 (Report of Precedents); 42 Ib. 181; 43 Ib. 60. 105.

[6] 11 Lords' J. 554; 39 Ib. 331.

the measure of penitence or ability in the offenders, or suffer all to stand, as in equity their lordships shall think fit." [1]

Commitment for a specified term.

The Lords have power to commit offenders to prison for a specified term, even beyond the duration of the session;[2] and thus on the 13th August 1850, being within two days of the prorogation, certain prisoners were committed for a fortnight.[3] If no time were mentioned, and the commitment were general, it has been said that the prisoners could not be discharged on habeas corpus even after a prorogation:[4] but in the case of Lord Shaftesbury, a doubt was expressed by one of the judges whether the imprisonment, which was for an uncertain time, would be concluded by the session; and another said, that if the session had been determined, the prisoner ought to have been discharged.[5] The latter opinion derives confirmation from the following precedent. On the 14th January 1744, the serjeant-at-arms acquainted the house that he had kept a prisoner in his custody, "until he was *discharged of course by the prorogation* of Parliament, without his having made his submission;" whereupon the offender was ordered to be re-attached.[6]

Whether House of Commons be a court of record.

Whether the House of Commons be, in law, a court of record, it would be difficult to determine; for this claim, once firmly maintained, has latterly been virtually abandoned, although never distinctly renounced. In Fitzherbert's case, in 1592, the house resolved "that this house being a court of record, would take no notice of any matter of fact at all in the said case, but only of matter of record;" and the record of Fitzherbert's execution was accordingly sent to the house by the lord keeper.[7] In the debate on Floyde's case, in 1621, Sir Edward Coke said, "no question but this is a house of record, and that it hath power of judicature in some cases;" and exclaimed, "I wish his

[1] Lords' S. O. No. 98.
[2] 43 Lords' J. 105.
[3] Lords' Minutes, 13 August 1850.
[4] Lord Denman's Judgment in Stockdale *v.* Hansard, 1839 (283), p. 147.
[5] Howell, St. Tr. 1296. 1 Mod. Rep. 144.
[6] 26 Lords' J. 420.
[7] D'Ewes, 502.

tongue may cleave to his mouth that saith that this house is no court of record."[1] And in 1604, the apology of the Commons contains these words: "We avouch also that our house is a court of record, and ever so esteemed."[2] On the other hand, in Jones *v.* Randall,[3] Lord Mansfield said the House of Commons was not a court of record.

It may be argued that if the Commons, as a branch of the High Court of Parliament, be not a court of record in adjudging breaches of privilege, the judicature of the Lords is not sufficient alone to constitute that house a court of record, in their legislative capacity; for though they have various kinds of judicature, the Commons also have parallel kinds of judicature. The Lords have a judicature for their privileges, and for the election of representative peers of Scotland; the Commons have, in like manner, a judicature for their privileges, and in the election of members. It is true that the Lords have other judicial functions which the Commons do not possess; but so far as each house is acting within its own peculiar jurisdiction, the one would appear to be a court of record as well as the other; and when does the legislative character cease, and the judicial character begin in either house? In their deliberations they are both legislative, but when their privileges are infringed, their judicature is called into action. If this view of the question be allowed, both houses, in matters of privilege, are equally courts of record; and the Lords have no further claim to that character than the Commons, except when they are sitting as a court of appeal, in trials of peers, in hearing claims of peerage, or in cases of impeachment.[4]

Fines imposed by the Commons.

Acting as a court of record, the Commons formerly imposed fines and imprisoned offenders for a time certain.

In 1575, Smalley, a member's servant, who had fraudulently procured himself to be arrested, in order to be dis-

[1] 1 Com. J. 604.
[2] 1 Hatsell, 233.
[3] 1 Cowp. 17.
[4] See also Chapters VII. & XV.

charged of a debt and execution, was committed to the Tower, for a month, and until he should pay to W. Hewett the sum of 100 *l.*[1]

Again, in 1580, Mr. Arthur Hall, a member, who had offended the house by a libel, was ordered to be committed to the Tower, and to remain in the said prison for *six months, and so much longer as until himself should willingly make retractation of the said book, to the satisfaction of the house;* and it was resolved that a fine should be assessed by this house, to the Queen's majesty's use, of 500 marks, and that he should be expelled.[2] There are also several other cases in the earlier Journals, in which offenders were committed by the house for a time certain;[3] and in which prisoners have been admitted to bail.[4]

In 1586, Bland, a currier, was fined 20 *l.* for having used contumacious expressions against the House of Commons.[5]

Floyde's case.

In Floyde's case, in 1621, the Commons clearly exceeded their jurisdiction. That person had spoken offensive words concerning the daughter of James I., and her husband, the elector palatine. In this he may have been guilty of a libel, but certainly not of any breach of parliamentary privilege. Yet the Commons took cognisance of the offence, and sentenced Floyde to pay a fine of 1,000 *l.*, to stand twice in the pillory, and to ride backwards on a horse, with the horse's tail in his hand.[6] Upon this judgment being given, first the King and then the Lords interfered, not on account of the severity of the punishment, nor because it was thought to exceed the power of the house; but because the offence was altogether beyond the jurisdiction of the Commons. The Commons perceived their error, and left the offender to be dealt with by the

[1] 1 Com. J. 112, 113.
[2] 1 Ib. 125, 126.
[3] 1 Ib. 269. 333. 639. 655; 7 Ib. 531. 591; 9 Ib. 543. 687. 737.
[4] 1 Ib. 621; 2 Ib. 806; 9 Ib. 96. 216; 10 Ib. 84; 12 Ib. 255, 256; 13 Ib. 318, &c.
[5] D'Ewes, J. 366.
[6] 1 Com. J. 609. 1 Hans. Parl. Hist. 1250.

Lords; but at the same time they guarded their own rights by an ambiguous protestation that their proceedings against Floyde "should not be drawn or used as a precedent to the enlarging or diminishing the lawful rights and privileges of either house, but that the rights and privileges of both houses should remain in the selfsame state and plight as before."[1]

But if the Commons exceeded their jurisdiction in this case, the Lords equally disregarded the limits of their own, and proceeded to still more disgraceful severities. Floyde was charged by the attorney-general before the Lords, and received sentence that he should be incapable of bearing arms as a gentleman; that he should be ever held an infamous person, and his testimony not be taken in any court or cause; that he should ride twice to the pillory with his face to the horse's tail, holding the tail in his hand; that he should be branded with the letter K on his forehead, be whipped at the cart's tail, be fined 5,000 *l.* to the King, and be imprisoned in Newgate for life.[2]

The last case of a fine by the Commons occurred in 1666, when a fine of 1,000 *l.* was imposed upon Thomas White, who had absconded after he had been ordered into the custody of the serjeant-at-arms.[3]

Present modes of punishment.

The modern practice of the Commons is to commit persons to the custody of the serjeant-at-arms, to Newgate, or to the Tower, during the pleasure of the house; and to keep offenders there until they present petitions praying for their release, and expressing contrition for their offences;[4] or until, upon motion made in the house, it is resolved that they shall be discharged.[5] It is then usual for the parties to be brought to the bar, and after a reprimand from the

[1] 1 Com. J. 619.

[2] 3 Lords' J. 134. See also "Proceedings and Debates of the Commons," 1620, 1621 (Oxford), and 1 Hans. Parl. Hist. 1259.

[3] 8 Com. J. 690.

[4] It has been customary to order such petitions to be printed and considered on a future day. 97 Com. J. 180. 209; 106 Ib. 151; 113 Ib. 196. 150 Hans. Deb. 3rd Ser. 1198.

[5] 95 Com. J. 291. 337; 97 Ib. 224.

speaker, to be discharged on payment of their fees.[1] But occasionally their attendance at the bar,[2] and the reprimand,[3] have been dispensed with.

Reprimand and admonition.

It is not customary to order a person to be reprimanded unless he be in custody, though there are some examples of a different practice.[4] When the offence has not been so grave as to cause the commitment of the offender, he is generally directed to be "admonished" only.[5] What is said by Mr. Speaker in reprimanding or admonishing persons at the bar, is always ordered to be entered in the Journals. Where the offence has been slight, or the apology is accepted as satisfactory, even an admonition has been dispensed with; and the house has resolved to proceed no further in the matter (such resolution being communicated to the person concerned, by the speaker);[6] or that the person be excused or discharged from further attendance.[7]

Payment of Fees.

It cannot fail to be remarked that this condition of the payment of fees still partakes of the character of a fine. The payment of the money forms part of the punishment, and is compulsory; nor could any limit be imposed upon the amount fixed by order of the house. Payment has been occasionally remitted under special circumstances,[8] as, for example, on account of the poverty of the parties;[9] or, because the prisoner was labouring under mental delusion;[10] and, in one case, as arrangements had been made for his immediate removal to a lunatic asylum.[11]

[1] 82 Com. J. 399; 87 Ib. 365; 97 Ib. 240; 106 Ib. 289.

[2] 75 Ib. 467; 103 Ib. 263; 113 Ib. 203; 150 Hans. Deb. 3rd Ser. 1313. 1404.

[3] 86 Com. J. 333; 90 Ib. 532; 95 Ib. 96; 101 Ib. 768.

[4] 5 Parl. Hist. 910; 82 Com. J. 399; 93 Ib. 316.

[5] 87 Com. J. 294; 88 Ib. 218; 97 Ib. 143.

[6] Case of Mr. Hope, 17th July 1822; 77 Com. Journ. 432; 7 Hans. Deb. 2nd Ser. 1668.

[7] Case of Mr. Menzies, 17th July 1822. Ibid. Case of Mr. Reed, 27th February 1863; 118 Com. J. 106.

[8] 58 Com. J. 221; 74 Ib. 192; 80 Ib. 470; 83 Ib. 199; 90 Ib 532; 106 Ib. 147; 108 Ib. 595, &c.

[9] 74 Ib. 192.

[10] 85 Ib. 465.

[11] 107 Ib. 301.

No period of imprisonment is named by the Commons, and the prisoners committed by them, if not sooner discharged by the house, are immediately released from their confinement on a prorogation,[1] whether they have paid the fees or not. If they were held longer in custody, they would be discharged by the courts, upon a writ of habeas corpus. Lord Denman, in his judgment in the case of Stockdale *v.* Hansard, said,

Imprisonment by the Commons concluded by prorogation.

"However flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offence being committed the day before the prorogation, if the house ordered his imprisonment but for a week, every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by habeas corpus."[2]

It was formerly the practice to make prisoners receive the judgment of the house, kneeling at the bar. In both houses, however, this practice has long since been discontinued; although the entries in the Lords' Journals still assume that the prisoners are "on their knees" at the bar.[3] On the 16th March 1772, it was resolved by the Commons, *nem. con.*,

Prisoners kneeling at the bar.

"That when any person shall from henceforth be brought to the bar of this house to receive any judgment of this house, or to be discharged from the custody of the serjeant-at-arms attending this house, or from any imprisonment inflicted by order of the house, such person shall receive such judgment, or the order of the house for his discharge, standing at the bar, unless it shall be otherwise directed, in the order of the house made for that purpose;" and ordered to be made a standing order.[4]

The discontinuance of this practice arose from the refusal of Mr. Murray to kneel, when brought up to the bar of the House of Commons on the 4th of February 1750. For this refusal he was declared "guilty of a high and most danger-

[1] But this law never extended to an adjournment, even when it was in the nature of a prorogation. See 10 Com. J. 537.

[2] Judgment in Stockdale *v.* Hansard, 1839 (283), p. 142.

[3] 77 Lords' J. 737, &c.

[4] 33 Com. J. 594.

ous contempt of the authority and privilege of this house;" was committed close prisoner to Newgate, and not allowed the use of pen, ink, and paper.[1] It appears that there had previously been only one other instance of such a refusal to kneel.[2]

[1] 14 Hans. Parl. Hist. 894. 1 Walpole's Memoirs of George II., 15.

[2] Report of Precedents; 26 Com. J. 48. There had, however, been similar cases before the Lords; 3 Parl. Hist. 844, 880.

CHAPTER IV.

PRIVILEGE OF FREEDOM OF SPEECH CONFIRMED BY THE ANCIENT LAW OF PARLIAMENT AND BY STATUTE: ITS NATURE AND LIMITS.

Necessity of freedom of speech.

FREEDOM of speech is a privilege essential to every free council or legislature. It is so necessary for the making of laws, that if it had never been expressly confirmed, it must still have been acknowledged as inseparable from Parliament, and inherent in its constitution. Its principle was well stated by the Commons, at a conference on the 11th of December 1667: "No man can doubt," they said, "but whatever is once enacted is lawful: but nothing can come into an Act of Parliament, but it must be first affirmed or propounded by somebody; so that if the Act can wrong nobody, no more can the first propounding. The members must be as free as the houses: an Act of Parliament cannot disturb the state; therefore the debate that tends to it cannot; for it must be propounded and debated before it can be enacted."[1]

Confirmed by law of Parliament.

But this important privilege has not been left to depend upon abstract principles, nor even upon the ancient law and custom of Parliament, but has been recognised and confirmed, as part of the law of the land.

According to Elsynge, the "Commons did oftentimes, under Edward III., discuss and debate amongst themselves many things concerning the King's prerogative, and agreed upon petitions for laws to be made directly against his prerogative, as may appear by divers of the said petitions; yet they were never interrupted in their consultations, nor received check for the same, as may appear also by the answers to the said petitions."[2]

[1] 12 Lords' J. 166.

[2] Elsynge, 177.

Haxey's case.

In the 20th of Richard II., however, a case occurred in which this ancient privilege was first violated, and afterwards signally confirmed. Haxey, a member of the Commons, having displeased the King, by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry IV., Haxey exhibited a petition to the King in Parliament to reverse that judgment, as being "against the law and custom which had been before in Parliament;" and the judgment was reversed and *annulled* accordingly by the King, with the advice and assent of all the lords spiritual and temporal.[1] This was unquestionably an acknowledgment of the privilege, by the highest judicial authority—the King and the House of Lords; and in the same year the Commons took up the case of Haxey, and in a petition to the King affirmed "that he had been condemned against the law and course of Parliament, and in annihilation of the customs of the Commons;" and prayed that the judgment might be reversed, "as well for the furtherance of justice as for the saving of the liberties of the Commons."[2] To this the King also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, "should be annulled and held to be of no force or effect."[3]

Young's case.

In the 33rd Henry VI., Thomas Young, a member, presented a petition, complaining that he had been imprisoned "for matters by him showed in the house." The Commons transmitted his petition to the Lords, and the King "willed that the lords of his council do and provide for the said suppliant, as in their discretion shall be thought convenient and reasonable."[4]

Strode's case.

Again, in the 4th Henry VIII. (1512), Mr. Strode, a

[1] 1 Hen. IV.; 3 Rot. Parl. 430. "Si bien en accomplissement de droit, come pur salvation des libertés de lez ditz communes."

[3] 3 Rot. Parl. 434.

[4] 5 Ib. 337.

member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tinners in Cornwall, and was fined and imprisoned in consequence.[1] Upon which an Act was passed,[2] which, after stating that Strode had agreed with others of the Commons in putting forth bills "the which here in this High Court of Parliament, should and ought to be communed and treated of," declared the proceedings of the Stannary Court to be void, and further enacted,

"That all suits, condemnations, executions, fines, amerciaments, punishments, &c. put or had, or hereafter to be put or had, upon the said Richard (Strode), and to every other of the person or persons that now be of the present Parliament, or *that of any Parliament thereafter shall be*, for any bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed and treated of, be utterly void and of none effect."

As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be a privilege of Parliament, and was not, at that time, first enacted. The words of the statute also leave no doubt that it was intended to have a general operation in future, and to protect all members, of either house, from any question on account of their speeches or votes in Parliament.

Petition of the Commons.

Thirty years afterwards the petition of the Commons to the King, at the commencement of the Parliament, appears for the first time to have included this privilege amongst those prayed for of the King. The first occasion on which such a petition is recorded, was in the 33rd Henry VIII. (1541), when it was made by Thomas Moyle, speaker.[3]

But although the petitions for freedom of speech had not been previously made in that form, there is a remarkable petition of the Commons, and answer of the King, in the 2nd Henry IV., relating to this privilege. The Commons prayed the King not to take notice of any reports that might

[1] 4 Parl. Hist. 85. 1 Hatsell, 86. [2] 4 Hen. VIII., c. 8.
[3] Elsynge, 176.

be made to him of their proceedings; to which the King replied, that it was his wish that the Commons should deliberate and treat of all matters amongst themselves, in order to bring them to the best conclusion, according to their wisdom, for the welfare and honour of himself and all his realm; and that he would hear no person, nor give him any credit, before such matters were brought before the King, by the advice and assent of all the Commons, according to the purport of their petition.[1]

The independent right of free discussion in Parliament was further confirmed by the same King, in the ninth year of his reign, who, in a disagreement between the houses concerning the grant of subsidies, declared, by the advice and consent of the Lords,—

"That it shall be lawful for the Lords to debate together in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it; and in like manner it shall be lawful for the Commons, on their part, to debate together concerning the said condition and remedies; provided always, that neither the Lords on their part, nor the Commons on their part, do make any report to our lord the king of any grant granted by the Commons, and agreed to by the Lords, nor of the communications of the said grant, before the said Lords and Commons are of one accord and agreement in the said matter."[2]

Interpretation of the privilege.

But notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. In reply to the usual petition of the speaker, Sir Edward Coke, in 1593, the lord keeper said, "Liberty of speech is granted you, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter: but your privilege is '*aye*,' or '*no*.'"[3] In 1621, the Commons, in their protestation, defined their privilege more consistently with its present limits. They affirmed, "that every member hath freedom from all impeachment, imprisonment, or mo-

[1] 3 Rot. Parl. 456. [2] 3 Rot. Parl. 611.
[3] 1 Parl. Hist. 862.

lestation, other than by censure of the house itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business."[1]

Violations of the privilege.

It is needless to recount how frequently this privilege was formerly violated by the power of the Crown. The Act of the 4th of Henry VIII. extended no further than to protect members from being questioned, in other courts, for their proceedings in Parliament: but its principle should equally have saved them from the displeasure of the Crown. The cases of Mr. Strickland, in 1571,[2] of Mr. Cope, Mr. Wentworth, and others, in 1586,[3] and of Sir Edwin Sandys, in 1621,[4] will serve to remind the reader how imperfectly members were once protected against the unconstitutional exercise of prerogative.

Sir J. Eliot and others.

The last occasion on which the privilege of freedom of speech was directly impeached, was in the celebrated case of Sir John Eliot, Denzil Hollis, and Benjamin Valentine, against whom a judgment was obtained in the King's Bench, in the 5th Charles I., for their conduct in Parliament. On the 8th July 1641, the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament.[5] The prosecution of those members was, indeed, one of the illegal acts which hastened the fate of Charles I. It was strongly condemned in the petition of right, and, after the restoration, it was not forgotten by the Parliament.

The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry VIII. had been simply a private statute, for the relief of Strode, and had no general operation; and in order to condemn this construction of the plain words of the statute, the Commons resolved, on the 12th November 1667,

[1] 1 Hatsell, 79.
[2] D'Ewes, 166. 4 Parl. Hist. 153.
[3] D'Ewes, 410.
[4] 1 Com. J. 635. 1 Hatsell, 136, 137.
[5] 2 Com. J. 203. 3 St. Tr. 235-335.

"That the Act of Parliament in 4th Henry VIII., commonly intituled 'An Act concerning Richard Strode,' *is a general law*, extending to indemnify all and every the members of both houses of Parliament, in all Parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the Parliament to be communed and treated of; *and is a declaratory law of the ancient and necessary rights and privileges of Parliament.*"[1] And on a subsequent day they also resolved, "that the judgment given, 5 Car., against Sir John Eliot, Denzil Hollis, and Benjamin Valentine, in the King's Bench, was an illegal judgment, and against the freedom and privilege of Parliament."[2] A conference was afterwards demanded with the Lords, and their Lordships agreed to the resolutions of the Commons;[3] and, finally, upon a writ of error, the judgment of the Court of King's Bench was reversed by the House of Lords, on 15th April 1668.[4]

Its recognition by statute.

This would have been a sufficient recognition, by law, of the privilege of freedom of speech: but a further and last confirmation was reserved for the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared, "that the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.[5]

But, although by the ancient custom of Parliament, as well as by the law, a member may not be questioned out of Parliament, he is liable to censure and punishment by the house itself, of which he is a member. The cases in which members have been called to account and punished for offensive words spoken before the house, are too numerous to mention. Some have been admonished, others imprisoned, and in the Commons some have even been expelled.[7] Less

[1] 9 Com. J. 19.
[2] 9 Ib. 25.
[3] 12 Lords' J. 166.
[4] Ib. 223.
[5] 1 Will. & Mary, sess. 2, c. 2.
[6] 4 Lords' J. 475; 5 Ib. 77. Sir R. Canne, 1680; 9 Com. J. 642. Mr. Manley, 1696; 11 Com. J. 581.
[7] Mr. Shepherd, 1 Com. J. 524.

severity has been shown in modern times, in the censure of intemperate speeches. The members who offend against propriety are called to order, and generally satisfy the house with an explanation or apology.[1]

Privilege does not extend to speeches separately published.

Taking care not to say anything disrespectful to the house, a member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation. And here it may be noticed, that the rule by which all published reports of debates are ignored by Parliament, is an auxiliary to the privilege of freedom of speech. What is said in Parliament is supposed to be unknown elsewhere, and cannot be noticed without a breach of privilege: but if a member should proceed to publish his speech, his printed statement will be regarded as a separate publication, unconnected with any proceedings in Parliament. This construction of the law cannot be complained of by the houses of Parliament, as, by their rules and orders, the publication of a debate is forbidden; and it is therefore impossible to protect, by privilege, an irregular act, which is itself declared to be a breach of privilege. This view of the law has been established by two remakable cases.

Lord Abingdon's case.

In 1795, an information was filed against Lord Abingdon for a libel. His lordship had accused his attorney of improper conduct in his profession, in a speech delivered in the House of Lords, which he afterwards had printed in several newspapers, at his own expense. His lordship pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right to speak: but Lord Kenyon said, that "a member of Parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel."

[1] See Chapter XI. on DEBATE.

The court gave judgment that his lordship should be imprisoned for three months, pay a fine of 100 *l.*, and find security for his good behaviour.[1]

Mr. Creevey's case.

In 1813, a much stronger case occurred. Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the house, and incorrect reports of his speech having appeared in several newspapers, Mr. C. sent *a correct report* to the editor of a Liverpool paper, with a request that he would publish it in his newspaper. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial, Lord Ellenborough saying,

> "A member of that house has spoken what he thought material, and what he was at liberty to speak, in his character as a member of that house. So far he is privileged; but he has not stopped there; but, unauthorised by the house, has chosen to publish an account of that speech, in what he has pleased to call a corrected form; and in that publication has thrown out reflections injurious to the character of an individual."[2]

Mr. Creevey, who had been fined 100 *l.*, complained to the house of the proceedings of the King's Bench: but the house refused to admit that they were a breach of privilege.[3]

Mr. Wason's case.

The Lord Chief Justice of England, in a recent case, has also laid it down that "if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged," but that a fair and faithful report of the whole debate would not be actionable.[4]

Rex *v.* Wright.

The privilege which protects debates, extends also to reports and other proceedings in Parliament. In the case of Rex *v.* Wright,[5] Mr. Horne Tooke applied for a criminal information against a bookseller for publishing the copy of a report made by a Committee of the House of Commons,

[1] 1 Esp. N. P. C. 228.
[2] 1 M. & S. 278.
[3] 68 Com. J. 704. Hans. Deb. 25th June 1813.
[4] Wason *v.* Walter, 21st Decr. 1867.
[5] 8 Term Reports, 293.

which appeared to imply a charge of high treason against Mr. Tooke, after he had been tried for that crime and acquitted. The rule, however, was discharged by the court, partly because the report did not appear to bear the meaning imputed to it, and partly because the court would not regard a proceeding of either house of Parliament as a libel.

Publication of parliamentary papers.

By the 3 & 4 Vict. c. 9, which was passed in consequence of the decision of the Court of Queen's Bench in the memorable case of Stockdale *v.* Hansard, it was enacted that proceedings, criminal or civil, against persons for the publication of papers printed by order of either house of Parliament, shall be immediately stayed, on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either house of Parliament. Proceedings are also to be stayed, if commenced on account of the publication of a *copy* of a Parliamentary paper, upon the verification of the correctness of such copy; and in proceedings commenced for printing any extract from, or abstract of a Parliamentary report or paper, the defendant may give the report in evidence under the general issue, and prove that his own extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of Not guilty will be entered.[1]

[1] 3 & 4 Vict. c. 9, s. 3.

CHAPTER V.

FREEDOM FROM ARREST OR MOLESTATION: ITS ANTIQUITY; LIMITS AND MODE OF ENFORCEMENT. PRIVILEGE OF NOT BEING IMPLEADED IN CIVIL ACTIONS: OF NOT BEING LIABLE TO BE SUMMONED BY SUBPŒNA, OR TO SERVE ON JURIES. COMMITMENT OF MEMBERS BY COURTS OF JUSTICE. PRIVILEGE OF WITNESSES AND OTHERS IN ATTENDANCE ON PARLIAMENT.

Antiquity of this privilege.

THE privilege of freedom from arrest or molestation is of great antiquity, and dates, probably, from the first existence of parliaments or national councils in England. By some writers its recognition by the law has been traced so far back as the time of Ethelbert, at the end of the sixth century, in whose laws it is said, "If the king call his people to him (*i.e.* in the witena-gemót), and any one does an injury to one of them, let him pay a fine."[1] Blackstone has shown that it existed in the reign of Edward the Confessor, in whose laws we find this precept, "Ad synodos venientibus, sive summoniti sint, sive per se quid agendum habuerint, sit summa pax;" and so, too, in the old Gothic constitutions, "Extenditur hæc pax et securitas ad quatuordecim dies, convocato regni senatu."[2] In later times there are various precedents explanatory of the nature and extent of this privilege, and of the mode in which it was sustained. From these it will be seen that not only are the persons of members of both Houses of Parliament free from arrest on mesne process or in execution, but that formerly the same immunity was enjoyed in regard to their servants and their property. The privilege was strained still further, and even claimed to protect members and their servants from all civil actions or suits, during the time over

[1] Wilkins' Leges Anglo-Sax. p. 2. 2 Hallam, Middle Ages, 231. 2 Kemble, Saxons in England, 33.

[2] 1 Comm. 165. Steirnh. de Jure Goth.

which privilege was supposed to extend. The privilege of freedom from arrest has also been construed to discharge members and their servants from all liability to answer subpœnas in other courts and to serve on juries, and in some cases to relieve them from commitments by courts of justice.

Privileges enumerated.

These various immunities have undergone considerable change and restriction; and being now defined, for the most part, with tolerable certainty, they will be best understood by considering them in the following order: 1. Privilege of members and their servants from arrest and distress, and the mode of enforcing it. 2. Their protection from being impleaded in civil actions. 3. Their liability to be summoned by subpœna, or to serve on juries. 4. Their privilege in regard to commitments by legal tribunals. 5. Privilege of witnesses and others in attendance on Parliament. It may, however, be stated at once, that although many cases that will be given, apply equally to members and to their servants, according to the privilege existing in those times, the latter have, at present, no privilege whatever.[1] These cases, though at variance with modern usage, could not be omitted consistently with a complete view of the privilege of freedom from arrest and molestation.

Freedom from arrest and distress of goods.

So far back as the 19th of Edward I., in answer to a petition of the Master of the Temple for leave to distrain for the rent of a house held of him by the Bishop of St. David's, the king said, "It does not seem fit that the king should grant that they who are of his council should be distrained in time of Parliament."[2] From this precedent Sir Edward Coke infers that at that time a member of Parliament had privilege, not only for his servants, but for his horses or other goods distrainable.[3] The privilege was also acknowledged very distinctly by the Crown in the case of the Prior of Malton, in the 9th Edward II.[4]

Chedder's case.

The freedom, both of the Lords and Commons, and their

[1] See *supra*, p. 65, note.
[2] 1 Rot. Parl. 61.
[3] 4th Inst. 24 E.
[4] 1 Hatsell, 12.

servants, from all assaults or molestation, when coming to Parliament, remaining there, and returning thence, was distinctly recognised in the case of Richard Chedder, a member, by statute 5 Henry IV., c. 6, and again by another statute of the 11th Henry VI., c. 11. In the 5th Henry IV., the Commons, in a petition to the king, alleged that, according to the custom of the realm, the lords, knights, citizens, and burgesses were entitled to this privilege; and this was admitted by the king; who, instead of agreeing to the proposition of the Commons, that treble damages should be paid by parties violating their privilege, answered that there was already a sufficient remedy.[1] Hence this privilege appears, distinctly, not to have been created by statute, but to have been confirmed as the ancient law and custom of Parliament and of the realm. Much later, viz., in the 17th Edward IV., the Commons affirmed in Atwyll's case, that the privilege had existed "whereof tyme that mannys mynde is not the contrarie;"[2] thus placing it on the ground of prescription, and not on the authority of statutes then in force.

Atwyll's case.

Thorpe's case.

The only exception to the recognition of this privilege was in the extraordinary case of Thorpe, the speaker of the Commons who was imprisoned in 1452, under execution from the Court of Exchequer, at the suit of the Duke of York. The judges delivered their opinion to the Lords, "that if any person that is a member of this High Court of Parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests, and make an attorney, so that they may have their freedom and liberty freely to attend upon the Parliament." As Thorpe was in execution for a civil action that had been brought during an adjournment, he was obviously entitled to his release, according to the opinion of the judges; yet it is entered on the rolls of

[1] 3 Rot. Parl. 541.

[2] 6 Rot. Parl. 191.

Parliament, that after having "heard this answer and declaration, it was thoroughly agreed, assented, and concluded, by the lords spiritual and temporal, that the said Thomas, according to the law, should still remain in prison, the privilege of Parliament, or that the said Thomas was speaker of the Parliament, notwithstanding."[1] Yet even here it is worthy of notice, that the privilege of Parliament was admitted, though adjudged to be overruled by the law. The whole case, however, has been regarded as irregular and "begotten by the iniquity of the times."[2] Down to 1543, although the privilege had been recognised by statute, by declaration of both houses,[3] by the frequent assent of the king,[4] and by the opinions of the judges,[5] the Commons did not deliver their members out of custody by their own authority: but when the members were in execution, in order to save the rights of the plaintiff, they obtained special statutes to authorise the lord chancellor to issue writs for their release;[6] and when confined on mesne process only, they were delivered by a writ of privilege issued by the lord chancellor.[7] And in the singular case of Mr. Speaker Thorpe, already mentioned, the Commons even submitted the vindication of their privilege to the House of Peers, as well as to the king.[8]

Release of members from custody.

At length, with sudden energy, the Commons, for the first time, vindicated the privilege of Parliament, and acted independently of any other power. In 1543, George Ferrers, a member, was arrested in London, by a process out of the King's Bench, at the suit of one White, as surety for the debt of another. The house, on hearing of his arrest, ordered the serjeant to go to the Compter and demand his

Case of George Ferrers.

[1] 5 Rot. Parl. 239.

[2] 1 Com. J. 546.

[3] Larke's case, "Le Roi, par advis des seigneurs espirituelx et temporelx, et a les especiales requestes des communes."—4 Rot. Parl. 357. Atwyll's case, 6 Rot. Parl. 191.

[4] Larke's case, 4 Rot. Parl. 357. Parr's case, 5 Rot. Parl. 111. Hyde's case, 6 Rot. Parl. 160.

[5] Thorpe's case, 5 Rot. Parl. 239.

[6] Cases of Larke, Clerk, Hyde, and Atwyll, 4 Rot. Parl. 357; 5 Ib. 374; 6 Ib. 160. 191.

[7] Sadcliffe's case, 1 Hatsell, 51.

[8] 32 Hen. VI., 5 Rot. Parl. 239.

delivery. The serjeant was resisted by the city officers, who were protected by the sheriffs; and he was obliged to return without the prisoner. The house then rose as a body, and laid their case before the Lords, "who judging the contempt to be very great, referred the punishment thereof to the order of the Commons' house." The Commons ordered the serjeant to repair to the sheriffs, and to require the delivery of Ferrers, without any writ or warrant. The lord chancellor had offered them a writ of privilege, but they refused it, "being of a clear opinion that all commandments and other acts proceeding from the neather house were to be done and executed by their serjeant without writ, only by show of his mace, which was his warrant." The sheriffs, in the meantime, were alarmed, and surrendered the prisoner; but the serjeant, by order of the house, required their attendance at the bar, together with the clerks of the Compter, and White, the plaintiff; and on their appearance, they were all committed for their contempt.

The king, on hearing of these proceedings, called before him the lord chancellor, the judges, the speaker, and some of the gravest persons of the lower house, and addressed them. Having commended the wisdom of the Commons in maintaining the privileges of their house, and stated that even their cooks were free from arrest, he is reported to have used these remarkable words:

"And further, we are informed by our judges, that we at no time stand so highly in our estate royal, as in the time of Parliament; wherein we as head, and you as members, are conjoined and knit together into one body politick, so as whatsoever offence or injury, during that time, is offered to the meanest member of the house, is to be judged as done against our person and the whole court of Parliament; which prerogative of the court is so great (as our learned counsel informeth us), that all acts and processes coming out of any other inferior courts, must for the time cease, and give place to the highest."

When the king had concluded his address, "Sir Edward Montagu, the lord chief justice, very gravely declared his

opinion, confirming by divers reasons all that the king had said, which was assented unto by all the residue, none speaking to the contrary."

As this case rests upon the authority of Holinshed,[1] and not upon parliamentary records, its accuracy has sometimes been doubted: but the positions there maintained are so conformable with the law of Parliament, as since asserted; the circumstances are so minutely stated, and were of so notorious a character, that there can be little ground for distrusting the general correctness of the account. Its probability is confirmed by the fact that Ferrers was a servant of the King, and the proceedings of the Commons on his behalf were therefore the more likely to be acceptable to the King, and to be sanctioned by his councillors and the House of Lords.[2]

The practice of releasing members by a writ of privilege was still continued, notwithstanding the course pursued in the case of Ferrers: but henceforward no such writ was suffered to be obtained without a warrant previously signed by the speaker. Thirty years later, Smalley, the servant of a member, being under arrest, "was ordered to be brought hither to-morrow by the serjeant, and so set at liberty by warrant of the mace, and not by writ."[3] Again, in 1592, in the case of Mr. Fitzherbert, a member, who had been outlawed and taken in execution, the house, after many discussions as to his title to privilege, and concerning the manner in which he should be delivered, were at length acquainted that the lord keeper thought it best, "in regard to the ancient liberties and privileges of the house, that a serjeant-at-arms be sent, by order of the house, for Mr. Fitzherbert, by which he may be brought hither without peril of being further arrested by the way, and the state of the matter then considered of and examined into."[4] In this case, however, the house determined that the member should

Smalley's case.

Fitzherbert's case.

[1] 1 Holinshed, 824.
[2] 1 Hatsell, 57.
[3] 27th Feb. 1575, 1 Com. J. 108.
[4] D'Ewes, 482. 514. 1 Hatsell, 107.

not have privilege; "first, because he was taken in execution before the return of the indenture of his election; secondly, because he had been outlawed at the queen's suit, and was now taken in execution for her Majesty's debt; thirdly, in regard that he was so taken by the sheriff, neither sedente Parliamento, nor eundo, nor redeundo."[1]

Neale's case.

This case was scarcely settled, when Mr. Neale, a member, complained that he had been arrested upon an execution; that he had paid the money, but out of regard to the liberties and privileges of the house, he thought it his duty to acquaint them with it. Upon which the house committed to the Tower the person at whose suit the execution was obtained, and the officer who executed it. Three days afterwards the prisoners were reprimanded and discharged.[2]

Cases in the Lords.

The principal cases in the Lords, up to this period, show an uncertainty in their practice similar to that of the Commons; privileged persons being sometimes released immediately, and sometimes by writs of privilege. On the 1st December 1585, they ordered to be enlarged and set at liberty James Diggs, servant to the Archbishop of Canterbury, "by virtue of the privilege of this court:"[3] and again, in the same year, a servant of Lord Leicester,[4] and in 1597, the servants of Lord Chandois and the Archbishop of Canterbury.[5] In the two last cases the officers who had arrested the prisoners were committed by the house. Later still, in November 1601, they adopted the precedent of Ferrers. William Hogan, like Ferrers, a servant of the queen, was imprisoned in execution; and the Lords debated whether he should be discharged by a warrant from the Lords to the lord keeper, to grant a writ in the Queen's name for bringing up Hogan, or by immediate direction and order of the house, without any writ; and at length it was agreed that he should be brought up by order from the house. By virtue of their order, he was brought up and

[1] D'Ewes, 518. [2] D'Ewes, 518. 520. [3] 2 Lords' J. 66.
[4] 2 Lords' J. 93. [5] Lords' J. 201. 205.

discharged on giving a bond for the payment of his debt; and the under-sheriff was committed to the Fleet for having arrested him.[1] Yet, soon afterwards, in Vaughan's case, the Lords resorted to the old method of discharging a prisoner by an order to the lord keeper for a writ of privilege; after having first committed the keeper of Newgate for refusing to obey their order to bring up his prisoner.[2]

These cases have been cited not only as illustrative of the ancient claims of privilege, but also as throwing light, incidentally, upon the general law and privilege of Parliament. But it is now time to pass to the modifications of the ancient privilege which have since been effected by statute; and to the modern practice of Parliament, in protecting members from arrest.

Sir T. Shirley's case.

In 1603, the case of Sir Thomas Shirley occasioned a more distinct recognition of the privilege by statute, and an improvement in the law. Sir Thomas had been imprisoned in the Fleet, in execution, before the meeting of Parliament, and the Commons first tried to bring him into the house by habeas corpus, and then sent their serjeant to demand his release. The warden refused to give up his prisoner, and was committed to the Tower for his contempt. Many proposals were made for releasing their member: but as none were free from objection, the house endeavoured to coerce the warden, and committed him to the prison called "Little Ease," in the Tower. At length the warden, either overcome by his durance, or commanded by the king, delivered up the prisoner, and was discharged, after a reprimand.[3] So far the privileges of the house were satisfied: but there was still a legal difficulty to be overcome, that had been common to all cases in which members were in execution, viz., that the warden was liable to an action of escape, and the creditor had lost his right to an execution.[4] In former cases a

[1] 2 Lords' J. 230. D'Ewes, 603.
[2] 2 Lords' J. 238. 240. D'Ewes, 607.
[3] 1 Com. J. 155 *et seq.* 5 Parl. Hist. 113, &c. 1 Hatsell, 157.
[4] See 1 Com. J. 173. 195; and Collection of Precedents, 10 Ib. 401.

remedy had been provided by a special Act, and the same expedient was now adopted: but in order to provide for future cases of a similar kind, a general Act was also passed.

Statutes relating to freedom from arrest.

The Act 1 James I., c. 13, after stating that "doubts had been made, if any person, being arrested in execution, and by privilege of Parliament set at liberty, whether the party at whose suit such execution was pursued, be for ever barred and disabled to sue forth a new writ of execution in that case;" proceeded to enact, that after such time as the privilege of that session in which privilege is granted shall cease, parties may sue forth and execute a new writ; and that no sheriff, &c. from whose arrest or custody persons shall be delivered by privilege, shall be chargeable with any action. Lastly, the Act provided that nothing therein should "extend to the diminishing of any punishment to be hereafter by censure in Parliament inflicted upon any person who shall hereafter make or procure to be made any such arrest." Three points are distinctly recognised; viz., 1, the privilege of freedom from arrest; 2, the right of either house of Parliament to set a privileged person at liberty; and, 3, the right to punish those who make or procure arrests: while two other points were for the first time established; viz., that the officer should not be liable to an action of escape, and that the debt should not be satisfied.

But although the privilege of either house of Parliament was admitted to entitle a prisoner to his release, the manner of releasing him was still indefinite; and for some time it continued to be the practice, where privileged persons had been imprisoned in execution, to issue warrants for a writ of privilege or a writ of habeas corpus.[1] In 1625, however, the Commons declared, "that the house hath power, when they see cause, to send the serjeant immediately to deliver a prisoner;[2] and in some cases during the 17th century, peers and members arrested in execution, were released

[1] 2 Lords' J. 270. 296. 299. 302. 588.; 3 Ib. 30. 1 Hatsell, 167. 168.

[2] 1 Com. J. 820.

without any writ of privilege or habeas corpus,[1] as Lord Baltinglasse in 1641,[2] Lord Rich in 1646,[3] and Sir Robert Holt in 1677.[4]

During the same period also, when the property of peers or of their servants was distrained, the Lords were accustomed to interfere by their direct authority, as in 1628, in the case of a ship belonging to the Earl of Warwick;[5] and in 1648, in regard to the tenants of Lord Montague:[6] but privilege did not attach to property held by a peer as a trustee only.[7] In cases of arrest on mesne process, the practice of releasing the prisoners directly by a warrant,[8] or by sending the black rod or serjeant, in the name of the house, to demand them,[9] was continually adopted.

At length, in the year 1700, an Act was passed,[10] which, while it retained the privilege of freedom from arrest with more distinctness than the 1st James I., made the goods of privileged persons liable to distress infinite and sequestration, between a dissolution or prorogation and the next meeting of Parliament, and during adjournments for more than fourteen days. In suits against the king's immediate debtors, execution against members was permitted even during the sitting of Parliament, and the privilege of freedom from arrest in such suits was not reserved to servants. Again, by the 2 & 3 Anne, c. 18, executions for penalties, forfeitures, &c. against privileged persons, being employed in the revenue or any office of trust, were not to be stayed by

[1] Hatsell states, that "since the end of Elizabeth's reign we have not actually met with any instance where a person entitled to privilege, if in custody in execution, hath been delivered by any other mode than by virtue of a writ of privilege, or by a writ of habeas corpus."—(Vol. i. p. 167). But this statement had reference to the period from the accession of James I. to 1628; and unless it be understood with this limitation, it is calculated to mislead.

[2] 4 Lords' J. 654.

[3] 8 Ib. 635. 639.

[4] 9 Com. J. 411.

[5] 3 Lords' J. 776, 777.

[6] 10 Ib. 611.

[7] 12 Ib. 194. 390; 14 Ib. 36. 78; 16 Ib. 294; 22 Ib. 412.

[8] Bassett's case, 1 Com. J. 807.

[9] 4 Lords' J. 654; 8 Ib. 577. 601. Boteler's case, 17 Com. J. 6.

[10] 12 & 13 Will. III., c. 3, afterwards extended by 11 Geo. II., c. 24.

privilege. Freedom from arrest, however, was still maintained for the members of both houses, in such cases, but not for their servants.

Servants' privilege discontinued.

By the 10th Geo. III., c. 50, a very important limitation of the freedom of arrest was effected. Down to that time the servants of members had been entitled to all the privileges of their masters, except as regards the limitations effected by the two last statutes: but by the 3rd section of the 10th Geo. III., the privilege of members to be free from arrest upon all suits, authorised by the Act, was expressly reserved; while no such reservation was introduced in reference to their servants. And thus, without any distinct abrogation of the privilege, it was, in fact, put an end to, as executions were not to be stayed in their favour, and their freedom from arrest was not reserved.

Members how released at present.

By these several statutes the freedom of members from arrest has become a legal right rather than a parliamentary privilege. The arrest of a member has been held, therefore, to be irregular, *ab initio*, and he may be discharged immediately, upon motion in the court from which the process issued.[1]

For the same reason writs of privilege have been discontinued. In 1707, a few years after the passing of the 12th & 13th Will. III., the serjeant was sent with the mace to the warden of the Fleet, who readily paid obedience to the orders of the house, and discharged Mr. Asgill, a member then in execution.[2] Peers, peeresses, and members are now discharged directly by order or warrant, and the parties who cause the arrest are liable to censure and punishment, as in the case of the baroness Le Cale in 1811;[3] and Viscount Hawarden in 1828.[4]

In 1807, Mr. Mills had been arrested on mesne process, and was afterwards elected. The house determined that

[1] Colonel Pitt's case, 2 Strange, 985. K. B. Cases, temp. Hard. 28.

[2] 15 Com. J. 471.

[3] 48 Lords' J. 60. 63.

[4] 60 Ib. 34 (and Rep. of Precedents, 28).

he was entitled to privilege, and ordered him to be discharged out of the custody of the marshal of the King's Bench.[1] In 1819, Mr. Christie Burton had been elected for Beverley, but being in custody on execution, and also on mesne process, was unable to attend his service in Parliament. The house determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the warden of the Fleet.[2] An action was brought against the warden by the assignees of a creditor of Mr. Burton, for his escape, who were declared guilty of a breach of privilege, and ordered to attend the house:[3] but having acknowledged their offence by petition, they were not subjected to any punishment.

Duration of privilege.

It now only remains to inquire what is the duration of the privilege of freedom from arrest; and it is singular that this important point has never been expressly defined by Parliament. The person of a peer (by the privilege of peerage) "is for ever sacred and inviolable."[4] This immunity rests upon ancient custom, and is recognised by the Acts 12 & 13 Will. III., c. 3, and 2 & 3 Anne, c. 18. It would seem to have been an ancient feudal privilege of the barons, the law assuming that there would always be, upon the demesnes of their baronies, sufficient to distrain for the satisfaction of any debt.[5] Peeresses are entitled to the same privilege as peers, whether they be peeresses by birth, by creation, or by marriage:[6] but if a peeress by marriage should afterwards intermarry with a commoner, she forfeits her privilege.[7] It is also ordered and declared by the Lords, that privilege of Parliament shall not be allowed to

Peeresses.

[1] 62 Com. J. 654.
[2] 74 Ib. 44.
[3] 75 Ib. 286.
[4] 1 Bl. Comm. 165.
[5] 1 West. Inq. 27.
[6] Countess of Rutland's case, 6 Co. 52. Cases of Lady Purbeck, 1625; Lady Della Warr 1642; Lady D'Acre, 1660; Lady Petre, 1664; Countess of Huntingdon, 1676; Countess of Newport, 1699; Lady Abergavenny, 1727; 60 Lords' J. 28-31.
[7] Co. Litt. 166. 4 Bacon's Abridg. 229. Lords' S. O. No. 78. 11 Lords' J. 298; 15 Ib. 241.

minor peers, noblewomen, or widows of peers (saving their right of peerage).[1]

Representative peers.

And by the 23rd Article of the Act of Union with Scotland (5 Anne, c. 8), the sixteen representative peers are allowed all the privileges of the peers of the Parliament of Great Britain; and all other peers and peeresses of Scotland, though not chosen, enjoy the same privileges.[2] In the same manner, by the Act of Union with Ireland, the peers and peeresses of Ireland are entitled to the same privileges as the peers and peeresses of Great Britain.[3]

Authorities as to the duration of privileges.

With regard to members of the House of Commons, "the time of privilege" has been repeatedly mentioned in statutes, but never explained.

It is stated by Blackstone and others, and has been the general opinion, that the privilege of freedom from arrest remains with a member of the House of Commons "for forty days after every prorogation, and forty days before the next appointed meeting:" but the learned commentator cites the case of the Earl of Athol *v.* the Earl of Derby,[4] which hardly supports so distinct a conclusion. It appears from the report of that case, that the Lords claim privilege for twenty days only, before and after each session; and the report adds, "But, *it is said*, the Commons never assented to this, but *claim* forty days after and before each session." In another report of the same case, it is also said, that "they claim forty days;"[5] and in another report, "that the Commons claimed forty days, which ought not to be allowed."[6] But that the Commons have claimed so long a duration of this immunity, there are no precedents to show. By the original law of Parliament, privilege extended to the protection of members and their servants, "eundo, morando et exinde

[1] Lords' S. O. No. 78. See also 12 Lords' J. 714; 13 Ib. 67. 79, 80. 659.

[2] 2 Strange, 990. 60 Lords' J. 28.

[3] Case of Viscount Hawarden, an Irish Peer, 31st Jan. 1828. 60 Lords' J. 15; Rep. of Com. of Privileges, Ib. 28; 18 Hans. Deb. 2nd Ser. 69; Lord Colchester's Diary, iii. 544, 545.

[4] 2 Levinz, 72.

[5] 1 Chan. Cas. 221.

[6] Sid. 29.

redeundo:" but Parliament has never yet determined what time shall be considered convenient for this purpose; and Prynne expresses an opinion, that no such definite extent of privilege is claimable by the law of Parliament.[1] There has, however, been a general belief and tradition (founded, probably, upon the ancient law and custom, by which writs of summons for a Parliament were always issued at least forty days before its appointed meeting), that privilege extended to forty days; and several acts of the Irish Parliament have defined that time as the duration of privilege in Ireland.[2] Parliamentary precedents alone will not be found to establish this extent of privilege in England: but it has been allowed by the courts of law, on the ground of usage and universal opinion. And by reason of frequent prorogations, the enjoyment of this privilege is never liable to interruption.

Pledall's case.

On the 6th December 1555, a case occurred, which has been relied upon as a declaration of Parliament concerning the duration of privilege, but to which no importance can be attached. The Commons sent a message to the Lords, to complain that their privilege was broken, by reason of Gabriel Pledall, a member, having been bound in a recognizance in the Star Chamber, to appear before the council within twelve days after the end of the Parliament, which was about to be dissolved. A message was afterwards received for six members to confer with the Lords, who went, and reported, on their return, "that the chief justices, master of the rolls, and serjeants, do clearly affirm that the recognizance is no breach of the privilege."[3] From this case Prynne infers that the Commons, "have not twelve, much less twenty or forty days, after the Parliament ended:" but no such inference can be supported, for it does not appear whether the opinion of the judges related to the recognizance itself, or to the duration of the privilege after

[1] 4 Prynne, Reg. 1216.

[2] See 3 Edw. IV. c. 1, Ir. 6 Anne, c. 3, Ir. 1 Geo. II. c. 8, s. 2, Ir.

[3] 1 Com. J. 46

the dissolution. The case is not mentioned in the Lords' Journal; the Lords were not said to have pronounced this opinion, but only the judges; and there was no acquiescence on the part of the Commons, for the Parliament was dissolved two days afterwards.

Mr. Marten's case.

In the case of Mr. Marten, in 1586, who had been arrested twenty days before the meeting of Parliament, the question was put, whether the house would limit any time for privilege? The house answered, a convenient time: but they determined that the twenty days were within a convenient time, and that Mr. Marten should, therefore, be discharged.[1] Twenty days, therefore, have been allowed, which would exclude any inference from Pledall's case.

Resolutions in both houses.

On the 14th December 1621, the Lords resolved that their servants were free from arrest "for twenty days before and after every session; in which time the Lords may conveniently go home to their houses, in the most remote parts of this kingdom."[2] And again, on the 28th May 1624, they adopted a similar resolution.[3] On the 27th January 1628, they added, that this freedom should "begin with the date of the writ of summons, in the beginning of every Parliament, and continue twenty days before and after every session of Parliament."[4] On the 24th April 1640, it was "said in the House of Commons, and not contradicted, that members had privilege for sixteen days exclusive, and fifteen days inclusive, before the beginning and ending of every Parliament;" and in a case of privilege considered on that day, it is entered, "the contempt of his arrest to be declined, because it was not committed within time of privilege, viz., within sixteen days before the beginning of the Parliament, or so many days after."[5] And on the 17th January 1689, the Lords declared that

[1] D'Ewes, 410. 1 Hatsell, 100.
[2] 3 Lords' J. 195.
[3] Ib. 417.
[4] 4 Lords' J. 13. 1 Hatsell, 41, *n.*
[5] 2 Com. J. 10.

the freedom of their servants should begin twenty days before the return of the writ of summons, and continue twenty days before and after every session.[1]

A confirmation of the claim of forty days, however, has been indirectly found in the several Acts of Parliament relating to the privilege of franking letters (now abolished by statute), in which the power of franking was given to members for forty days before any summons, and forty days after any prorogation.[2]

Mr. Duncombe's case.

On the 7th September 1847, Mr. Duncombe claimed and was allowed his privilege, by a judge's order. He had been elected, at the general election, on the 28th of July, and it was argued that his privilege had expired on the 2nd September. The writs for the new Parliament were returnable on the 21st September: but Parliament was prorogued, by writ, to the 12th October. The 2nd September was forty days after the dissolution, but within twenty days of the 21st September, the day first appointed for the meeting of Parliament. It was contended, in opposition to the claim of privilege—1st, that twenty days was a sufficient time; and, 2ndly, supposing a longer period to be allowed, that the period should be reckoned to the 12th October, which would leave the member forty days for coming to Parliament. Mr. Justice Williams, however, was satisfied that the privilege extended to forty days, and that the period must be reckoned to the 21st September only. On a motion for rescinding the judge's order, the Chief Baron, in delivering the judgment of the court, at once determined that the period must be reckoned to the 21st September, as the day on which the writs were returnable; and after citing the authorities as to the duration of privilege, concluded in these words: "We think that the conclusion to be drawn from all that is to be found in the books on the subject is this: that whether the rule was

[1] Lords' S. O. No. 65.

[2] For a history of this privilege, see Report, 16th April 1735.

originally for a convenient time, or for a time certain, the period of forty days before and after the meeting of Parliament has for about two centuries, at least, been considered either a convenient time, or the actual time to be allowed. Such has been the usage, the universally prevailing opinion on the subject; and such, we think, is the law."[1]

After dissolution.

It has been determined by the courts of law, that the privilege, even after a dissolution, is still enjoyed for a convenient and reasonable time for returning home.[2] What this convenient time may be, has never been determined; but the general claim of exemption from arrest, *eundo et redeundo*, extends as well to dissolutions as to prorogations, as no distinction is made between them.

Members in execution before their election.

These cases apply to arrests made after the privilege has accrued: but the effect of the election of a person already in execution still remains to be considered. In Thorpe's case the judges excepted from privilege the case of "a condemnation had before the Parliament;" but their opinion has not been sustained by the judgment of Parliament. Unless a member has incurred some legal disability, or has subjected himself to processes more stringent than those which result from civil actions, it has been held that his service in Parliament is paramount to all other claims. Thus in 1677, Sir Robert Holt was discharged, although he had been "taken in execution out of privilege of Parliament;"[3] and, not to mention intermediate cases, or any which are of doubtful authority,[4] Mr. Christie Burton obtained his release in 1819, although he had been in the custody of the warden of the Fleet before his election.[5]

Persons under arrest becoming peers.

A person succeeding to a peerage while under arrest, is entitled to his discharge in virtue of his privilege. On

[1] Welsby, H. & G. 430.

[2] Colonel Pitt's case, 1 Strange, 985. Barnardo *v.* Mordaunt, 1 Lord Ken. 125. 9 Com. J. 411.

[4] See Reports of Precedents, 10 Com. J. 401. 62 Com. J. 642. 653, 654. 2 Hatsell, 37.

[5] 74 Com. J. 44; 75 Ib. 230.

the 1st January 1849, Lord Harley having succeeded, by the death of his father, to the Earldom of Oxford, applied to a judge in chambers (Mr. Baron Platt), for his discharge from the Queen's Prison. It was submitted that he was not entitled to privilege until he had taken his seat as a peer: but this position could not be supported by any authorities, and the earl was ordered to be discharged.[1] It has been decided by the Lords that a peer is entitled to privilege when he has not qualified himself to sit, by taking the oaths.[2]

Members not admitted as bail.

As a consequence of the immunity of a member of Parliament, it has been held that he cannot be admitted as bail; for not being liable to attachment, by reason of his privilege, he cannot be effectually proceeded against, in the event of the recognizances being forfeited.[3]

Not to be impleaded. Case of Bogo de Clare.

The earliest case in which the privilege of not being impleaded appears to be recorded, is that of Bogo de Clare, in the 18th Edward I. (1290.).[4] A complaint was made that the prior of the Holy Trinity in London, by procurement of Bogo de Clare, had cited the Earl of Cornwall, in Westminster Hall, in Parliament time, to appear before the Lord Archbishop of Canterbury. Both of them were sent for, to answer before the king, and having appeared, and submitted themselves, were sent to the Tower. Bogo de Clare afterwards came and paid a fine of two thousand marks to the king. This case has been cited by Sir E. Coke, Elsynge, and others, as a claim of parliamentary privilege: but has latterly been held to have arisen out of the service of a citation in a privileged place;[5] although the words "in Parliament time," would suggest an opposite conclusion.

[1] M'Cabe *v.* Lord Harley.

[2] Lords' J. 24th Feb. 1691; 13th May 1720.

[3] Duncan *v.* Hill (1 Dowling & Ryland's Rep. 126); Graham *v.* Sturt (4 Taunton's Rep. 249); Burton *v.* Atherton (2 Marsh, 232); and case of Mr. Feargus O'Connor, who offered himself as bail for Mr. Ernest Jones, 11th June 1848, at Bow-street.

[4] 1 Rot. Parl. 17.

[5] Burdett *v.* Abbot.

Writs of supersedeas.

In the 8th Edward II., writs of supersedeas were issued to the justices of assize, to prevent actions from being maintained against members in their absence, by reason of their inability to defend their rights while in attendance upon the Parliament.[1] This privilege appears to have fallen into disuse, for in the 12th Edward IV., it was disallowed in the case of Walsh, a servant of the Earl of Essex. That person pleaded a king's writ, in which his right not to be impleaded was affirmed: but the Lords, with the advice of the judges, determined, that there "was no custom, but that members and their servants might be impleaded;" and they disallowed the writ, and ordered Walsh to plead.[2] In the same year, a similar decision was given in the case of Cosyn.[3] Yet, while this was held to be the law in England, the privilege thus disallowed had been confirmed, not long before, by a statute in the Parliament of Ireland.[4] A few years later, the Commons, in Atwyll's case, claimed it as a prescriptive privilege, that they "should not be impleaded in any action personal;" and their claim seems to have been admitted both by the king and by the House of Lords.[5]

Cases of Walsh and Cosyn.

One of the most marked cases of later times, in which the privilege was enforced, was on the 21st February 1588; when the House of Commons, being informed that several members had writs of nisi prius brought against them, to be tried at the assizes, a motion was made, "that writs of supersedeas might be awarded in these cases, in respect of the privilege of this house, due and appertaining to the members of the same." Upon which it was resolved, "that those of this house which shall have occasion to require such benefit of privilege in that behalf, may repair unto Mr. Speaker, to declare unto him the state of their cases; and that he, upon

[1] 1 Hatsell, 7, 8. "Ne per eorum *absentiam*, dum sic in dicto Parliamento steterint, *exhæredacionem* aliquam sustineant, aliqualiter vel incurrant." And again, "presertim cum absentes jura sua defendere nequeant, ut presentes."

[2] 1 Hatsell, 41, 42.

[3] Ib. 43.

[4] 3 Edw. IV. c. 1.

[5] Atwyll's case, 17 Edw. IV.; 6 Rot. Parl. 191.

his discretion, if the case shall so require, may direct the warrant of this house to the lord chancellor of England, for the awarding of such writs accordingly."[1]

Suits stayed by letter.

At the beginning of the reign of James I., another practice was adopted. Instead of resorting to writs of supersedeas, the speaker was ordered to stay suits by a letter to the judges,[2] and sometimes by a warrant to the party also;[3] and the parties and their attorneys who commenced the actions were brought, by the serjeant, to the bar of the house.[4] Applications for the stay of suits, at length, became so frequent and troublesome, that it was ordered, "where any member of the house hath cause of privilege, to stay any trial, a letter shall issue, under Mr. Speaker's hand, for stay thereof, without further motion in the house."[5] This power of staying suits appears to have been generally acquiesced in by the courts: but in the case of Hodges and Moore, in 1626, the Court of King's Bench refused to obey the speaker's letter, and was about to return a sharp answer, when the Parliament was dissolved.[6] In numerous instances, however, members agreed to waive their privilege; and upon the petitions of the parties, suits were occasionally allowed to proceed.[7]

Limitations of the privilege by statute.

The privilege insisted upon in this manner, continued until the end of the seventeenth century, when it underwent a considerable limitation by statute. The 12th and 13th Will. III., c. 3, enacted, that any person might commence and prosecute actions against any peer, or member of Parliament, or their servants, or others entitled to privilege, in the courts at Westminster, and the duchy court of Lancaster, immediately after a dissolution or prorogation, until the next meeting of Parliament, and during any adjournment for more than fourteen days; and that during such

[1] D'Ewes, 436.
[2] 1 Com. J. 286. 381. 421, &c.
[3] Ib. 804.
[4] Ib. 304.
[5] 1620; Ib. 525.
[6] Prynne's 4th Register, 810. 1 Com. J. 861. 1 Hatsell, 184, 185.
[7] 1 Com. J. 378. 421. 595, &c.; 10 Ib. 280. 300. 596; 11 Ib. 557, &c.

times, the court might give judgment and award execution. Processes and bills against members were authorised, during the same intervals, to be had or exhibited, and to be enforced by distress infinite or sequestration; and actions, &c. against the king's immediate debtors were not to be stayed, at any time, by privilege of Parliament. The privilege was thus limited in its operation: but it was still acknowledged, especially by the third section, which provided that where actions were stayed by privilege, the plaintiffs should be at liberty to proceed to judgment and execution upon the rising of Parliament.

Soon afterwards, it was enacted, by the 2nd and 3rd Anne, c. 18, that no action, suit, process, proceeding, judgment, or execution, against privileged persons, employed in the revenue, or any office of public trust, for any forfeiture, penalty, &c., should be stayed or delayed by or under colour or pretence of privilege of Parliament. The Act of William III. had extended only to the principal courts of law and equity: but by the 11th Geo. II., c. 24, all actions in relation to real and personal property, were allowed to be commenced and prosecuted in the recess and during adjournments of more than fourteen days, in any court of record, &c.

Still more important limitations of the privilege were effected by the Act 10 Geo. III., c. 50. The preamble of that Act states, that the previous laws were insufficient to obviate the inconveniences arising from the delay of suits by reason of privilege of Parliament; and it is therefore enacted that,

"Any person may at any time commence and prosecute any action or suit in any court of record, or court of equity, or of admiralty; and in all causes, matrimonial and testamentary, against any peer or lord of Parliament of Great Britain,[1] or against any of the knights, citizens, or burgesses, &c. for the time being, or against any of their menial, or any other servants, or any other person entitled to the

[1] The 4th Article of the Act of Union extends all privileges of English peers to the peers of Ireland.

privilege of Parliament; and no such action, suit, or any other process or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or under any colour or pretence of any privilege of Parliament."

"Sect. 2. But nothing in this Act shall extend to subject the person of any of the knights, citizens, and burgesses for the time being, to be arrested or imprisoned upon any such suit or proceeding."

Stringent modes of enforcing the processes of the courts were enacted by this Act, and still further facilities were given to plaintiffs by the 45th Geo. III., c. 124, and the 47th Geo. III., sess. 2, c. 40. Under these Acts members of Parliament may be coerced by every legal process, except the attachment of their bodies. By the Bankruptcy Act 1869, persons having privilege of Parliament are subject to the processes of the Court.[1]

Subpœnas and juries.

The claim to resist subpœnas was founded upon the same principle as other personal privileges, viz., the paramount right of Parliament to the attendance and service of its members. Yet it does not appear to have been maintained in early times. In 1554, a complaint was made by the Lords that Mr. Beamond, a member of the Commons, had caused a subpœna to be served upon the Earl of Huntingdon; to which the Commons returned an answer, "that they take this writ to be no breach of privilege."[2] Yet, in 1557, on a complaint being made that Mr. T. Eyms, a member of the Commons, had been served with a subpœna, two members were sent to the chancellor, to require that the process might be revoked;[3] and, again, in the case of Richard Cook, in 1584, three members were sent to the Court of Chancery, to signify to the chancellor and master of the rolls that, by the ancient liberties of this house, the members of the same are privileged from being served with

[1] Before that Act came into operation it was adjudged, that a peer was liable to be made a bankrupt, under the Act of 1861; *ex parte* Morris *re* the Duke of Newcastle: Lord Justice Giffard, 20th November 1869, affirmed by the House of Lords, upon appeal, on the 7th July 1870. 102 Lords' J. 397.

[2] 1 Com. J. 34.

[3] Ib. 48. 1 Parl. Hist. 630.

subpœnas, "and to desire that they will allow the like privileges for other members of this house, to be signified to them in writing under Mr. Speaker's hand." But the chancellor replied, that "he thought the house had no such liberty of privilege for subpœnas." A committee was then appointed to search for precedents, but made no report.[1] Immediately afterwards, the house punished a person who had served a member with a subpœna.[2] Various other cases subsequently occurred, in which the parties who had served subpœnas upon members of both houses were committed, or otherwise punished for their contempt;[3] but, of late years, so far from withholding the attendance of members as witnesses in courts of justice, the Commons have frequently granted leave of absence to their members on the express ground that they had been summoned as witnesses,[4] and have even admitted the same excuse for defaulters at calls of the house.[5] But although this claim of privilege is not now enforced as regards other courts, one house will not permit its members to be summoned by the other, without a message desiring his attendance, nor without the consent of the member whose attendance is required; and it may be doubtful whether the house would not protect a member served with a subpœna, from the legal consequences of non-attendance in a court of justice, if permission had not been previously granted by the house for his attendance.[6] No officer of either house should be served with a subpœna to give evidence concerning any proceedings in Parliament, or to produce documents in his custody, until leave has been given to him to attend.[7]

Members summoned as jurors.

As the withdrawal of a witness may affect the administra-

[1] D'Ewes, 347. 1 Hatsell, 96, 97.

[2] 1 Hatsell, 97.

[3] 1 Hatsell, 169. 175. 3 Lords' J. 630. 1 Com. J. 203. 205. 211. 368. 1040, &c.; 9 Ib. 339.

[4] 56 Com. J. 122; 68 Ib. 218. 243. 292; 71 Ib. 110; 82 Ib. 306. 379. See also Hans. Deb. 1st March 1844 (Earl of Devon).

[5] 48 Com. J. 318.

[6] 78 Ib. 132.

[7] 91 Lords' J. 508; 92 Ib. 590. 103 Com. J. 40; 106 Ib. 277. &c.; but see *infra*, p. 176.

tion of justice, the privilege has very properly been waived: but the service of members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts. The privilege is of great antiquity; the tenure *per baroniam* having conferred an exemption from serving on juries, not only upon those summoned to Parliament, but also upon all tenants *per baroniam*.[1]

The first complaint of a member being summoned on a jury, appears to have been made on the 22nd November 1597, in the case of Sir J. Tracy. In that case the serjeant was immediately sent with the mace to call Sir J. Tracy to his attendance in the house, who shortly returned accordingly.[2] Another case occurred in 1607, in which it was ordered that two members, retained as jurors by the sheriff, should be spared their attendance, and the serjeant-at-arms was sent with his mace to deliver the pleasure of the house to the secondary of the King's Bench, the court then sitting.[3] On the 15th May 1628, it was determined that Sir W. Alford should have privilege not to serve, and a letter was ordered "to be written by Mr. Speaker to the judges, that he be not amerced for his non-appearance."[4] Lord Hardwicke is said to have fined the member for Shoreham for not attending as a juror, Parliament not being then sitting; but admitted the exemption during the sitting of Parliament.[5] On the 20th February 1826, Mr. Holford complained that he had been fined for non-attendance as a juryman by the Court of Exchequer, his excuse that he was attending the service of Parliament, not being admitted; and Mr. Ellice, another member, stated that he had also been fined for non-attendance, in the same court:[6] but these cases obviously arose from misinformation on the part of the court. A committee of privileges was immediately

[1] 1 West Inq. 28.
[2] D'Ewes, 560. 1 Hastell, 112.
[3] 1 Com. J. 369.
[4] 1 Com. J. 898.
[5] 14 Hans. Deb. N. S. 569.
[6] Ibid.

appointed, and the house, on receiving its report, resolved, *nem. con.*, that it is "amongst the most ancient and undoubted privileges of Parliament, that no member shall be withdrawn from his attendance on his duty in Parliament to attend on any other court."[1] Before this committee had reported, another member, Mr. Bennet, having been summoned as a juror, asked the advice of the speaker, who stated "his answer would be, that, conceiving his duty to that house was his first obligation, he should perform it, he would not say neglecting every other duty, for that would imply a fault, but omitting all others which would clash therewith."[2] On the 12th June 1829, Mr. Macleod complained that he had been summoned as a juror, during an adjournment of the house, but had declined to attend. The speaker said, "it was clear that members of that house were not liable to be called upon to serve on juries, during the sitting of Parliament. The next point to be considered was, whether an adjournment of the house was to be looked upon as a sitting, so far as the question of privilege was concerned; and he believed it was admitted by every member that it was so considered."[3] To this it may be added, that in the last clause of the Act of 1825, for consolidating the laws relating to jurors and juries,[4] there was an express reservation that nothing shall "abridge or affect any privilege of Parliament;" and further, this privilege has been fully recognised by the courts. In the case of Viscount Enfield, 6th February 1861, Chief Justice Erle stated, that "his lordship ought not to have been summoned as a juror, as members were not bound to serve in any other court than that in which they had been returned to serve, viz., the high court of Parliament, which was the highest court of the realm." And in later cases, where members have been inadvertently summoned, their privilege has been promptly acknowledged. Exemption was not ordinarily claimed by members after a

[1] 81 Com. J. 82. 87. 14 Hans. Deb. N. S. 568. 642.
[2] 14 Hans. Deb. 2nd Ser. 643. [3] 21 Hans. Deb. N. S. 1770. [4] 6 Geo. IV. c. 50.

prorogation; and there was no distinct authority for its existence at that time: but by the Juries Act, 1870, peers and members of Parliament are included among the persons exempted from serving on juries, without reference to the sitting of Parliament; and their privilege has since become a legal exemption.

Criminal commitments.

The privilege of freedom from arrest has always been limited to civil causes, and has not been allowed to interfere with the administration of criminal justice. In Larke's case,[1] in 1429, the privilege was claimed, "except for treason, felony, or breach of the peace;" and in Thorpe's case,[2] the judges made exceptions to such cases as be "for treason, or felony, or surety of the peace." The privilege was thus explained by a resolution of the Lords, 18th April 1626: "That the privilege of this House is, that no peer of Parliament, sitting the Parliament, is to be imprisoned or restrained, without sentence or order of the House, unless it be for treason or felony, or for refusing to give surety of the peace;"[3] and again, by a resolution of the Commons, 20th May 1675, "that by the laws and usage of Parliament, privilege of Parliament belongs to every member of the House of Commons, in all cases except treason, felony, and breach of the peace."

It was stated by the Commons, at a conference on the 17th August 1641:

"1. That no privilege is allowable in case of peace betwixt private men, much more in case of the peace of the kingdom. 2. That privilege cannot be pleaded against an indictment for anything done out of Parliament, because all indictments are 'contra pacem domini regis.' 3. Privilege of Parliament is granted in regard of the service of the Commonwealth, and is not to be used to the danger of the Commonwealth. 4. That all privilege of Parliament is in the power of Parliament, and is a restraint to the proceedings of other inferior courts, but is no restraint to the proceedings of Parliament, and, therefore, seeing it may, without injustice, be denied, this being the case of the Commonwealth, they conceive it ought not to be granted."[4]

[1] 4 Rot. Parl. 357.
[2] 5 Ib. 339.
[3] 3 Lords' J. 562
[4] 2 Com. J. 261. 4 Lords' J. 369.

On the 14th April 1697, it was resolved, "that no member of this house has any privilege in case of breach of the peace, or forcible entries, or forcible detainers."[1]

Seditious Libels.

In Wilkes' case, 29th November 1763, although the Court of Common Pleas had decided otherwise,[2] it was resolved by both houses,

"that privilege of Parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of laws in the speedy and effectual prosecution of so heinous and dangerous an offence."[3]

"Since that time," said the committee of privileges, in 1831, "it has been considered as established generally, that privilege is not claimable for any indictable offence."[4]

Case of Lord Cochrane.

These being the general declarations of the law of Parliament, one case will be sufficient to show how little protection is practically afforded by privilege, in criminal offences. In 1815, Lord Cochrane, a member, having been indicted and convicted of a conspiracy, was committed by the Court of King's Bench to the King's Bench Prison. Lord Cochrane escaped, and was arrested by the marshal, whilst he was sitting on the privy councillors' bench, in the House of Commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The case was referred to the committee of privileges, who reported that it was "entirely of a novel nature, and that the privileges of Parliament did not appear to have been violated, so as to call for the interposition of the House by any proceedings against the marshal of the King's Bench."[5]

Causes of commitment to be communicated.

Thus the House will not allow even the sanctuary of its walls to protect a member from the process of criminal

[1] 11 Com. J. 784.

[2] 2 Wils. Rep. 150. 19 St. Tr. 981.

[3] 29 Com. J. 689. 15 Parl. Hist. 1362-1378.

[4] Sess. Paper, 1831 (114). See also case of Lord Oliphant, in 1709; 19 Lords' J. 31. 34; and 26 Ib. 492 (Gaming-houses).

[5] Sess. Paper, 1814–15 (239). 30 Hans. Deb., 1st Ser., 309. 336. Lord Colchester's Diary, ii. 534–536.

law. But in all cases in which members are arrested on criminal charges, the house must be informed of the cause for which they are detained from their service in Parliament. The various Acts which have suspended for a time the Habeas Corpus Act, have contained provisions to the effect that no member of Parliament shall be imprisoned, during the sitting of Parliament, until the matter of which he stands suspected shall be *first* communicated to the house of which he shall be a member, and the consent of the said house obtained for his commitment.[1] But in cases not affected by these Acts, it has been usual to communicate the cause of commitment, after the arrest, as in the case of Lord George Gordon, for high treason in 1780,[2] and Mr. Smith O'Brien in 1848,[3] and whenever members have been in custody in order to be tried by naval or military courts martial,[4] or have been committed for any offence by a magistrate.[5]

Bankrupts.

The same distinction between civil and criminal processes has been observed in the case of bankrupts. By the Bankrupt Law Consolidation Act, 1849, s. 66, it was enacted that "if any trader having privilege of Parliament shall commit any act of bankruptcy, he may be dealt with under the Act in like manner as any other trader: but such person shall not be subject to be arrested or imprisoned during the term of such privilege, except in cases made felonies and misdemeanors by this Act."[6] By the Bankruptcy Act, 1869, s. 120, a person having privilege of Parliament is to be dealt with as if he had not such privilege.

Commitment of members for contempt.

Another description of offence, partaking of a criminal character, is a contempt of a court of justice; and it was for some time doubtful how far privilege would extend to

[1] See 17 Geo. II. c. 6. 45 Geo. III. c. 4, s. 2. 57 Geo. III. c. 3, s. 4. 57 Geo. III. c. 55, s. 4. 3 Geo. IV. c. 2, s. 4.

[2] 37 Com. J. 903.

[3] 103 Ib. 808.

[4] 37 Ib. 57. 39 Ib. 479. 51 Ib. 139. 557. 58 Ib. 597. 67 Ib. 246, &c. 47 Lords' J. 349 (Lord Gambier); and see case of Lord Torrington, 14 Ib. 521. 523. 525. 527.

[5] Mr. F. O'Connor, 107 Com. J. 28.

[6] 12 & 13 Vict. c. 106.

Case of Lord Cromwell.

the protection of a member committed for a contempt. On the 30th June 1572, a complaint was made to the Lords by Henry Lord Cromwell, that his person had been attached by the sheriff of Norfolk, by a writ of attachment from the Court of Chancery, for not obeying an injunction of that court, "contrary to the ancient privileges and immunities, time out of mind, unto the Lords of Parliament and peers of this realm, in such cases used and allowed." The Lords, after examining this case in the presence of the judges and others of the queen's learned counsel, agreed that "the attachment did not appear to be warranted by the common law or custom of the realm, or by any statute law, or by precedents of the Court of Chancery," and they ordered Lord Cromwell to be discharged of the attachment. They were, however, very cautious in giving a general opinion, and declared that if at any future time cause should be shown that by the queen's prerogative, or by common law or custom, or by any statute or precedents, the persons of Lords of Parliament are attachable, the order in this case should not affect their decision in judging according to the cause shown.[1] Prynne, in reference to this case, lays it down that the persons of peers would only be attachable in cases of breach of the peace and contempts with force, when there would be a fine to the king.[2]

This precedent was adopted and confirmed by the Lords on the 10th February 1628. It had been referred to the committee of privileges to inquire "whether a serjeant-at-arms may arrest the person of a peer (out of privilege of Parliament) upon a contempt of a decree in the Chancery." The committee reported that no case of attachment had occurred before that of Lord Cromwell, and that "the Lords of Parliament ought to enjoy their ancient and due privileges, and their persons to be free from such attachments, with the same proviso as in the case of Lord

[1] 1 Lords' J. 727. [2] 4th Reg. 792.

Cromwell;" to which the Lords generally assented.[1] But on the 22nd October 1667, a report of the committee of privileges, containing the same proviso, was confirmed by the house, leaving out the proviso.[2]

Mr. Brereton.

In 1605, in the case of Mr. Brereton, who had been committed by the Court of King's Bench for a contempt, the Commons brought up their member by a writ of habeas corpus, and received him in the house.[3] The case of Sir W. Bampfield, in 1614, throws very little light upon the matter, as, after he had been brought in by writ of habeas corpus, the speaker desired to know the pleasure of the house: but no resolution or order appears to have been afterwards agreed to.[4] On the 8th February 1620, a complaint was made, in the Commons, that two of the members' pages had been punished for misbehaviour in the Court of King's Bench. It was stated, however, that the judges had sent one of the offenders to be punished by the house, and would send the other when he could be found; "and yet, but for respect of this house, they would have indicted them for stroke in face of the court; and many for less offences have lost their hands."[5]

Lord Vaux.

On the 9th February 1625, the Lord Vaux claimed his privilege, for stay of the proceedings in an information against him in the Star Chamber; and it was granted;[6] and shortly afterwards, in the case of the Earl of Arundel, the Lords' committee maintained that "though a lord, at the suit of the king, be sued in the Star Chamber *for a contempt*, yet the suit is to be stayed, by privilege of Parliament, in Parliament time."[7] But on the 8th June 1757, it was "ordered and declared by the Lords, that no peer or lord of Parliament hath privilege of peerage, or of Parliament, against being compelled, by process of the courts of

Earl of Arundel.

[1] 4 Lords' J. 27.
[2] 12 Ib. 122.
[3] 1 Com. J. 269.
[4] Ib. 466.
[5] 1 Com. J. 513.
[6] 3 Lords' J. 496.
[7] Ib. 558 (Report of Precedents), 562, &c.

Westminster Hall, to pay obedience to a writ of habeas corpus directed to him," and that this be a standing order.[1] And it was decided, in the case of Earl Ferrers, that an attachment may be granted, if a peer refuses obedience to the writ.[2]

Mr. Long Wellesley.

In more recent cases, members committed by courts for open contempt, have failed in obtaining their release by virtue of privilege. In 1831, Mr. Long Wellesley, a member, having confessed, in the Court of Chancery, that he had taken his infant daughter, a ward in chancery, out of the jurisdiction of the court, Lord Brougham, C., at once committed him for contempt, saying,—

"It is no violation of the privileges of Parliament if the members of Parliament have violated the rights and privileges of this court, which is of as high a dominion, and as undisputed a jurisdiction, as the High Court of Parliament itself; it is no breach of, but a compliance with, their privileges, that a member of either house of Parliament, breaking the rules of this court, and breaking the law of the land by a contempt committed against this court, should stand committed for that contempt."

The lord chancellor acquainted the speaker of this commitment; and Mr. Wellesley also appealed, through the speaker, to the House of Commons, and claimed his privilege. His case was referred to the committee of privileges, who reported, "that his claim to be discharged from imprisonment, by reason of privilege of Parliament, ought not to be admitted."[3]

Mr. Lechmere Charlton.

The last case was that of Mr. Lechmere Charlton, in

[1] 29 Lords' J. 181.

[2] Burr. 631. It is said in Bacon's Abridgment (vol 6, p. 546), "Also peers of the realm are punishable by attachment for contempts in many instances: as for rescuing a person arrested by due course of law; for proceeding in a cause against the king's writ of prohibition; for disobeying other writs wherein the king's prerogative, or the liberty of the subject, is nearly concerned; and for other contempts which are of an enormous nature."—2 Hawk. P. C., c. 22, s. 33; 1 Burr. 634. "But the courts will not grant an attachment against a peer or member of Parliament for non-payment of money according to award."—7 Term. Rep. 171. 448. And see *dicta* of Lord Brougham, in Westmeath, *v.* Westmeath, 8 Law Journ. (1st Series, Chancery) 177.

[3] 86 Com. J. 701.

1837. That member had been committed by the lord chancellor, for a contempt, in writing a letter to one of the masters in chancery, "containing matter scandalous with respect to him, and an attempt improperly to influence his decision." The lord chancellor stated the grounds of this commitment, in a letter to the speaker, to whom Mr. Charlton also complained of his commitment; and these letters were referred to a committee of privileges. As the lord chancellor's order did not set forth the obnoxious letter, the committee directed it to be produced, as they considered,

"That although the lord chancellor had the power to declare what he deemed to be a contempt of the High Court of Chancery, it was necessary that the House of Commons, as the sole and exclusive judge of its own privileges, should be informed of the particulars of the contempt before they could decide whether the contempt was of such a character as would justify the imprisonment of a member."

After inquiring fully into the nature of the contempt, the committee reported, that Mr. Charlton's claim to be discharged from imprisonment ought not to be admitted.[1]

Before these last cases, the ordinary process for contempts against persons having privilege of Parliament or of peerage, had not been that of attachment of the person, but that of sequestration of the whole property, as in the case of the Countess of Shaftesbury.[2] In 1829, an order for the commitment of Lord Roscommon, for contempt, had been made by the lord chancellor, but was never executed, nor even taken out of the registrar's office. Nor must it be omitted that, so late as 1832, an Act was passed,[3] by which contempts of the ecclesiastical courts, "in face of the court, or any other contempt towards such court, or the process thereof, are directed to be signified to the lord chancellor, who is to issue a writ *de contumace capiendo*, for taking into custody persons charged with such contempt," in case such person "shall not be a peer, lord of Parliament, or member of the House of Commons." It must not, therefore, be

[1] 92 Com. J. 3 *et seq.*; 1 Parl. Rep. 1837, No. 45.

[2] 2 Peere Williams, 110.

[3] 2 & 3 Will. IV. c. 93.

understood, that either house has waived its right to interfere when members are committed for contempt. Each case is open to consideration, when it arises; and although protection has not been extended to flagrant contempts, privilege would still be allowed against commitment under any civil process, or if the circumstances of the case appeared otherwise to justify it.

Members fined for contempt of court.

In January 1873, the Court of Queen's Bench fined Mr. Onslow and Mr. Whalley, two members of the House of Commons, for a contempt of that court, when Cockburn, C. J., took occasion to state that the Court would not have been restrained by privilege from committing these members, if it had thought fit.

Privilege of witnesses, suitors, and others.

As yet the personal privilege of members, and the ancient privilege of their servants, have alone been noticed. These were founded upon the necessity of enabling members freely to attend to their duties in Parliament. Upon the same ground, a similar privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either house of Parliament, or before parliamentary committees, and to others in personal attendance upon the business of Parliament, in coming, staying, and returning; and to officers of either house, in immediate attendance upon the service of Parliament.[1] In the early Journals there are numerous orders that all persons attending in obedience to the orders of the house, and of committees, shall have the privilege or protection of the house.[2] A few precedents will serve to explain the nature and extent of this privilege.

Their freedom from arrest.

Instances of protections given by the Lords to witnesses and to parties, while their causes or bills were depending, appear very frequently on the Journals of that house.

In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrest, was allowed

[1] 1 Lex Parl. 380. 1 Hatsell, 9. 11. 172.

[2] 1 Com. J. 505. 2 Ib. 107. 9 Ib. 62. 13 Ib. 521, &c.

privilege, "to protect him during the time that this house examine him;"[1] and many similar protections have been granted in later times.[2] In 1641, it was ordered that Sir T. Lake, who had a cause depending, should "have liberty to pass in and out unto the house, and to his counsel, solicitor, and attorney, for and during so long time only as his cause shall be before their lordships in agitation;"[3] and many similar orders have been made in the case of other parties, who have had causes depending,[4] or bills before the house.[5]

On the 12th May 1624, the master and others of the felt-makers were ordered, by the Commons, to be enlarged from the custody of the warden of the Fleet, for the prosecution of a bill then depending, "till the same be determined by both houses."[6] On the 24th May 1626, it was ordered, "that J. Bryers shall be sent for to testify, and to have privilege for coming, staying, and returning."[7] In the same manner, privilege was extended to persons who had bills depending, on the 22nd and 29th January 1628, on the 3rd May 1701, and the 11th May 1758.[8] On the 23rd January 1640, certain persons having petitions before the grand committee on Irish affairs, were ordered "to have liberty to come and go freely to prosecute their petition, without molestation, arrest, or restraint; and that there be a stay of committing any waste upon the lands mentioned in the petition, during the dependency of the business here."[9] Numerous instances have occurred, in which witnesses, who have been arrested on their way to or from Parliament, or during their attendance there, have been discharged out of custody;[10] and the same protection is extended, not only to parties, but to their counsel and agents,

[1] 4 Lords' J. 143, 144.
[2] 25 Ib. 625. 27 Ib. 19.
[3] 4 Ib. 262.
[4] Ib. 263. 289. 330. 477. 5 Ib. 476.
[5] 5 Ib. 563. 574. 653. 680. 27 Ib. 538. 28 Ib. 512.
[6] 1 Com. J. 702.
[7] 1 Com. J. 863.
[8] Ib. 921. 924. 13 Ib. 512. 28 Ib. 244.
[9] 2 Ib. 72.
[10] 8 Ib. 525. 9 Ib. 20. 366. 472. 12 Ib. 364. 610. 66 Ib. 226. 232. 90 Ib. 521.

in prosecuting any business in Parliament.[1] On the 2nd May 1678, Mr. J. Gardener, solicitor in the cause concerning Lyndsey Level, who had been arrested as he was coming to attend on the house, was discharged from his arrest.[2] On the 9th April 1742, complaint was made, that Mr. Gilbert Douglas, a solicitor for several bills depending in the House of Commons, had been arrested as he was attending the house, and he was immediately ordered to be discharged from his arrest.[3] In the same way, solicitors for bills depending in the house, were discharged from arrest, on the 30th April 1753,[4] on the 12th February, and the 22nd March 1756.[5]

On the 29th March 1756, Mr. Aubrey, who had an estate bill depending in the House of Commons, presented a petition, in which he stated that he apprehended an arrest; and it was ordered, "that the protection of the house be allowed to him during the dependence of his bill in this house."[6] The last case that need be mentioned is that of Mr. Petrie, in 1793. That gentleman was a petitioner in a controverted election, and claimed to sit for the borough of Cricklade. Having received the usual notice to attend, by himself, his counsel, or agents, he had attended the sittings of the election committee as a party in the cause; and although he had a professional agent, he had himself assisted his counsel, and furnished them with instructions before the committee. He was arrested before the committee had closed their inquiries; and on the 20th March the house, after receiving a report of precedents, ordered, *nem. con.*, that he should be discharged out of the custody of the sheriff of Middlesex.[7] This protection, in short, is the same as that given by courts of law to witnesses and others, which has even been extended to arbitrations.[8]

[1] 88 Lords' J. 189; 92 Ib. 75, 76.
[2] 9 Com. J. 472.
[3] 24 Ib. 170.
[4] 26 Ib. 797.
[5] 27 Ib. 447. 537.
[6] 27 Com. J. 548.
[7] 48 Ib. 426.
[8] Court of Q. B. in banco, Nov. 7th 1857.

Protection of witnesses and others from suits and molestation.

Witnesses, petitioners, and others, being thus free from arrest while in attendance on Parliament, are further protected, by privilege, from the consequences of any statements which they may have made before either house; and any molestation, threats, or legal proceedings against them, will be treated by the house as a breach of privilege.

On the 23rd November 1696,

"A complaint being made that Sir George Meggott had prosecuted at law several persons for what they testified, the last session, at the committee of privileges and elections,"

it was referred to that committee to examine the matter of the complaint. It appeared from their report, 4th December, that Sir G. Meggott,

"Having thought himself injured by their evidence, did think he might lawfully have done himself right by an action; but as soon as he was better advised, he desisted, and suffered himself to be nonsuited, and had paid them their costs."

Notwithstanding his submission, however, the house agreed with the committee in a resolution, that he had been guilty of a breach of privilege, and committed him to the custody of the serjeant-at-arms.[1]

On the 27th November 1696, a petition was presented from T. Kemp and other hackney coachmen, complaining that an action had been brought against them by Mr. Gee, for libel, on account of a petition which had been presented to the house from them, in the last session.[2] From the report of the committee of privileges, to whom the matter was referred, 9th February 1696, it appeared that Mr. Gee had desisted from his action when he understood it was taken notice of by the house, and offered to release the same. The house agreed with the committee in a resolution that Mr. Gee, "for prosecuting at law the hackney coachmen for petitioning this house, is guilty of a high misdemeanor and breach of privilege," and committed him to the custody of the serjeant-at-arms.[3]

On the 8th April 1697, the Lords attached T. Stone, for

[1] 11 Com. J. 591. 613. [2] 11 Com. J. 599. [3] 11 Com. J. 699.

striking and giving opprobrious language to a witness, below the bar, who had been summoned to attend a committee, and directed the attorney-general to prosecute him for his offence.[1] On the 5th March 1710, on the report from a committee that John Hare, a soldier, was afraid of giving evidence, the Commons resolved, "that this house will proceed with the utmost severity against any person that shall threaten, or any way injure, or send away the said J. Hare, or any other person that shall give evidence to any committee of this house."[2]

On the 9th February 1715, a complaint was made that C. Medlycot, esq., had been abused and insulted, "in respect to the evidence by him given" before a committee. Mr. Tovey, the person complained of, was declared to be guilty of a breach of privilege, and was committed to the custody of the serjeant-at-arms.[3]

On the 28th February 1728, it was reported to the house, by a committtee appointed to inquire into the state of the gaols, that Sir W. Rich, a prisoner in the Fleet, had been misused by the warden of the Fleet, in consequence of evidence given by the former to the committee. The house declared, *nem. con.*, that the warden was guilty of contempt, and committed him to the custody of the serjeant-at-arms.[4]

On the 10th May 1733, complaint was made that Jeremiah Dunbar, esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a Bill, upon which the house resolved, *nem. con.*, "that the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this house, or any committee thereof, is an audacious proceeding, and a high violation of the privileges of this house."[5]

On the 12th March 1819, the house being informed that

[1] 16 Lords' J. 144.
[2] 16 Com. J. 535.
[3] 18 Ib. 371.
[4] 21 Com. J. 247.
[5] 22 Ib. 146.

Mr. Goold, who had given his evidence at the bar, had been insulted and threatened, in consequence of such evidence, resolved, *nem. con.*, that,

"T. W. Grady having used insulting language to a witness attending this house, and having threatened him with personal violence on account of evidence already given by him, and which he may hereafter be called upon to give at the bar of the house, has been guilty of a high contempt, &c.," and committed him to the custody of the serjeant-at-arms.[1]

In 1819, Thomas Henton, a soldier examined before the Worcester Election Committee, was arrested by the serjeant of his regiment, in the lobby, for absenting himself from drill. There were, however, other circumstances in the case, which induced the house not to regard this as a breach of privilege.[2]

On the 2nd July 1845, Mr. Jasper Parrott complained to the house, by petition, that an action had been commenced against him in respect of evidence which he had given before a committee.[3] On the 3rd July a copy of the declaration was delivered in by Mr. Parrott's agent, and the plaintiff and his solicitors were ordered to attend on a future day.[4] On the 7th July they all attended, and having disclaimed any intention of violating the privileges of the house, and having declared that the action would be discontinued, they were severally discharged from further attendance, although the commencement of the action was declared to be a breach of privilege.[5] It is worthy of remark, that the plaintiff's solicitor stated, in a petition to the house, that the declaration had been framed upon the assumption that a witness would not be protected, by privilege, in respect of any evidence which was wilfully and maliciously false, any more than the powers of the superior courts at Westminster would be exerted to protect any witness from an indictment for perjury. The house, however, did not recognise any such analogy: but resolved to

[1] 74 Com. J. 223.

[2] 39 Hans. Deb., 1st Ser., 1168. 1226.

[3] 100 Com. J. 672.

[4] 100 Com. J. 680.

[5] Ib. 697. 81 Hans. Deb., 3rd Ser., 1436.

protect the witness from all proceedings against him, in respect of the evidence given by him before a committee.

In the same year, a similar case occurred in the House of Lords. Peter Taite Harbin had brought an action, by John Harlow his attorney, against Thomas Baker, for false and malicious language uttered before the House of Lords, in giving evidence before a committee. On the 14th July, the plaintiff and his attorney were summoned to the bar, and on their refusal to state that the action should not be proceeded with, were both declared guilty of a breach of privilege, and committed.[1] On the following day, the prisoners submitted themselves to the house by petition, and stated that the action had been withdrawn, upon which they were brought to the bar, reprimanded by the lord chancellor, and discharged.[2]

Protection to counsel.

The privilege of protection from all molestation in respect of what they have stated professionally, is also extended to counsel. On the 21st March 1826, complaint was made that an insulting letter had been written by John Lee Wharton to Mr. Fonblanque, Q.C., in relation to a speech made by him, at the bar of the House of Lords, on the 16th March. Wharton attended, according to order, and on making a proper submission and apology, was discharged from further attendance.[3]

Mr. Fonblanque.

Statements to Parliament not actionable.

And apart from the protection afforded by privilege, it appears that statements made to Parliament in the course of its proceedings are not actionable at law.

In Lake *v.* King,[4] which was an action upon the case for printing a false and scandalous petition to the committee of Parliament for grievances, it was agreed by the court, "that the exhibiting the petition to a committee of Parliament was lawful, and that no action lies for it, although the matter

[1] 82 Hans. Deb., 3rd Series, 431. See also the protest in the Lords' Journal.

[2] Ib. 494.

[3] 58 Lords' J. 128. 145.

[4] 1 Saunders' Reports, 131 b. 1 Lev. 240. 2 Keb. 361. 383. 462. 496. 659. 801. See also 2 Inst. 228, as to evidence before a jury being privileged.

contained in the petition was false and scandalous, because it is in a summary course of justice, and before those who have power to examine whether it be true or false. But the question was, whether the printing and publishing of it, in the manner alleged by the defendant in his plea," viz., by delivering printed copies to the members of the committee, "according to custom used by others in that behalf, and approved of by the members of the said committee," was justifiable or not? After this case had depended twelve terms, judgment was given in Hilary Term, 19 & 20 Charles II., for the defendant, by Hale, C. J., upon the ground, "that it was the order and course of proceedings in Parliament to print and deliver copies, whereof they ought to take judicial notice."

But are admissible in evidence.

In Rex *v.* Merceron there was an indictment against a magistrate of the county of Middlesex for misconduct in his office, in having corruptly and improperly granted licenses to public-houses which were his own property.

In the course of the evidence for the prosecution, it was proposed to prove what had been said by the defendant, in the course of his examination before a committee of the House of Commons, appointed for the purpose of inquiring into the police of the metropolis. The defendant had been compelled to appear before this committee, and had, upon examination, delivered in a list of certain public-houses, with the names of the owners and other particulars. On the part of the defendant it was objected, that since this statement had been made under a compulsory process, from the House of Commons, and under the pain of incurring punishment as for a contempt of that house, the declarations were not voluntary, and could not be admitted for the purpose of criminating the defendant; but Abbott, C.J., was of opinion that the evidence was admissible.[1]

[1] 2 Starkie's Nisi Prius Cases, 366.

CHAPTER VI.

JURISDICTION OF COURTS OF LAW IN MATTERS OF PRIVILEGE.

Difficulty of the question.

THE precise jurisdiction of courts of law in matters of privilege, is one of the most difficult questions of constitutional law that has ever arisen. Upon this point the precedents of Parliament are contradictory, the opinions and decisions of judges have differed, and the most learned and experienced men of the present day are not agreed. It would, therefore, be presumptuous to define the jurisdiction of the courts, or the bounds of parliamentary privilege: but it may not be useless to explain the principles involved in the question; to cite the chief authorities, and to advert to some of the leading cases that have occurred.

Principles stated.

It has been shown already, that each House of Parliament claims to be sole and exclusive judge of its own privileges, and that the courts have repeatedly acknowledged the right of both houses to declare what is a breach of privilege, and to commit the parties offending, as for a contempt; but, although the courts will neither interfere with Parliament, in its punishment of offenders, nor assume the general right of declaring and limiting the privileges of Parliament, they are bound to administer the law of the land, and to adjudicate when breaches of that law are complained of. The jurisdiction of Parliament, and the jurisdiction of the courts are thus liable to be brought into conflict. The House of Lords, or the House of Commons, may declare a particular act to have been justified by their order, and to be in accordance with the law of Parliament; while the courts may decline to acknowledge the right of one house to supersede, by its sole authority, the laws which have been made by the assent, or which exist with the acquiescence, of all the branches of the legislature. It is true that, in a

general sense, the law of Parliament is the law of the land: but if one law should appear to clash with the other, how are they to be reconciled? Is the declaration of one component part of Parliament to be conclusive as to the law; or are the legality of the declaration, and the jurisdiction of the house, to be measured by the general law of the land? In these questions are comprised all the difficulties attendant upon the conflicting jurisdictions of Parliament, and of the courts of law.

It is contended on the one hand, that in determining matters of privilege, the courts are to act ministerially rather than judicially, and to adjudicate in accordance with the law of Parliament, as declared by either house; while, on the other, it is maintained that although the declaration of either house of Parliament, in matters of privilege within its own immediate jurisdiction, may not be questioned; its orders and authority cannot extend beyond its jurisdiction, and influence the decision of the courts, in the trial of causes legally brought before them. From these opposite views it naturally follows that, in declaring its privileges, Parliament may assume to enlarge its own jurisdiction, and that the courts may have occasion to question and confine its limits.

The claim of each house of Parliament to be the sole and exclusive judge of its own privileges has always been asserted, in Parliament, upon the principles and with the limitations which were stated in the third chapter of this book, and is the basis of the law of Parliament.[1] This claim has been questioned in the courts of law: but before the particular cases are cited, it will be advisable to take a general view of the legal authorities which are favourable or adverse to the claim, in its fullest extent, as asserted by Parliament.

Authorities in favour of the exclusive jurisdiction of Parliament.

The earliest authority on which reliance is usually placed, in support of the claim, is the well-known answer of the judges in Thorpe's case.

[1] See *supra*, p. 68.

Thorpe's case. In the 31st Henry VI., on the Lords putting a case to the judges, whether Thomas Thorpe, the speaker of the Commons, then imprisoned upon judgment in the Court of Exchequer, at the suit of the Duke of York, "should be delivered from prison by virtue of the privilege of Parliament or not," the Chief Justice Fortescue, in the name of all the justices, answered,

"That they ought not to answer to that question, for it hath not been used aforetyme, that the justices should in anywise determine the privilege of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of the Parliament, and not to the justices."[1]

In regard to this case it must be observed that no legal question had come before the judges for trial, in their judicial capacity: but that, as assistants of the House of Lords, their opinion was desired upon a point of privilege which was clearly within the immediate jurisdiction of Parliament, and was awaiting its determination. Under these circumstances it was natural that the judges should be reluctant to press their own opinions, and desirous of leaving the matter to the decision of the Lords. That part of their answer which alleges that Parliament can make and unmake laws, as a reason why the judges should not determine questions of privilege, can only apply to the entire Parliament, and not to either house separately, nor even to both combined; and, consequently, it has no bearing upon the jurisdiction of Parliament, except in a legislative sense.

Sir E. Coke. The principle of this answer was adopted and confirmed by Sir Edward Coke, who lays it down that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere;"[2] and again, that "judges ought not to give any opinion of a matter of privilege, because it

[1] 5 Rot. Parl. 240. See also Lord Ellenborough's observations upon this case, 14 East, 29.

[2] 4th Inst. 15.

is not to be decided by the common laws, but *secundum leges et consuetudinem Parliamenti*; and so the judges, in divers Parliaments, have confessed."[1]

These general declarations were explained and qualified by Lord Clarendon, who, in his History of the Rebellion, thus defines the jurisdiction of the Commons: Lord Clarendon.

"They are the only judges of their own privileges; that is, upon the breach of those privileges which the law hath declared to be their own, and what punishment is to be inflicted upon such breach. But there can be no privilege of which the law doth not take notice, and which is not pleadable by and at law."[2]

In the case of Barnardiston *v.* Soame, in 1674, Lord Chief Justice North said, Lord C. J. North.

"I can see no other way to avoid consequences derogatory to the honour of the Parliament but to reject the action, and all others that shall relate either to the proceedings or privilege of Parliament, as our predecessors have done. For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province; for if we err, privilege of Parliament will be invaded, which we ought not in any way to endamage."[3] But in the same argument he alleged "that actions may be brought for giving Parliament protections wrongfully; actions may be brought against the clerk of the Parliament, serjeant-at-arms, and speaker, for aught I know, for executing their offices amiss, with averments of malice and damage; and then must judges and juries determine what they ought to do by their officers. This is in effect prescribing rules to the Parliament for them to act by."[4]

In the case of Paty, one of the Aylesbury men, brought up by habeas corpus, Mr. Justice Powell thus defined the jurisdiction of the courts in matters of privilege: Mr. Justice Powell.

"This court may judge of privilege, but not contrary to the judgment of the House of Commons." Again, "This court judges of privilege only incidentally; for when an action is brought in this court, it must be given one way or other." "The court of Parliament is a superior court; and though the King's Bench have a power to prevent excesses of jurisdiction in courts, yet they cannot prevent such excesses in Parliament, because that is a superior court, and a prohibition was never moved for to the Parliament."[5]

[1] 4th Inst. 15.

[2] Clarendon's Hist. of the Rebellion, vol. ii. book 4, p. 195. 8vo. edit. Oxf.

[3] 6 Howell, St. Tr. 1110.

[4] Ib.

[5] 2 Lord Raym. 1105.

In several other cases which related solely to commitments by either house of Parliament, very decided opinions have been expressed by the judges, in favour of privilege, and adverse to the jurisdiction of the courts of law: but most of these may be taken to apply more especially to the undoubted right of commitment for contempt, rather than to general matters of law in which privilege may be concerned.[1]

Mr. Justice Blackstone.

In the case of Brass Crosby, Mr. Justice Blackstone went so far as to affirm that "it is our duty to presume the orders of that house (of Commons), *and their execution*, to be according to law;" and in Rex *v.* Wright, Lord Kenyon said, "This is a proceeding by one branch of the legislature, and therefore we cannot inquire into it:" but he added, "I do not say that cases may not be put, in which we would inquire whether the House of Commons were justified in any particular measure."

Lord Kenyon.

Hawkins.

It is laid down by Hawkins that

"There can be no doubt but that the highest regard is to be paid to all the proceedings of either of those houses; and that wherever the contrary does not plainly and expressly appear, it shall be presumed that they act within their jurisdiction, and agreeably to the usages of Parliament, and the rules of law and justice."[2]

Lord C. B. Comyn.

And Lord Chief Baron Comyn, following the opinion of Sir Edward Coke, affirms that

"All matters moved concerning the Peers and Commons in Parliament, ought to be determined according to the usage and customs of Parliament, and not by the law of any inferior court."[3]

These authorities are sufficient, for the present purpose, to show the general confirmation of the exclusive jurisdiction of Parliament, in matters of privilege: but even here the parliamentary claim is occasionally modified and limited, as in the opinions of Lord Clarendon, Chief Justice North, and Lord Kenyon. In other cases, the jurisdiction of courts of law has been more extensively urged, and the

Authorities in support of the jurisdiction of courts in matters of privilege.

[1] See *supra*, p. 78.

[2] 2 Pleas of the Crown, c. 15, s. 73.

[3] Digest "Parliament" (G. 1.)

privileges of Parliament proportionately limited. In Benyon *v.* Evelyn, the lord chief justice, Sir Orlando Bridgman, came to the conclusion,

Sir O. Bridgman.

"That resolutions or resolves of either house of Parliament, singly, in the absence of parties concerned, are not so concludent upon courts of law, but that we may, nay (with due respect, nevertheless, had to their resolves and resolutions,) we must, give our judgment according as we upon our oath conceive the law to be, though our opinions fall out to be contrary to those resolutions or votes of either house."[1]

Lord C. J. Willes.

On another occasion Lord Chief Justice Willes said,

"I declare for myself, that I will never be bound by any determination of the House of Commons, against bringing an action at common law for a false or double return; and a party may proceed in Westminster Hall, notwithstanding any order of the house."[2]

Lord Mansfield.

Lord Mansfield, in arguing for the exclusive right of the Commons to decide upon elections, said,

"That, in his opinion, declarations of the law by either House of Parliament were always attended with bad effects: he had constantly opposed them whenever he had an opportunity; and, in his judicial capacity, thought himself bound never to pay the least regard to them:" "but he made a wide distinction between general declarations of law, and the particular decision which might be made by either house, in their judicial capacity, on a case coming regularly before them, and properly the subject of their jurisdiction."[3]

At another time the same great authority declared that "a resolution of the House of Commons, ordering a judgment to be given in a particular manner, would not be binding in the courts of Westminster Hall."[4] And in Burdett *v.* Abbot, Lord Ellenborough said, "the question in all cases would be, whether the House of Commons were a court of competent jurisdiction, for the purpose of issuing a warrant to do the act."[5]

Lord Ellenborough.

Passing now to the most recent judicial opinions, the cases of Stockdale *v.* Hansard and Howard *v.* Gosset present themselves. An outline of all the proceedings in these cases (the most important that had arisen since that of Ashby

[1] Benyon *v.* Evelyn, Bridgman, 324.
[2] Wynne *v.* Middleton, 1 Wils. 128.
[3] 16 Hansard, Parl. Hist. 653.
[4] 24 Ib. 517.
[5] 14 East, 128.

and White), will be presently attempted: but, for the present, the expositions of the judges, in reference to the general jurisdiction of the courts, will be necessary to close this summary of authorities.

Stockdale *v.* Hansard.

In giving judgment in that case on the 31st May 1839, Lord Denman used these words:

"But having convinced myself that the mere order of the house will not justify an act otherwise illegal, and that the simple declaration that that order is made in exercise of a privilege, does not prove the privilege; it is no longer optional with me to decline or accept the office of deciding whether this privilege exist in law. If it does, the defendant's prayer must be granted, and judgment awarded in his favour: or, if it does not, the plaintiff, under whatever disadvantage he may appear before us, has a right to obtain at our hands, as an English subject, the establishment of his lawful rights, and the means of enforcing them."[1]

In the same trial Mr. Justice Littledale argued,

"It is said the House of Commons is the sole judge of its own privileges; and so I admit, as far as proceedings in the house, and some other things, are concerned: but I do not think it follows that they have a power to declare what their privileges are, so as to preclude inquiry whether what they declare, are part of their privileges. The attorney-general admits that they are not entitled to create new privileges: but they declare this (the publication of papers) to be their privilege. But how are we to know that this is part of their privileges without inquiring into it, when no such privilege was ever declared before? We must therefore be enabled to determine whether it be part of their privileges or not."[2]

To this argument, however, it is an obvious answer that, assuming the house to be the judge of its own privileges, it is its province to determine whether a privilege be new or not, from an examination of the Journals and other authorities. The learned judge said further,

"I think that the mere statement that the act complained of was done by the authority of the House of Commons is not of itself, without more, sufficient to call at once for the judgment of the court for the defendant."[3]

Mr. Justice Patteson thus expressed his opinion:

"If the orders (of the House of Commons) be illegal, and not merely erroneous, upon no principle known to the laws of this country, can

[1] Proceedings, printed by the Commons, 1839 (283), p. 155.
[2] Ib. pp. 161, 162.
[3] Ib. p. 162.

those who carry them into effect justify under them. A servant cannot shelter himself under the illegal orders of his master, nor could an officer under the illegal orders of a magistrate, until the legislature interposed and enabled him to do so. The mere circumstance, therefore, that the act complained of was done under the order and authority of the House of Commons, cannot of itself excuse the act, if it be in its nature illegal; and it is necessary, in answer to an action for the commission of such illegal act, to show, not only the authority under which it was done, but the power and right of the House of Commons to give such authority."[1]

And upon the question of jurisdiction he laid it down,

"That every court in which an action is brought upon a subject matter generally, and *primâ facie* within its jurisdiction, and in which by the course of the proceedings in that action the powers and privileges and jurisdiction of another court come into question, must of necessity determine as to the extent of those powers, privileges, and jurisdiction; and the decisions of that court, whose powers, privileges, and jurisdiction are so brought into question as to their extent, are authorities, and, if I may so say, evidences in law upon the subject, but not conclusive."[2]

In conclusion, Mr. Justice Coleridge thus summed up his view of the duties of a court of law:

"The cause is before us; we are sworn to decide it according to our notions of the law; we do not bring it here, and being here, a necessity is laid upon us to deliver judgment; that judgment we can receive at the dictation of no power; we may decide the cause erroneously, but we cannot be guilty of any contempt in deciding it according to our consciences."[3]

Howard *v.* Gosset.

In the case of Howard *v.* Gosset, Mr. Justice Coleridge again expressed his opinion as to the powers of a court of law in matters of privilege:

"It is enough to say that the law is supreme over the House of Commons, and over the Crown itself. If the limits of the law be passed by either, for most satisfactory reasons, they are indeed themselves irresponsible, but the law will require a strict account of the acts of all persons and their agents; and these, according to the nature of the illegality, will be answerable civilly or criminally."[4]

Judgments adverse to claims of privilege.

With these conflicting opinions as to the limits of parliamentary privilege, and the jurisdiction of courts of law, if

[1] Proceedings, printed by the Commons, 1839 (283), p. 169.

[2] Ib. p. 174.

[3] Ib. p. 188.

[4] Arguments and judgment, as printed by the House of Commons, 1845 (305), p. 105.

either House of Parliament insist upon precluding other courts from inquiring into matters which are held to be within its own jurisdiction, the proper mode of effecting that object, is the next point to be determined. If the courts were willing to adopt the resolutions of the house as their guide, the course would be clear. The authority and adjudication of the house would be pleaded, and the courts, acting ministerially, would at once give effect to them. But if the courts regard a question of privilege as any other point of law, and assume to define the jurisdiction of the house,—in what manner, and at what point, can their adverse judgments be prevented, overruled, or resisted? The several modes that have been attempted, will appear from the following cases: but it must be premised that when a privilege of the Commons is disputed, that house labours under a peculiar embarrassment. If the courts admit the privilege, their decisions are liable to be reversed by the House of Lords; and thus, contrary to the law of Parliament, one house would be constituted a judge of the privileges claimed by the other. And if the privilege be denied by the courts, the house has no other remedy, in the ordinary course of law, but an ultimate appeal to the House of Lords. It is difficult to determine which alternative is the least satisfactory—the denial of a privilege by the Lords on a writ of error, or an application to them for redress, when the authority of the house has been discredited by an inferior tribunal. With these perplexities before them, it is not surprising that the Commons should frequently have viewed all legal proceedings, in derogation of their authority, as a breach of privilege and contempt. They have restrained suitors and their counsel by prohibition and punishment, they have imprisoned the judges, they have coerced the sheriff: but still the law has taken its course.

Having opened the principles of the controversy respecting parliamentary jurisdiction, it is time to proceed with a

narrative of the most important cases in which the privileges of Parliament have been called in question.

Case of Sir W. Williams.

Sir William Williams, speaker of the House of Commons, in the reigns of Charles II. and James II., had printed and published, by order of the house, a paper well known in the histories of that time, as Dangerfield's Narrative. This paper contained reflections upon the Duke of York, afterwards James II., and an information for libel was filed against the speaker, by the attorney-general, in 1684. He pleaded to the jurisdiction of the court, that as the paper had been signed by him, as speaker, by order of the House of Commons, the Court of King's Bench had no jurisdiction over the matter. On demurrer, this plea was overruled, and a plea in bar was afterwards made, but withdrawn; his plea, that the order of the house was a justification, was set aside by the court, without argument, as "an idle and insignificant plea;" and he was fined 10,000 *l.* Two thousand pounds of this fine were remitted by the king, but the rest he was obliged to pay. The Commons were indignant at this contempt of their authority, and declared the judgment to be an illegal judgment and against the freedom of Parliament.[1] It was also included in the general condemnation, by the bill of rights, of "prosecutions in the Court of King's Bench for matters and causes cognisable only in Parliament."[2] Three bills were brought in, in 1689, in 1690, and in 1695, to reverse this judgment: but they all miscarried, chiefly, it is understood, because it was proposed to indemnify the speaker out of the estate of Sir Robert Sawyer, who had filed the information, as attorney-general.[3]

Jay *v.* Topham.

The next important case is that of Jay *v.* Topham, in 1689. After a dissolution of Parliament, an action was brought in the Court of King's Bench against John Topham, esq., serjeant-at-arms, for executing the orders of the

[1] 12th July 1689, 10 Com. J. 215. Tr. 1370. Wynn's Argument, 10 Com. J. 177, 205.

[2] See 10 Com. J. 146. 177.

[3] 2 Shower, 471. 13 Howell St.

house in arresting certain persons. Mr. Topham pleaded to the jurisdiction of the court the said orders: but his plea was overruled, and judgment given against him. The house declared this judgment to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the cause, to the custody of the serjeant-at-arms.[1]

They had protested, in their examination, that they had not questioned the legality of the orders of the house, but had overruled, on technical grounds, the plea to the jurisdiction. They averred also, that if there had been a plea in bar, the defendant would have been entitled to a judgment.[2] Assuming the truth of their statements, it has been generally acknowledged that these proceedings against the judges were liable to great objection. Lord Ellenborough said, that it was surprising "how a judge should have been questioned, and committed to prison by the House of Commons, for having given a judgment which no other judge who ever sat in his place could have differed from." And Lord Denman, in Stockdale *v.* Hansard, said that this judgment was righteous, and that the judges "vindicated their conduct by unanswerable reasoning;"[3] and again, in Howard *v.* Gosset, he called the commitment of these judges "a flagrant abuse of privilege:" but, on the other hand, Lord Campbell has pointed out that there had been a plea in bar, which had been overruled, as stated in the petition of Topham to the House of Commons,[4] and that the authority of that house had, in fact, been questioned by the judges.[5]

White, &c.

The remarkable cases of Ashby and White, and the Aylesbury men, in 1704, are next worthy of a passing notice. They have been already alluded to in the second chapter, with reference to the right of determining elec-

[1] 10 Com. J. 227.

[2] 12 Howell, St. Tr. 829. 831.

[3] Shorthand writer's notes, 1839, (283), 149.
10 Com. J. 104.

[5] Shorthand writer's notes of argument in Stockdale *v.* Hansard, 76. 2 Lives of the Ch. Justices, 57. 2 Nelson's Abridg. 1248.

tions:[1] but they must again be brought forward, to point out the course adopted by the Commons, to stay actions derogatory to their privileges. Enraged by a judgment of the House of Lords, which held that electors had a right to bring actions against returning officers, touching their right of voting, the Commons declared that such an action was a breach of privilege; and, "that whoever shall presume to commence any action, and all attorneys, solicitors, counsellors, and serjeants-at-law, soliciting, prosecuting, or pleading in any case, are guilty of a high breach of the privileges of this house." In spite of this declaration, five burgesses of Aylesbury, commonly known as "the Aylesbury men," commenced actions against the constables of their borough, for not allowing their votes. The House of Commons obtained copies of the declarations, and resolved that the parties were "guilty of commencing and prosecuting actions," "contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges, of this house:"[2] for which offence, the parties and their attorney were committed to Newgate.[3] Thence they endeavoured to obtain their release by writs of habeas corpus, but without success; and the counsel who had pleaded for the prisoners, on the return of the writs, were committed to the custody of the serjeant-at-arms.[4] The Lords took part with the Aylesbury men against the Commons; and after a tumultuous session, occupied with addresses, conferences, and resolutions upon privilege, the queen prorogued the Parliament.

On this occasion, the Commons, consistently with ancient usage,[5] endeavoured to stop the actions at their commencement, and thus to prevent the courts from giving any judgment. But although this course of proceeding may chance to be effectual, an action cannot be legally obstructed, if the parties be determined to proceed with it. Their counsel

[1] See p. 57. [2] 14 Com. J. 444. [3] 14 Com. J. 445.
[4] 14 Com. J. 552. [5] See *supra*, 138.

may be prevented from pleading, but others would be immediately instructed to appear before the court; and it must not be forgotten, that during a recess, neither house could interfere with the parties or their counsel, and that judgment might be obtained and executed before the meeting of Parliament. This mode of preventing actions, however, is so natural, that it has since been resorted to: but the principle has not been uniformly asserted, and it is difficult to determine whether commencing such actions, in future, will be regarded as a breach of privilege or not.

Burdett *v.* Abbot; Burdett *v.* Colman.

When Sir Francis Burdett brought actions against the speaker and the serjeant-at-arms, in 1810, for taking him to the Tower in obedience to the orders of the House of Commons, they were directed to plead, and the attorney-general received instructions to defend them.[1] A committee at the same time reported a resolution, "that the bringing these actions, for acts done in obedience to the orders of the house, is a breach of privilege," but it was not adopted by the house. The actions proceeded in the regular course, and the Court of King's Bench sustained and vindicated the authority of the house.[2] The judgment of that court was afterwards affirmed, on a writ of error, by the Exchequer Chamber,[3] and ultimately by the House of Lords.[4]

Within the last few years a series of cases have arisen, in which the authority of the House of Commons, and the acts of its officers, have been questioned. They have caused so much controversy, and have been so fully debated and canvassed, that nothing is needed but a succinct statement of the proceedings, and a commentary upon the present position of parliamentary privilege and jurisdiction.

Printed Papers; Stockdale *v.* Hansard.

Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the reports of the inspectors of prisons, in one of which a book published by

[1] 65 Com. J. 355. 16 Hans. Deb. 1st. Ser., 915. 956. 969. Lord Colchester's Diary ii. 263–277.

[2] 14 East, 1.

[3] 4 Taunt. 401.

[4] 5 Dow. 165.

John Joseph Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard, during the recess in 1836, who pleaded the general issue, and proved the order of the house to print the report. This order, however, was held to be no defence to the action: but Stockdale had a verdict against him upon a plea of justification, as the jury considered the description of the work in question, to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, on the meeting of Parliament in 1837, to examine precedents, and to ascertain the law and practice of Parliament in reference to the publication of papers, printed by order of the house. The result of these inquiries was the passing of the following resolutions by the house:

"That the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interests, is an essential incident to the constitutional functions of Parliament, more especially of this house, as the representative portion of it.

"That by the law and privilege of Parliament, this house has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in Parliament, is a high breach of such privilege, and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon.

"That for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either house of Parliament thereon, is contrary to the law of Parliament, and is a breach and contempt of the privileges of Parliament."[1]

[1] 92 Com. J. 418.

Nothing could have been more comprehensive than these resolutions; they asserted the privilege, and denounced the parties, the counsel, and the courts who should presume to question it; yet Stockdale immediately commenced another action, and the house, instead of acting upon its resolutions, directed Messrs. Hansard to plead, and the attorney-general to defend them.

In the former case, Messrs. Hansard had obtained judgment upon a plea which would have availed them equally if they had printed the report upon their own account, like any other bookseller: but in the second action the privileges and order of the house were alone relied upon in their defence, and the Court of Queen's Bench unanimously decided against them.

Damages paid.

Still the House of Commons was reluctant to act upon its own resolutions, and instead of punishing the plaintiff, and his legal advisers, "under the special circumstances of the case," it ordered the damages and costs to be paid. The resolutions, however, were not rescinded, and it was then determined that, in case of future actions, Messrs. Hansard should not plead at all, and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person, and for the publication of the same report. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury, in the Sheriffs' Court, at 600 *l.* The sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they were anxious to delay paying the money to Stockdale as long as possible, in order to avoid its threatened displeasure.

Commitment of the sheriffs.

At the opening of the session of Parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, which had been carried on in spite of its resolutions, and in the first place committed Stockdale to the custody of

the serjeant-at-arms. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. The sheriffs retained possession of the money until an attachment was issued from the Court of Queen's Bench,[1] when they paid it over to Stockdale. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence; and Messrs. Hansard were again ordered not to plead. Once more judgment was entered up against them, and a writ of inquiry of damages issued.

Mr. France, the under-sheriff, upon whom the execution of this writ devolved, having been served with the resolutions of the Commons, expressed by petition his anxiety to pay obedience to them, and sought the protection of the house. He then obtained leave to show cause before the Court of Queen's Bench, on the fourth day of Easter term, why the writ of inquiry should not be executed.

Meanwhile the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions. Mr. Howard's son, and his clerk, Mr. Pearce, having been concerned in conducting such actions, were committed for the contempt; and Messrs. Hansard, as before, were instructed not to plead. At length, as there appeared to be no probability of these vexatious actions being discontinued, a bill was introduced into the Commons, by which proceedings, criminal or civil, against persons for publication of papers printed by order of either house of Parliament, are to be stayed by the courts, upon delivery of a certificate and affidavit that such publication is by order of either house of Parliament. This bill was agreed to by the Lords, and received the royal assent.[2] It has removed one ground for disputing the authority of Parliament:[3] but has left the

Act for the publication of papers.

[1] 11 Adolphus & Ellis, 253.

[2] 3 & 4 Vict. c. 9.

[3] The action of Harlow *v.* Hansard was stayed 14th July 1845, by Mr. Justice Wightman in chambers, on the production of the speaker's certificate.

general question of privilege and jurisdiction in the same uncertain state as before.

Howard *v.* Gosset and others.

In executing the speaker's warrant for taking Mr. Howard into custody, the officers employed by the serjeant-at-arms for that purpose had remained some time in his house, during his absence, for which he brought an action of trespass against them. As it was possible that they might have exceeded their authority, and as the right of the house to commit was not directly brought into question, the defendants were, in this case, permitted to appear, and defend the action ;[1] although a clause for staying further proceedings in the action was contained in the bill which was pending, at that time, in the House of Lords, where it was afterwards omitted.

This action after some delay, proceeded to trial. On the 15th June 1842, the serjeant-at-arms informed the house that he had received a subpœna to attend the trial on the part of the defendants ; and leave was given to him to attend and give evidence. At the same time the clerk of the journals, who had received a subpœna, had leave to attend and give evidence, and to produce the journal of the house.[2] The cause was tried before Lord Denman, in the sittings after Michaelmas term, 1842, when Parliament was not sitting, and a verdict was given for the plaintiff, with 100 *l.* damages.[3] This verdict, however, did not proceed upon any question of the jurisdiction of the house; but simply on the ground that the officers had exceeded their authority, by remaining in the plaintiff's house, after they were aware of his absence from home. The attorney-general, who appeared in their defence, admitted that they were not justified in their conduct ; and the case can scarcely be cited as one of privilege.

Howard's second action.

But other actions were afterwards commenced by Mr. Howard against Sir William Gosset and other officers of

[1] 95 Com. J. 236. Hans. Deb. 31st March 1840.

[2] 97 Com. J. 378.

[3] 11 Adolphus & Ellis, 273.

the house, for taking him into custody, and conveying him to Newgate, in obedience to orders of the house, and the speaker's warrants.[1] The house gave all the defendants leave to appear and defend the actions, and directed the attorney-general to defend them.[2] The only action that came on for trial was that against the serjeant himself: but three other actions were commenced against the officers of the house, in one of which the damages were laid at 100,000 *l.*

The second action of Howard *v.* Gosset came on for trial on the 15th November 1844; and the circumstances in which it originated, and the results to which it led, may be briefly described. Mr. Howard, having expressed his regret for commencing Stockdale's third action against Messrs. Hansard, had been reprimanded by the speaker and discharged; when he immediately commenced a fourth action. He was then ordered to attend the house forthwith: but it appeared from the evidence of the messengers, that he was wilfully evading the service of the order, and could not be found. The house, instead of resolving that he was in contempt, adopted the precedent of 31st March 1771,[3] and, according to ancient custom, ordered that he should be sent for in the custody of the serjeant-at-arms,[4] and that Mr. Speaker should issue his warrant accordingly. The warrant was in the following form:

Form of warrant.

"Whereas the House of Commons have this day ordered that Thomas Burton Howard be sent for in the custody of the serjeant-at-arms attending this house: these are therefore to require you to take into your custody the body of the said Thomas Burton Howard," &c. &c.

Howard was taken into custody on this warrant, and brought to the bar; and it was for this arrest that the action of trespass was brought. Pleas were put in justifying the acts of the serjeant, under the authority of the warrant, to which there were special demurrers, denying their sufficiency in law.

[1] 98 Com. J. 59. [2] Ib. 118. Hans. Deb. 15th March 1843.
[3] 21 Com. J. 705. [4] 95 Com. J. 30.

Arguments and judgment.

In the argument it was contended, not only that the warrant was informal, but that the house had exceeded its jurisdiction in sending for a person in custody, without having previously adjudged him guilty of a contempt. The house might have sent for him, it was urged, and when he did not appear, have declared him in contempt, and committed him for his offence: but they had no right to bring him in custody, and thus imprison him upon a charge, instead of on conviction. This doctrine, however, was not supported by the court: but judgment was given for the plaintiff on other grounds. The three judges whose opinion was for the plaintiff, each differed as to the grounds of the judgment. Mr. Justice Wightman thought the warrant technically bad, because in the mandatory part it merely directed the serjeant to take the plaintiff into custody, whereas in the recital it appeared that he was to be sent for in custody. Mr. Justice Coleridge differed upon this point, and thought the mandatory part was to be read with the recital, and thus made consistent. His main objection to the warrant was, that it did not express the cause for which the plaintiff was to be sent for. From this opinion, again, Lord Denman expressed his dissent; but thought the warrant otherwise bad. On the other hand, Mr. Justice Williams was of opinion that there should be judgment for the defendant. The grounds upon which the judgment was pronounced were so far technical, that the judges considered that no question of privilege was involved in their decision; and "that the form of the warrants issued by Mr. Speaker, by order of the house, may be questioned and adjudged to be bad, without impugning the authority of the house, or in any way disputing its privileges." From this doctrine a committee of the Commons[1] entirely dissented. "They could not admit the right of any court of law to decide on the propriety of those forms of warrants which the house, through its highest officer, has thought proper to

[1] 2nd Rep. on Printed Papers, 1845 (397), p. vi.

adopt on any particular occasion. If the highest court of law has this right, it is impossible to deny it to the lowest." The committee, in considering the course to be adopted by the house, in consequence of this judgment, thus expressed the difficulties of their situation :—

"They are not insensible to the public evil which might result from the adoption by the House of Commons of decisive measures for resisting the execution of a judgment of a court of law. They are not without apprehension that such measures may hereafter become inevitable; but they entertain a strong conviction that it would be inexpedient for the house needlessly to precipitate such a crisis; and they think that every other legitimate mode of asserting and defending its privileges should be exhausted before it resorts to the exercise of that power which it possesses, of preventing, by its own authority, the further progress of an action in which judgment has been obtained."

Writ of error.

The house concurred in the opinion of the committee, and ordered that a writ of error be brought upon the judgment of the Court of Queen's Bench.[1] In the meantime, in order to avoid "submitting to abide by the judgment of the court of error, in the event of its being adverse," the serjeant was not authorised to give bail, and execution was levied on his goods.[2] Judgment was given by the Court of Exchequer Chamber, on the writ of error, on the 2nd February 1847, when the judgment of the court below was reversed by the unanimous opinion of all the judges of whom the court was composed. They found, "that the privileges involved in this case are not in the least doubtful, and the warrant of the speaker is, in our opinion, valid, so as to be a protection to the officer of the house."[3]

Lines *v* Russell.

On the 19th February 1852, the serjeant-at-arms acquainted the house that he had been served with a writ and declaration, at the suit of William Lines, a witness before the St. Alban's Election Committee of the previous session, whom he had taken into custody by virtue of a warrant from the chairman of that committee. The serjeant stated,

[1] 100 Com. J. 642. See also Hans. Deb. 30th May and 26th June 1845.

[2] 100 Com. J. 562.

[3] Shorthand writer's notes, 1847 (39), p. 164. See also *supra*, p. 167.

that before he pleaded, he thought it necessary to make this fact known to the house.[1] On the following day the house resolved, that the serjeant have leave to plead to and defend the action.[2] He pleaded accordingly, and it was held that he was justified by the warrant.[3]

Present position of privilege.

Thus far the course adopted by the house has led, for the present, to a fortunate termination of its contests with the courts of law; but, if any judgment had been ultimately adverse to their privileges, they would have been involved in still greater embarrassments. It is to be hoped that further contests may be very remote: but it must be acknowledged that the present position of privilege is, in the highest degree, unsatisfactory. Assertions of privilege are made in Parliament, and denied in the courts; the officers who execute the orders of Parliament are liable to vexatious actions; and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege, which does not stay the actions. If Parliament were to act strictly upon its own declarations, it would be forced to commit not only the parties, but their counsel and their attorneys, the judges, and the sheriffs; and so great would be the injustice of punishing the public officers of justice for administering the law according to their consciences and oaths, that Parliament would shrink from so violent an exertion of privilege. And again, the intermediate course adopted in the case of Stockdale *v.* Hansard, of coercing the sheriff for executing the judgment of the court, and allowing the judges who gave the obnoxious judgment to pass without censure, is inconsistent in principle, and betrays hesitation on the part of the house—distrust of its own authority, or fear of public opinion.

[1] 107 Com. J. 64. [2] 107 Com. J. 68. [3] See *supra*, 78.

Remedy by statute.

A remedy has already been applied to actions connected with the printing of parliamentary papers; and a well considered statute, founded upon the same principle, is the only mode by which collisions between Parliament and the courts of law can be prevented for the future. The proper time for proposing such a measure is when no contest is pending, and when its provisions may be calmly examined, without reference to a particular privilege, or a particular judgment of the courts. It is not desired that Parliament should, on the one hand, surrender any privilege that is essential to its dignity, and to the proper exercise of its authority; nor, on the other, that its privileges should be enlarged.[1] But some mode of enforcing them should be authorised by law, analogous to an injunction issued by a court of equity to restrain parties from proceeding with an action at common law, and even with a private bill, or an opposition to a private bill, in Parliament;[2] and such a prohibition should be made binding, not only upon the parties, but upon the courts.

[1] These views, expressed long since, receive confirmation from a letter of Lord Jeffrey, 2 Cockburn's Life, 353.

[2] Hartlepool Junction Railway Bill, 1848. See 100 Hans. Deb. 3rd Series, 783. North Staffordshire Railway Bill, 1850. Stockton and Hartlepool Railway Company *v.* Leeds and Thirsk and Clarence Railway Companies, 5 Railway and Canal Cases, 691. Kingstown Township Bill, 1873.

BOOK II.

PRACTICE AND PROCEEDINGS IN PARLIAMENT.

CHAPTER VII.

INTRODUCTORY REMARKS. MEETING OF A NEW PARLIAMENT. ELECTION AND ROYAL APPROBATION OF THE SPEAKER OF THE COMMONS. OATHS. QUEEN'S SPEECH AND ADDRESSES IN ANSWER. PLACES OF PEERS AND MEMBERS OF THE HOUSE OF COMMONS. ATTENDANCE ON THE SERVICE OF PARLIAMENT. OFFICE OF SPEAKER IN BOTH HOUSES. PRINCIPAL OFFICERS. JOURNALS. ADMISSION OF STRANGERS. PROROGATION.

Introductory remarks.

THE proceedings of Parliament are regulated chiefly by ancient usage, or by the settled practice of modern times, apart from distinct orders and rules: but usage has frequently been declared and explained by both houses, and new rules have been established by positive orders and resolutions.

Ancient usage.

Ancient usage, when not otherwise declared, is collected from the Journals, from history and early treatises, and from the

Modern practice.

continued experience of practised members. Modern practice is often undefined in any written form; it is not recorded in the Journals; it is not to be traced in the published debates; nor is it known in any certain manner but by personal experience, and by the daily practice of Parliament, in conducting its various descriptions of business.

Numerous orders and resolutions for regulating the proceedings of Parliament are to be found in the Journals of

both houses, which may be divided into: 1, standing orders; 2, sessional orders; and 3, orders or resolutions, undetermined in regard to their permanence.

Standing orders.

1. Both houses have agreed, at various times, to standing orders, for the permanent guidance and order of their proceedings; which, if not vacated or repealed,[1] endure from one Parliament to another, and are of equal force in all. They occasionally fall into desuetude, and are regarded as practically obsolete: but, by the law and custom of Parliament, they are binding upon the proceedings of the house by which they were agreed to, as continual bye-laws, until their operation is concluded by another vote of the house, upon the same matter.

In the House of Lords particular attention is paid to the making and recording of standing orders. No motion may be granted for making a standing order, or for dispensing with one, the same day it is made, nor before the house has been summoned to consider it;[2] and every standing order, when agreed to, is added to the "Roll of Standing Orders," which is carefully preserved, and published from time to time. Until 1854, no authorised collection of the standing orders of the House of Commons had ever been compiled, except in relation to private bills.[3]

Sessional orders.

2. At the commencement of each session both houses agree to certain orders and resolutions, which, from being constantly renewed from year to year, are evidently not intended to endure beyond the existing session. They are few in

[1] In the Lords, the rescinding of a standing order is termed "vacating;" in the Commons, "repealing." The earliest example of a standing order being repealed, was on the 21st. Nov. 1722, 20 Com. J. 61. On the 23rd May 1678, certain standing orders against written protections were ordered to be published by being set up in Westminster Hall. Sometimes resolutions of a former session are read and made standing orders.

[2] Lords' S. O. No. 39.

[3] In 1854, a manual of "Rules, Orders, and Forms of Proceeding of the House of Commons, relating to Public Business," was drawn up by the author of this work, under the direction of the Speaker; and was printed by order of the house in 1854, and in each succeeding Parliament.

number, and have but a partial effect upon the business of Parliament.

Orders and resolutions.

3. The operation of orders or resolutions of either house, of which the duration is undetermined, is not settled upon any certain principle. By the custom of Parliament they would be concluded by a prorogation: but many of them are practically observed and held good, in succeeding sessions, and by different Parliaments, without any formal renewal or repetition. In such cases, it is presumed that the house regards its former orders as declaratory of its practice; and that without relying upon their absolute validity, it agrees to adhere to their observance, as part of the settled practice of Parliament.[1]

Statutes and prerogative.

In addition to these several descriptions of internal authority, by which the proceedings of both houses are regulated, they are governed, in some few particulars, by statutes and by royal prerogative.

Plan of the second book.

The proceedings of Parliament will now be followed in the order which appears the best adapted for rendering them intelligible, without repetition, and apart from any presumption of previous knowledge on the part of the reader. For which purpose, it is proposed, in this chapter, to present an outline of the general forms of procedure, in reference to the meeting, sittings, adjournment, and prorogation of Parliament; and, in future chapters, to proceed to the explanation of the various modes of conducting parliamentary business, with as close an attention to methodical arrangement, as the diversity of the subjects will allow. Where the practice of the two houses differs, the variation will appear in the description of each separate proceeding: but wherever there is no difference, one account of a rule or form of proceeding, without more particular explanation, must be understood as applicable equally to both houses of Parliament.

Meeting of a new Parliament.

On the day appointed by royal proclamation for the first

[1] See Report of Committee on Jewish Relief Act, 1859 Sess. 1, No. 205; and 152 Hans. Deb. 3rd Ser. 459.

meeting of a new Parliament for despatch of business,[1] the members of both houses assemble in their respective chambers. In the House of Lords, the lord chancellor acquaints the house, "that her Majesty not thinking it fit to be personally present here this day, had been pleased to cause a commission to be issued under the great seal, in order to the opening and holding of this Parliament." The five lords commissioners being in their robes, and seated on a form between the throne and the woolsack, then command the gentleman usher of the black rod to let the Commons know "the lords commissioners desire their immediate attendance in this house, to hear the commission read."

Commons attend in the House of Peers.

Meanwhile, the clerk of the Crown in Chancery has delivered to the clerk of the House of Commons a book, containing the names of the members returned to serve in the Parliament; after which, on receiving the message from the black rod, the Commons go up to the House of Peers. The lord chancellor there addresses the members of both houses, and acquaints them that her Majesty has been pleased "to cause letters patent to be issued, under her great seal, constituting us, and other lords therein mentioned, her commissioners, to do all things in her Majesty's name, on her part necessary to be performed in this Parliament," &c. These letters patent are next read at length by the clerk; after which the lord chancellor, acting in obedience to these general directions,[2] again addresses both houses, and acquaints them,

[1] See *supra*, p. 49.

[2] On the opening of a new Parliament, the Commissioners, without any express directions to that effect in the Commission, direct the Commons to elect a speaker, and afterwards signify Her Majesty's approval. But when a vacancy occurs in the office of speaker, during a session, a special commission is required to signify the Queen's approval. (Mr. Speaker Shaw Lefevre, 1839; Mr. Speake; Brand, 1872). Mr. Speaker Evelyn Denison having resigned very early in the session of 1872, it was suggested that the Commissioners, under the recent Commission for opening and holding Parliament, were empowered to signify this approval. After full consideration, however, it was determined by the Lord Chancellor that a new commission was required, the

"That her Majesty will, as soon as the members of both houses shall be sworn, declare the causes of her calling this Parliament; and it being necessary a speaker of the House of Commons should be first chosen, that you, gentlemen of the House of Commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your speaker; and that you present such person whom you shall so choose, here, to-morrow (at an hour stated), for her Majesty's royal approbation."[1]

In 1868, an exceptional course, in the opening of Parliament, was rendered necessary by peculiar circumstances. Parliament had been dissolved in November, and was to meet on Thursday 10th December. A week before this time, however, ministers resigned, and Mr. Gladstone was summoned to Windsor to form a new administration, which was sworn in on the 9th December. To have prorogued Parliament, at so short a notice, would have been highly inconvenient: while without any ministers in the House of Commons, and without previous consultation, it was not possible to open Parliament in the accustomed manner, with a Queen's speech and addresses from both houses. A precedent was found in December 1765, when the Rockingham ministry having come into office during the recess, the king, in person, opened Parliament in a speech, in which he adverted briefly to the troubles then commencing in the American colonies, but said he had then called Parliament together to give an opportunity of issuing writs. This precedent, however, was so far objectionable, as the speech having all the usual solemnities, required addresses in

Commissioners who opened Parliament being *functi officio*. In all similar cases, there had been a commission; but it happened that on each of those occasions, Parliament had been opened by the king or queen in person.

[1] The forms here described have been in use, with little variation, since the 12th Anne (1713). Before that time, the sovereign usually came down on the first day of the new Parliament, and on one occasion, Queen Anne came down three times, viz. to open Parliament, to approve the speaker, and to declare the causes of summons in a speech from the throne (1707), 15 Com. J. 393; 17 Ib. 472. In 1774, 1780, 1784, and 1790, George III. came down, on the first day, when the Commons were directed to choose their speaker, 35 Com. J. 5; 38 Ib. 5; 40 Ib. 5; 46 Ib. 5.

answer, and was, in fact, the occasion of amendments and debates.[1] A more convenient course was therefore taken. Instead of a Queen's speech, the lords' commissioners, under the great seal for opening and holding the Parliament, had it further in command to acquaint both houses that since the time when Her Majesty had deemed it right to call them together, several vacancies had been caused by the acceptance of office from the Crown; and that it was Her Majesty's pleasure that an opportunity should now be given to issue writs, and that after a suitable recess they might proceed to the consideration of such matters as would then be laid before them.[2] By this proceeding, which was merely formal, the necessity of addresses was avoided: there were no debates: the new writs were issued, and both houses adjourned.[3]

Proceedings in the Lords.

When Parliament is opened, in the usual manner, the Commons withdraw immediately after the Queen's pleasure for the election of a speaker, has been signified, and return to their own house, while the House of Lords is adjourned during pleasure, to unrobe. On that house being resumed, the prayers, with which the business of each day is commenced, are read for the first time, by a bishop,[4] or if no bishop be present, by any peer in holy orders,[5] or if there be none present, then by the lord chancellor or lord on the woolsack, or by any peer who may be in the house.[6] The lord chancellor first takes and subscribes the oath singly, at the table. The clerk of the Crown delivers a certificate of the return of the sixteen representative peers of Scotland; and Garter king of arms the roll of the lords temporal;

Prayers.

[1] 17th December 1765, 31 Lords' J. 223.

[2] 15th December 1868, Votes p. 6.

[3] In 1828, when there was a change of ministry, during the recess, no such preliminaries were deemed necessary. On the 29th January, sixteen new writs were moved; but the King's speech was delivered as usual, and the debate upon the address was conducted as if nothing had happened.

[4] Usually the junior bishop, *i. e.* the bishop last admitted to the house.

[5] 73 Lords' J. 568.

[6] 26 Ib. 138. 157.

after which the lords who are present, present their writs[1] at the table, and take and subscribe the oath required by law.[2] A peer of the blood royal takes the oath singly, like the lord chancellor.[3]

Introduction of peers.

At this time, also, peers are introduced who have received writs of summons, or who have been newly created by letters patent, and they present their writs or patents to the lord chancellor, kneeling on one knee.[4] They are introduced in their robes, between two other peers of their own dignity, also in their robes, and are preceded by the gentleman usher of the black rod (or in his absence by the yeoman usher), by Garter king of arms (or in his absence by Clarenceux king of arms, or any other herald officiating for Garter king of arms), and by the earl marshal, and lord great chamberlain. It is not necessary, however, that the two last officers should be present. Being thus introduced, peers are conducted to their seats, according to their dignity.

When a new representative peer of Ireland has been elected, he is not introduced, but simply takes and subscribes the oath. The clerk of the Crownin Ireland attends with the writs and returns, with his certificate annexed, which certificate is read and entered on the journal.[5]

And bishops.

A bishop is introduced by two other bishops, presents his writ, on his knee, to the lord chancellor, and is conducted to his seat amongst the spiritual lords: but without some of the formalities observed in the case of the temporal peers.

Peers by descent.

With regard to peers by descent, or by special limitation in remainder, there are the following standing orders:

[1] A new writ is issued to every peer, except Scotch representative peers, at the commencement of each new Parliament. A peer by descent, before he can take his seat for the first time, is required to prove his right to the satisfaction of the lord chancellor.

[2] See Appendix.

[3] 89 Lords' J. 26 Ib. (Duke of Edinburgh) 98 Ib. 382.

[4] 73 Lords' J, 569; 89 Ib. 6. For proceedings on the introduction of the Prince of Wales, see Lords' Minutes, Feb. 5th, 1863.

[5] 73 Lords' J. 575.

"That all peers of this realm by descent, being of the age of one and twenty years, have right to come and sit in the House of Peers without any introduction.

"That no such peers ought to pay any fee or fees to any herald upon their first coming into the House of Peers.

"That no such peers may or shall be introduced into the House of Peers by any herald, or with any ceremony, though they shall desire the same, &c.[1]

"That every peer of this realm claiming by virtue of a special limitation in remainder, and not claiming by descent, shall be introduced."[2]

By special limitations in remainder.

Election of a speaker by the Commons.

The Commons, in the meantime, proceed to the election of their speaker. A member, addressing himself to the clerk (who, standing up, points to him, and then sits down), proposes to the house some other member then present, and moves that he, "do take the chair of this house as speaker," which motion is seconded by another member.[3] If no other member be proposed as speaker, the motion is ordinarily supported by an influential member (generally the leader of the House of Commons),[4] and the member proposed is called by the house to the chair, without any question being put.[5] He now stands up in his place, and expresses his sense of the honour proposed to be conferred upon him, and submits himself to the house; the house again unanimously call him to the chair, when his proposer and seconder take him out of his place, and conduct him to the chair. If another member be proposed, a similar motion is made and seconded in regard to him; and both the candidates address themselves to the house. A debate ensues in relation to the claims of

[1] Lords' S. O. No. 55.

[2] Ib. No. 56.

[3] Mr. Pitt was desirous of proposing Mr. Addington himself: but Mr. Hatsell on being consulted said, "I think that the choice of the speaker should not be on the motion of the minister. Indeed an invidious use might be made of it, to represent you as the friend of the minister, rather than the choice of the house." Mr. Pitt acknowledged the force of this objection. 1 Pellew's Life of Lord Sidmouth, 78, 79. A county and a borough member are generally selected for proposing and seconding the speaker. In 1868, a borough and an university member performed this office.

[4] 96 Com. J. 463.

[5] 108 Com. J. 7; Hans. Deb. 4th November 1852. 2 Hatsell, 218 and *note*. 112 Com. J. 119; 114 Ib. 191; 121 Ib. 9.

each candidate, in which the clerk continues to act the part of speaker, standing up and pointing to the members as they rise to speak, and then sitting down. When this debate is closed, the clerk puts the question that the member first proposed "do take the chair of this house as speaker," and if the house divide, he directs one party to go into the right lobby, and the other into the left lobby, and appoints two tellers for each.[1] If the majority be in favour of the member first proposed, he is at once conducted to the chair: but if otherwise, a similar question is put in relation to the other, which being resolved in the affirmative, that member is conducted to the chair by his proposer and seconder.[2]

Speaker elect returns thanks.

The speaker elect, on being conducted to the chair, stands on the upper step and "expresses his grateful thanks,"[3] or "humble acknowledgments,"[4] "for the high honour the house had been pleased to confer upon him;" and then takes his seat. The mace, which up to this time has been under the table, is now laid upon the table, where it is always placed during the sitting of the house, with the speaker in the chair.[5] Mr. Speaker elect is then congratulated by some leading member, and the house adjourns.

The mace.

Royal approbation of the speaker elect.

The house meets on the following day, and Mr. Speaker elect takes the chair and awaits the arrival of the black rod, from the lords commissioners. When that officer has delivered his message, Mr. Speaker elect, with the house, goes up to the House of Peers, and acquaints the lords commissioners,—

"that in obedience to her Majesty's commands her Majesty's faithful

[1] Election of Mr. Shaw Lefevre, 94 Com. J. 274. It had previously been the custom to appoint one teller only, for each party. See Chap. XII., DIVISIONS.

[2] Election of Mr. Abercromby, 9th February 1835, 90 Com. J. 5.

[3] 90 Com. J. 5.

[4] 96 Ib. 465; 103 Ib. 7; 108 Ib. 7; 112 Ib. 119, &c.

[5] The present mace dates from the restoration of Charles II., when a new mace was ordered, 21st May 1660. 8 Com. J. 39. After the death of Charles I., in 1648, a new mace had been made, which was the celebrated "bauble" taken away by Cromwell's order, on the 19th April 1653, and restored on the 8th July of the same year. 6 Ib. 166; 7 Ib. 282.

Commons, in the exercise of their undoubted right and privilege, have proceeded to the election of a speaker, and as the object of their choice he now presents himself at your bar, and submits himself with all humility to her Majesty's gracious approbation."

In reply, the lord chancellor assures him of her Majesty's sense of his sufficiency, and "that her Majesty most fully approves and confirms him as the speaker."[1]

Lays claim to the privileges of the Commons.

When the speaker has been approved, he lays claim, on behalf of the Commons, "by humble petition to her Majesty, to all their ancient and undoubted rights and privileges," which being confirmed, the speaker, with the Commons, retires from the bar of the House of Lords.

Speaker elected for the whole Parliament.

Vacancy during the session.

The speaker thus elected and approved, continues in that office during the whole Parliament, unless in the meantime he resigns, or is removed by death. In the event of a vacancy during the session, similar forms are observed in the election and approval of a speaker:[2] except that instead of her Majesty's desire being signfied by the lord chancellor in the House of Lords, a minister of the Crown, in the Commons, acquaints the house that her Majesty "gives leave to the house to proceed forthwith to the choice of a new speaker;"[3] and when the speaker has been chosen, the same minister acquaints the house that it is her Majesty's pleasure that the house should present their speaker to-morrow (at an hour stated) in the House of Peers, for her

[1] 80 Lords' J. 8; 89 Ib. 7, &c. It was formerly customary for the speaker elect to declare that he felt the difficulties of his high and arduous office, and that, "if it should be her Majesty's pleasure to disapprove of this choice, her Majesty's faithful Commons will at once select some other member of their house, better qualified to fill the station than himself."

[2] These forms preclude the proposal of any member as speaker during the session, who has not taken the oaths and his seat. See case of Mr. Charles Dundas, proposed by Mr. Sheridan, 11th February 1801. 35 Parl. Hist. 951; 1 Pellew's Life of Sidmouth, 304. In 1822, this consideration prevented Mr. Speaker Manners Sutton from vacating his seat, in order to stand for the University of Cambridge. 1 Court and Cabinets of Geo. IV. 394; Lord Colchester's Diary, iii. 260.

[3] 94 Com. J. 274. 127 Ib. 23. For probably the earliest instance of proceedings on the death of a speaker, see 1 Com. J. 116; 1 Parl. Hist. 811.

Majesty's royal approbation. Mr. Speaker elect puts the question for adjournment, and when the house adjourns, he leaves the house, without the mace before him. On the following day the royal approbation is given by the lords commissioners under a commission for that purpose, with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted.[1]

Exceptions to these forms.

The ceremony of receiving the royal permission to elect a speaker, and the royal approbation of him when elected, has been constantly observed, except during the civil war and the commonwealth, and on three other occasions, when from peculiar circumstances it could not be followed.

1. Previous to the Restoration in 1660, Sir Harbottle Grimston was called to the chair without any authority from Charles II., who had not yet been formally recognised by the Convention Parliament.[2] 2. On the meeting of the Convention Parliament on the 22nd January 1688, James II. had fled, and the Prince of Orange had not yet been declared king; when the Commons chose Mr. Henry Powle as speaker, by their own authority.[3] 3. Mr. Speaker Cornwall died on the 2nd January 1789, at which time George III. was mentally incapable of attending to any public duties: and on the 5th, the house proceeded to the choice of another speaker, who immediately took his seat, and performed all the duties of his office.[4]

So strong had been the sense of the Commons, of the necessity of having their choice confirmed, that in 1647, when the king had been delivered up by the Scots, and was under the guard of the Parliament and the army, they resorted to the singular expedient of presenting their

[1] 71 Lords' J. 308; 11 Com. J. 272; 94 Ib. 274; 1 Pellew's Life of Lord Sidmouth, 304. On the election of Mr. Addington in 1789, the king himself came down to the House of Lords, to signify his approbation in person. 44 Com. J. 435; 1 Pellew's Life of Lord Sidmouth, 66–68.

[2] 8 Com. J. 1.

[3] 10 Ib. 9.

[4] 44 Ib. 45.

speaker, Mr. Henry Pelham, to the Lords, who signified their approval.[1]

Royal approbation refused.

The only instance of the royal approbation being refused was in the case of Sir Edward Seymour in 1678.[2] Sir John Popham, indeed, had been chosen speaker in 1449, but his excuse being admitted by the king, another was chosen by the Commons in his place;[3] and Sir Edward Seymour, who knew that it had been determined to take advantage of his excuse, purposely avoided making any, so as not to give the king an opportunity of treating him in the same manner as his predecessor had been treated in a former reign.[4]

Oaths in the Commons.

The speaker on returning from the Lords, reports to the house his approval by her Majesty, and her confirmation of their privileges, and "repeats his most respectful acknowledgments to the house for the high honour they have done him." He then puts the house in mind that the first thing to be done is to take and subscribe the oath required by law;[5] and himself first, alone, standing upon the upper step of the chair, takes and subscribes the oath accordingly; in which ceremonies he is followed by the other members who are present. On the following day, the daily prayers are read, for the first time, by Mr. Speaker's chaplain.[6]

[1] 5 Com. J. 259, 260; 5 Clarendon Hist. 462.

[2] 6th March 1678–79. 4 Parl. Hist. 1092; 6 Grey's Deb. 404 *et seq.* 424. Mr. Parry inadvertently states that Mr. Serjeant Gregory was elected on that day, and rejected by the king (Parliaments and Councils of England, 586); but the latter was not elected until the 17th, after a short prorogation, by which the contention between the Court and the Commons, arising out of the disapproval of Sir E. Seymour, had been compromised.

[3] 1 Hans. Parl. Hist. 385; 5 Rot. Parl. 171. The excuse was genuine, Sir J. Popham being an old soldier, who had been wounded in the wars of the late reigns. His excuse is entered "debilitate sui corporis, guerrarum fremitibus . . . ac diversarum infirmitatum vexationibus, necnon senii gravitate multipliciter depressi."

[4] See also the case of John Cheyne, 1st Hen. IV., 1399, who excused himself on account of illness, after he had been approved by the king. 3 Rot. Parl. 424.

[5] The "out-door oaths," formerly taken by members of both houses before the lord steward, were abolished by 1 & 2 Will. IV., c. 9.

[6] In case of the accidental absence of the chaplain, Mr. Speaker reads

The speaker also, for the first time, now counts the house, and cannot take the chair, until forty members are present;[1] as there is no commission on that day, to make a house, and the oath is required, by statute, to be taken whilst a full House of Commons is there duly sitting, with their speaker in his chair. The members continue to take the oath on that and the succeeding day, after which the greater part are sworn, and qualified to sit and vote.[2]

Oaths formerly taken.

The oaths of allegiance, supremacy, and abjuration were formerly prescribed by the statutes 30 Chas. II., stat. 2, the 13th Will. III., c. 6, and 1 Geo. I., stat. 2, c. 13; and were required to be taken by every member. By the 10 Geo. IV., c. 7, a special oath was provided for Roman Catholic members. But by the 21st & 22nd Vict. c. 48, one oath for Protestant members was substituted for the oaths of allegiance, supremacy, and abjuration; and by the 29th & 30th Vict. c. 19, a single oath was prescribed for members of all religious denominations in the following form:—"I —— do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."[3]

One oath substituted for former oaths.

prayers, as was done once by Mr. Speaker Abercromby, and three times by his successor. On the last of these occasions (May 8th, 1856), the speaker was in his full dress robes, the house having met to proceed to Buckingham Palace with an address. On the 26th July 1858, and on the 31st March 1860, Mr. Speaker Denison also read prayers. Chaplains or ministers were first appointed "to pray with the house daily," during the long Parliament. 3 Com. J. 365; 7 Ib. 366. 424. 595. Before that time prayers had been read by the clerk, and sometimes by the speaker. On the 23rd March 1603, prayers "were read by the clerk of the house (to whose place that service anciently appertains), and one other special prayer, fitly conceived for that time and purpose, was read by Mr. Speaker; which was voluntary, and not of duty or necessity, though heretofore of late time the like hath been done by other speakers." 1 Com. J. 150. On the 8th June 1657, there being no minister present, and it being uncertain whether the speaker or clerk should read prayers, the house proceeded to business without any prayers. 2 Burton's Diary, 191.

[1] 2 Hatsell, 173.

[2] See 1 Pellew's Life of Sidmouth 176.

[3] In one case, an attempt was made to obtain from a member, who was about to bring forward a motion, a re-

Time and manner of taking the oath.

The oaths were required, by former statutes, to be "solemnly and publicly made and subscribed" between the hours of nine in the morning and four in the afternoon, at the table, in the middle of the house, and whilst a full house is there, with their speaker "in his place," or "in his chair."

This provision caused the ordinary meeting of the House of Commons to be fixed for a quarter before four o'clock in the afternoon; and the appearance of a member to be sworn, before four o'clock, interrupted any other business.[1]

By the recent Act, the same solemnities are to be observed: but the oath may be taken at such hours and according to such regulations as each house may, by its standing orders, direct. Until 1843, the time for taking the oaths, by both houses, continued limited to the hours between nine and four: but, by 6 & 7 Vict., c. 6, the Lords were enabled to take the oaths until five o'clock in the afternoon. After the passing of the new Oaths Act, the Lords agreed to a standing order, 3rd May 1866, requiring the oath to be taken, as usual, between the hours of nine and five. But the House of Commons by standing order, 30th April 1866, provided,—

"That members may take and subscribe the oath required by law, at any time during the sitting of the house, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of: but no debate or business shall be interrupted for that purpose."

Refusal to take oaths.

When the oaths of allegiance and supremacy were required, members who refused to take them were adjudged by the house to be disqualified by the statutes from sitting, and new writs were issued in their room. Soon after the Revolution of 1688, Sir H. Mounson and Lord Fanshaw refused to take the oaths, and were discharged from being

pudiation of statements made elsewhere, which were alleged to be at variance with the oath he had taken: but the speaker stated that it was no part of his duty to determine what was consistent with that oath, and that the terms of the motion were not in violation of any rules of the house. 210 Hans. Deb. 3rd Ser. 252.

[1] 2 Hatsell, 90. 105 Com. J. 629. 108 Ib. 178. 114 Ib. 98 (Mr. Sotheron Estcourt).

members of the house;[1] and on the 9th of January following, Mr. Cholmly, who said he could not *yet* take the oaths, was committed to the Tower for his contempt.[2] But the most remarkable precedent is that of Mr. O'Connell, who had been returned for the county of Clare, in May 1829, before the passing of the Roman Catholic Relief Act. On the oaths being tendered to him by the clerk, he refused to take the oath of supremacy, and claimed to take the new oath contained in the Roman Catholic Relief Act,[3] which had been substituted for the other oaths, as regards Roman Catholic members to be returned after the passing of the Act. Mr. O'Connell was afterwards heard upon his claim; but the house resolved that he was not entitled to sit or vote, unless he took the oath of supremacy. Mr. O'Connell persisted in his refusal to take that oath, and a new writ was issued for the county of Clare.[4]

Jews unable to take the oaths until 1858.

The only legal obstacle which, prior to 1858, prevented a Jew from sitting and voting in Parliament, arose from the words, "upon the true faith of a Christian," at the end of the oath of abjuration. These words were omitted from the oath when taken by a Jew, in certain cases, by the 10 Geo. I., c. 4; and again, by the 13 Geo. II., c. 7, for the naturalising foreign Protestants; and lastly, on admission to municipal offices, by the 8 & 9 Vict. c. 52; but as regards the parliamentary oaths, there was no statute which could be construed so as to justify the omission of these words.

Baron Rothschild.

In 1850, Baron Lionel Nathan de Rothschild, who during the two previous sessions had been one of the members for the city of London, but had not taken the oaths and his seat, was admitted to be sworn on the Old Testament, being the form most binding on his conscience.[5] Having taken the oaths of allegiance and supremacy, he proceeded to take

[1] 10 Com. J. 131. 5 Parl. Hist. 254.

[2] Ib. 328.

[3] 10 Geo. IV. c. 7.

[4] 84 Com. J. 303. 311. 314. 325.

[5] 105 Com. J. 584; Hans. Deb. 29th July 1850. See 1 & 2 Vict. c. 105.

the oath of abjuration, but omitted the concluding words, "on the true faith of a Christian," "as not binding on his conscience," adding the words "so help me God;" whereupon he was directed to withdraw.[1] After debate, the house resolved that he was "not entitled to vote in this house, or to sit in this house during any debate, until he shall take the oath of abjuration, in the form appointed by law."[2] No new writ, however, was issued, as it appeared that the statutes by which the oath of abjuration was appointed to be taken, did not attach the penalty of disability to the refusal to take that oath, but solely to the offence of sitting and voting without having taken it.[3]

Mr. Alderman Salomons.

In 1851, Mr. Alderman Salomons, having been returned for the borough of Greenwich, pressed his claim even further than Baron Rothschild. He was sworn on the Old Testament, and omitting the words "upon the true faith of a Christian," in the oath of abjuration, concluded with the words "so help me God." This omission being reported to the speaker, he directed Mr. Salomons to withdraw.[4] On a subsequent day, while further proceedings in this case were under discussion, Mr. Alderman Salomons entered the house and took his seat within the bar. He was directed by the speaker to withdraw, but continued in his seat. He was then ordered by the house to withdraw, but being called upon by the speaker to obey it, he still persisted in retaining his seat. Upon which the speaker directed the serjeant to remove him below the bar; and the serjeant having placed his hand upon Mr. Salomons, he was conducted below the bar.[5] In the meantime, however, he had not only sat during debates in the house, but had voted in

[1] 105 Com. J. 590; Hans. Deb. 30th July 1850.

[2] 105 Com. J. 612; Hans. Deb. 5th August 1850.

[3] 13 Will. III. c. 6. 6 Anne, c. 7. 6 Geo. III. c. 53. Debates 30th July and 5th August 1850. See also Report of the Committee on Oaths of Members, 1850 (268).

[4] 106 Com. J. 372; Hans. Deb. 18th July 1851.

[5] 106 Com. J. 381; Hans. Deb. 21st July 1851.

three divisions. In this case, as in the last, the house did not think fit to issue a new writ; but, having refused to hear counsel on the matter, agreed to a resolution in the same form, declaring that he was not entitled to sit or vote.[1] The legal validity of this resolution was afterwards established, beyond further question, by judgments in the Court of Exchequer,[2] and the Court of Exchequer Chamber.[3]

Admission of the Jews to Parliament.

After repeated attempts to remove this disability from the Jews by legislation, an Act was at length passed in 1858, by which it was provided, that either house might resolve that henceforth any person professing the Jewish religion may omit the words, "and I make this declaration on the true faith of a Christian." And on the 26th July 1858, Baron Lionel Nathan de Rothschild came to the table to be sworn; and the house having agreed to resolutions in the terms of the recent Act, he was sworn upon the Old Testament, and took and subscribed the oath in the modified form.[4] As a resolution of the house, under this Act, did not continue in force beyond the current session, it was necessary to renew it, in the next session, before other members could be admitted to be sworn, in the same manner:[5] but under another Act of 1860, a standing order was substituted for a resolution, when Jewish members were entitled to be sworn without any preliminary proceedings. The 29 & 30 Vict. c. 19, however, finally removed every invidious distinction, by omitting the words "on the true faith of a Christian" from the new form of oath; and henceforward Jews were placed in the same position as other members.

[1] 106 Com. J. 373. 407.

[2] Miller *v.* Salomons, 19th April 1852; Law Journ. vol. 21, N. S., p. 160. 7 Exch. Reports, 475.

[3] Salomons *v.* Miller, 11th May 1853; Law Journ. vol. 22, N. S., p. 169. 8 Exch. Rep. 778. A writ of error was lodged in the House of Lords, but the parties did not apply for a hearing; 147 Hans. Deb. 3rd Ser. 108.

[4] 113 Com. J. 345.

[5] Proceedings on admission of Baron Meyer de Rothschild, 16th Feb. 1859. 114 Com. J. 59. 152. Hans. Deb. 3rd Ser. 459.

Declarations by Quakers, &c.

Quakers, Moravians, Separatists, and others, who have a conscientious objection to an oath, are now permitted to make affirmations to the same effect. In 1693, John Archdale, a Quaker, having declined to take the oaths, "in regard to a principle of his religion," a new writ was issued in his room.[1] But subsequently to that case, several statutes permitting Quakers to make affirmations instead of oaths were passed;[2] and upon a general construction of these statutes, in 1833, Mr. Pease, a Quaker, was admitted to sit and vote, upon making affirmation to the effect of the oaths directed to be taken at the table.[3] In the same year an Act was passed[4] to allow Quakers and Moravians to make affirmation in all cases where an oath is or shall be required. Acts were also passed giving the same privilege to persons who had ceased to be Quakers and Moravians[5] and to Separatists;[6] and several members of these different religious denominations afterwards made affirmations instead of oaths.[7] And by the 29th & 30th Vict. c. 19, all such persons are allowed to make a solemn affirmation or declaration instead of taking the oath prescribed by that Act.

Omission to take the oaths. Penalties.

By the 30th Chas. II., stat. 2, the 13th Will. III., c. 6, and 1 Geo. I., stat. 2, c. 13, severe penalties and disabilities were inflicted upon any member of either house who sat or voted without having taken the oaths. By the 29th & 30th Vict., c. 19, any peer voting by himself or his proxy, or, sitting in the house of peers without having taken the oath, is subject, for every such offence, to a penalty of 500 *l.*; and any member of the House of Commons who votes as such, or sits during any debate after the speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat is also vacated in the same manner as if he

[1] 12 Com. J. 386. 388.

[2] 6 Anne, c. 23. 1 Geo. I. st. 2, c. 6 and c. 13. 8. Geo. I. c. 6. 22 Geo. II. c. 46.

[3] 88 Com. J. 41. See also report on his case, 1833 (6).

[4] 3 & 4 Will. 4, c. 49.

[5] 1 & 2 Vict. c. 77.

[6] 3 & 4 Will. 4, c. 82.

[7] 90 Com. J. 5; 98 Ib. 3; 103 Ib. 7. 566; 106 Ib. 3; 108 Ib. 7; 124 Ib. 5, &c.

were dead. When members have neglected to take the oaths from haste, accident, or inadvertence, it has been usual to pass Acts of indemnity, to relieve them from the consequences of their neglect.[1] In the Commons, however, it is necessary to move a new writ immediately the omission is discovered, as the member's seat is vacated.[2]

Members entitled to privileges before they are sworn.

But although a member may not sit and vote until he has taken the oaths, he is entitled to all the other privileges of a member, and is otherwise regarded both by the house and by the laws, as qualified to serve, until some other disqualification has been shown to exist. Thus, on the 13th April 1715, it was resolved, "that Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not been sworn at the clerk's table."[3] On the 11th May 1858, acting upon this precedent, the house added Baron Rothschild, who had now continued a member for eleven years without having taken the oaths, to the committee appointed to draw up reasons to be offered to the Lords at a conference, for disagreeing to the Lords' amendments to the Oaths Bill;[4] and on the 18th, he was appointed one of the managers of the conference.[5]

In 1849, Baron Lionel Nathan de Rothschild had been a member for two sessions, without having taken the oaths; when he accepted the Chiltern Hundreds. On the 27th June, a new writ was issued for the city of London, and he was again returned, and continued to be a member without taking the oaths: but being again returned in succeeding Parliaments, he accepted the Chiltern Hundreds a second time in 1857, and on the 23rd July a new writ was issued for the city of London, and he was for the fifth time returned. It is usual for members who have not yet taken

[1] 45 Geo. III. c. 5 (Lord J. Thynne). 56 Geo. III. c. 48. (Earl Gower). 1 Will. IV. c. 8 (Lord R. Grosvenor). 5 Vict. c. 3 (Earl of Scarborough), &c.

[2] 60 Com. J. 148; 67 Ib. 286; 69 Ib. 144; 71 Ib. 42; 86 Ib. 353.

[3] 18 Com. J. 59; Chandler's Debates; 7 Parl. Hist. 57; 2 Hatsell, 88 *n.*

[4] 113 Com. J. 167. 150 Hans. Deb. 3rd Ser. 336. 430.

[5] 113 Com. J. 182.

the oaths, to sit below the bar;[1] and care must be taken that they do not, inadvertently, take a seat within the bar, by which they would render themselves liable to the penalties and disqualifications imposed by the statute.

Certificate of clerk of the Crown.

At the beginning of a Parliament, the Return Book, received from the clerk of the Crown, is sufficient evidence of the return of a member, and the oaths are at once administered. If a member be elected after a general election, the clerk of the Crown sends to the clerk of the house a certificate of the return of the indenture into the Crown Office; and the member is required to produce this certificate from the Public Business Office, before the clerk of the house will administer the oaths. The neglect of this rule in 1848, gave rise to doubts as to the validity of the oaths taken by a member. Mr. Hawes was elected for Kinsale on the 11th March; on the 15th, he was sworn at the table: but his return was not received by the clerk of the Crown until the 18th; and it was questioned whether the oaths which he had taken before the receipt of the return, had been duly taken. A committee was appointed to inquire into the matter, who reported, "that although the return of the indenture to the Crown Office has always been required by the house, as the best evidence of a member's title to be sworn, yet that the absence of that proof cannot affect the validity of the election, nor the right of a person duly elected, to be held a member of the house."[2] The committee, at the same time, recommended a strict adherence to the practice of requiring the production of the usual certificate.[3]

[1] On the 18th May 1849, when notice was taken that strangers were present, Baron Rothschild was sitting below the bar, and retained his seat there during the exclusion of strangers, in virtue of his return to the house, although he had not taken the oaths and his seat.

[2] 1848, Sess. No. 256.

[3] It was stated in evidence, that in July 1846, Lord Alfred Paget being returned for Lichfield, brought up the return himself, which he took with him and produced at the table of the house; and after he had been sworn, the return was sent to the Crown Office. Questions, 87–89.

Subscription of oaths.

As no property qualification is now required,[1] so soon as a member has been sworn, he subscribes the oath which he has taken, in a book, at the table, commonly called the "test roll;" and is then introduced to the speaker by the clerk of the house.

New members sworn after general election.

Members returned upon new writs issued after the general election, take the oaths in the same manner; and, "in compliance with an ancient order and custom," explained by a resolution of the 23rd February 1688, "they are introduced to the table between two members, making their obeisances as they go up, that they may be the better known to the house;"[2] but this practice is not observed in regard to members who come in upon petition,[3] after a general election, for they are supposed to have been returned at the beginning of the Parliament, when no such introduction is customary.

Members seated on petition.

Another difference of form is to be remarked, in reference to new members, and members seated on petition, when coming to be sworn. The former not being in the original return-book, must bring with them, as already stated, a certificate of their return from the clerk of the Crown: but the latter having become members by the adjudication of an election judge, the clerk of the Crown amends the return by order of the house; and their names are consequently entered in the return-book, as if they had been originally returned.

Demise of the Crown.

In the event of the demise of the Crown, all the members of both houses again take the oaths.[4]

Oaths taken in the absence of the speaker, in 1855.

On the 5th and 6th June 1855, certain members took the oaths at the table, while the chair was occupied by Mr. FitzRoy, the chairman of ways and means, in the absence of the speaker, by virtue of recent resolutions, and before an act had been passed for the performance of the speaker's

[1] 21 & 22 Vict. c. 26.
[2] 10 Com. J. 34.
[3] 2 Hatsell, 85 *n.*
[4] 6 Anne, c. 7; 37 Geo. III. c. 137; 92 Com. J. 490, &c.

duties in his absence; and doubts having been raised as to the validity of oaths administered by the Commons, in the absence of "their speaker," it was deemed advisable to pass an act to declare these proceedings to have been as valid as if the speaker himself had been in the chair."[1]

Queen's speech.

To proceed with the business of the session. When the greater part of the members of both houses are sworn, the causes of summons are declared by her Majesty in person, or by commission. This proceeding is, in fact, the true commencement of the session; and in every session but the first of a Parliament, as there is no election of a speaker, nor any general swearing of members, the session is opened at once by the Queen's speech, without any preliminary proceedings in either house. In the Commons, prayers are said before the Queen's speech, but in the Lords usually not until their second meeting, later in the afternoon.[2] The speaker, after prayers, sits in the clerk's chair until black rod approaches the door, when he proceeds to his own chair to receive him. This form is observed, because no business can be commenced until Parliament has been opened by the Crown. The house is not counted on this day, as the Queen's message makes a house, as soon as it is capable of sitting.

When the Queen meets Parliament in person, she proceeds in state to the House of Lords, where, seated on the throne, adorned with her Crown and regal ornaments, and attended by her officers of state, the Prince of Wales (in his robes) sitting in his chair on her Majesty's right hand, (all the Lords being in their robes, and standing until her Majesty desires them to be seated), she commands the gentleman usher of the black rod, through the lord great chamberlain, to let the Commons know, "it is her Majesty's pleasure they attend her immediately, in this house." The usher of the black rod goes at once to the door of the House

[1] 18 & 19 Vict. c. 33.

[2] When a prince of the blood is to be introduced, prayers are said before the arrival of Her Majesty.

of Commons, which he strikes three times with his rod; and on being admitted, he advances up the middle of the house towards the table, making three obeisances to the chair, and says: "Mr. Speaker, the Queen *commands* this honourable house to attend her Majesty immediately in the House of Peers." He then withdraws, still making obeisances; nor does he turn his back upon the house, until he has reached the bar. The speaker, with the house, immediately goes up to the bar of the House of Peers;[1] upon which the Queen reads her speech to both houses of Parliament, which is delivered into her hands by the lord chancellor, kneeling upon one knee.

In 1866 and 1867, and again in 1871, the form of these proceedings was so far changed, that her Majesty's speech, instead of being delivered by herself, was read by her chancellor, taking directions from her Majesty.[2] This was no more, indeed, than the revival of an ancient custom, there being numerous precedents of the lord chancellor or lord keeper addressing both houses, in the presence of the sovereign, and by his command. Henry VIII., proud as he was of his royal state and personal accomplishments, always entrusted to his chancellor the task of addressing the Parliaments assembled in his presence.[3] On the 9th November 1605, the chancellor made a speech concerning the recent plot, in the presence of James I.[4] Charles I., who was unduly given to making speeches to his refractory Parliaments, was yet accustomed to make his chancellors, and sometimes other councillors, his spokesmen.[5] In February 1625, he told the Lords and Commons that he did "not love long speeches," and was not "very good to

[1] The precedence of members in going to the House of Lords on the opening and prorogation of Parliament by Her Majesty, is determined by ballot, in pursuance of resolutions, 7th August 1851; 106 Com. J. 443. 445.

[2] 98 Lords' J. 14, &c.

[3] See especially 21st January 1509, 1 Lords' J. 3; 8th June 1536, Ib. 84; 6th January 1541, Ib. 164.

[4] 2 Lords' J. 357.

[5] 3 Ib. 435. 470.

speak much;" he would, therefore, "bring in the old customs which many of his predecessors had used before him, that the lord keeper should tell you at large what I should speak to you in Parliament." Again in 1627, to use his own words, the lord keeper added a "short paraphrase upon the text he had himself delivered."[1] And the same practice was pursued by Charles II.[2] But the example exactly followed by her Majesty was that of George I., throughout whose reign the royal speech was delivered by the chancellor.[3]

By commission.

When her Majesty is not personally present, the causes of summons are declared by the lords commissioners. The usher of the black rod is sent, in the same manner, to the Commons, and acquaints the speaker that the lords commissioners *desire* the immediate attendance of this honourable house in the House of Peers, to hear the commission read; and when Mr. Speaker and the house have reached the bar of the House of Peers, the lord chancellor reads the royal speech to both houses. Until the end of the session of 1867, the lords commissioners' speech was framed as proceeding from themselves; and her Majesty's name was used throughout in the third person. But on that and subsequent occasions, the speech has been that of the queen herself in the first person, and delivered by the lord chancellor, or one of the commissioners,[4] by her command.

When the speech has been delivered, either by her Majesty in person, or by commission, the House of Lords is adjourned during pleasure. The Commons retire from the bar, and returning to their own house, pass through it, the mace being placed upon the table by the serjeant; and, as there have generally been new members desiring to be

[1] 3 Lords' J. 637.

[2] 11 Ib. 240. 684. 12 Ib. 287. 652.

[3] 21st March 1714. 20 Lords' J. 22, &c.

[4] 97 Lords' J. 639. At the prorogation, 10th August 1872, the Lord Chancellor's sight being impaired, the speech was read by Earl Granville.

sworn on that day, it has been usual for the house to re-assemble at a quarter before four o'clock.[1]

Report of Queen's speech.

When the houses are resumed in the afternoon, the main business is for the lord chancellor in the Lords, and the speaker in the Commons, to report her Majesty's speech. In the former house, the speech is read first by the lord chancellor and then by the clerk, and in the latter by the spaaker, who states that, for greater accuracy, he had obtained a copy. But before this is done, it is the practice in both houses, to read some bill a first time *pro formâ*, in order to assert their right of deliberating, without reference to the immediate causes of summons.

Bill read *pro formâ*.

This practice, in the Lords, is enjoined by a standing order.[2] In the Commons, the same form is observed by ancient custom only. There is an entry in the Journal of the 22nd March 1603, "That the first day of every sitting, in every Parliament, some one bill, and no more, receiveth a first reading for form sake."[3] And this practice has continued till the present time. By the Lords' standing order, it would appear necessary that this form should be observed immediately after the oaths have been taken: but in the Commons, the bill is only required to be read before the report of the Queen's speech; and other business is constantly entered upon before the reading of the bill, as the issue of new writs, the consideration of matters of privilege,[4] the presentation of papers, and the usual sessional orders and resolutions.[5] In 1794, Mr. Sheridan raised a debate upon the first reading of the Clandestine Outlawries Bill,

[1] Under the new statute, and order of the house (see *supra*, p. 195), the meeting at this hour is no longer necessary, but it has since been observed as the customary hour of meeting.

[2] Lords' S. O. No. 8.

[3] 1 Com. J. 150. See also *supra*, p. 46.

[4] 95 Com. J. 3. See also proceedings on the opening of the session, in 1763, relative to the reading of the bill before the consideration of the question of privilege arising out of the North Briton, No. 45. 15 Parl. Hist 1354.

[5] 96 Ib. 467; 121 Ib. 10, &c.

and the speaker decided that he was in order;[1] but such a proceeding is now prohibited by the standing orders.

When the royal speech has been read, an address in answer to it is moved, in both houses. Two members in each house are selected by the Administration for moving and seconding the address; and they appear in their places in uniform or full dress, for that purpose. The address is an answer, paragraph by paragraph, to the Queen's speech. Amendments may be made to any paragraph of the proposed address, in the same form as amendments to other questions;[2] and when the question for an address, whether amended or not, has been agreed to, a committee is appointed in the Commons, "to prepare" "or draw up" an address.[3] When the address, as drawn up by this committee, is reported, it is brought up and read a first time (short) by direction of the speaker, and a second time (at length), upon question. Amendments may be proposed to any paragraph, either when the clerk has read such paragraph, or after the second reading of the whole address. But no amendment can be proposed to the address, after the question has been proposed from the chair for agreeing with the committee in the address. After the address has been finally agreed to, it is ordered to be presented to her Majesty. When the speech has been delivered by the Queen in person, and she remains in town, the address is presented by the whole house: but when it has been read by the lords commissioners, or the Queen is in the country, the address of the upper house is presented "by the lords with white staves:"[4] and the address of the Commons by "such members of the house as are of her Majesty's most honourable privy council."[5] When the address is to be presented

Address.

Presented by the whole house.

[1] 31 Parl. Hist. 994.

[2] 99 Com. J. 6; 103 Ib. 9; 104 Ib. 5; 105 Ib. 6. In 1812, the address was moved as an amendment to a question for an address proposed by Sir F. Burdett. 21 Hans. Deb. 18. 34. Lord Colchester's Diary, ii., 351.

[3] Since 1861, the appointment of a Committee to prepare the address has been discontinued in the House of Lords.

[4] Of the royal household.

[5] On the 22nd January 1806, an

by the whole house, the "lords with white staves" in the one house, and the privy councillors in the other, are ordered "humbly to know her Majesty's pleasure when she will be attended" with the address. Each house meets when it is understood that this ceremony will take place, and after her Majesty's pleasure has been reported,[1] proceeds separately to the palace. For this purpose, care must be taken to make a house at the proper time: 1st, because it has been ordered that the address shall be presented by the whole house; and, 2ndly, because the house, properly constituted, has to receive her Majesty's pleasure, which can only be communicated to the house at large. From a neglect of this precaution, her Majesty was kept waiting by the Commons, for upwards of half an hour, on the 6th February 1845. If before the presentation of the address, by the whole house, any circumstance should be communicated which would make it inconvenient for her Majesty to receive the house, the address is presented by the "lords with white staves" and privy councillors, as was done on the 3rd February 1844.[2] The proceedings upon addresses need not be pursued any further, as they will be described more fully in a separate chapter.[3]

Places in the House of Lords.

In the upper house, "the lords are to sit in the same order as is prescribed by the Act of Parliament, except that the lord chancellor sitteth on the woolsack as speaker to the house."[4] But this order is not usually observed with any strictness. The bishops always sit together in

address in answer to a speech of the Lords' Commissioners, on the battle of Trafalgar, and the death of Nelson, was presented by the whole House. In 1869, both Houses resolved to present their addresses, in answer to a speech delivered by the Lords' Commissioners; and the Queen had arranged to come from Osborne to Buckingham Palace, to receive them: but Her Majesty being detained by the illness of Prince Leopold, the orders for the attendance of the Houses were discharged, and the addresses were presented in the usual manner; 124 Com. J., 32. 37. 42.

[1] 74 Lords' J. 10; 96 Com. J. 11; 101 Ib. 10; 111 Ib. 184, &c.

[2] 99 Com. J. 12. [3] Chapter XVII.

[4] Lords' S. O. No. 1; 31 Hen. VIII. c. 10. By this statute the precedence of princes of the blood royal,

the upper part of the house, on the right hand of the throne: but the lords temporal are too much distributed by their offices, by political divisions, and by the part they take in debate, to be able to sit according to their rank and precedence. The members of the administration sit on the front bench, on the right hand of the woolsack, adjoining the bishops; and the peers, who usually vote with them, occupy the other benches on that side of the house. The peers, in opposition, are ranged on the opposite side of the house; while many who desire to maintain a political neutrality, sit upon the cross benches, which are placed between the table and the bar. The standing order, however, is occasionally enforced. On the 20th January 1740, the Roll of Standing Orders was read, and the lords present took their due places;[1] and again on the 1st February 1771.[2] On the 10th February 1740, "it was insisted that the Lords should take their due places, and the Act 31 Hen. VIII., 'for placing of the lords,' being read, it was moved that the house be called over, but this motion was negatived;"[3] and on the 4th December 1741, "it was insisted on, that the lords should take their due places."[4] On the 22nd April 1831, notice being taken that peers were not seated in their proper places, a debate to order arose, but the standing order was not read or enforced.[5]

On the 22nd January 1740, it was agreed by the house that the end of the lowest cross bench, next the bishops' bench, is the place of the junior baron.[6]

Ancient baronies.

If the eldest son of a peer be summoned to Parliament by the style of an ancient barony held by his father, he takes precedence amongst the peers, according to the antiquity of

and of the bishops, peers, and high officers of state is defined. See also 1 Will. & Mary, c. 21, s. 2; 5 Ann. c. 8; 10 Ann. c. 4.

[1] 25 Lords' J. 572.

[2] 33 Lords' J. 47.

[3] 25 Ib. 593.

[4] 26 Ib. 9.

[5] 69 Hans. Deb., 3rd Ser. 1806.

[6] 25 Lords' J. 575.

his barony; whereas if he be created, by patent, a baron by a new style or title, he ranks as junior baron.[1]

Places in the Commons.

In the Commons no places are particularly allotted to members: but it is the custom for the front bench, on the right hand of the chair, to be appropriated for the members of the Administration, which is called the treasury or privy councillors' bench. The front bench on the opposite side is also usually reserved for the leading members of the opposition, who have served in high offices of state; but other members occasionally sit there, especially when they have any motion to offer to the house. And on the opening of a new Parliament, the members for the city of London[2] claim, and generally exercise, the privilege of sitting on the treasury or privy councillors' bench. It is understood that members who have received the thanks of the house in their places, are entitled, by courtesy, to keep the same places during the Parliament;[3] and it is not uncommon for old members, who are constantly in the habit of attending in one place, to be allowed to occupy it without disturbance.

Secured at prayers.

All other members who enjoy no place by courtesy, upon any of these grounds, can only secure a place for the debate by being present at prayers. On the back of each seat there is a brass plate, in which a member may put a card[4] with his name, if he be at prayers: but by a standing order of the 6th April 1835, "No member's name may be affixed to any seat in the house before the hour of prayers."[5] Attempts having been made to evade this order, by placing cards on the seats before prayers, they were brought to the notice of the house 20th April 1866; and the practice was

[1] Baron Mowbray, eldest son of Duke of Norfolk, 32 Chas. II., was summoned by writ, and sat as premier baron, West, Inq. 49; and Lord Stanley in 1845, 77 Lords' J. 18.

[2] In 1628, a question was raised whether the members for the city of London were "knights;" but there appears to have been no decision. 1 Com. J. 894.

[3] 2 Hatsell, 94.

[4] Cards, with the words "at prayers" printed on them, are always put upon the table for the convenience of members.

[5] 90 Com. J. 202. See also 22 Ib. 406. 414.

discontinued by order of the speaker to the serjeant.[1] But another practice has since acquired recognition, by which members, being within the precincts of the house, are allowed to leave their hats upon particular seats, in order to retain them until they acquire a right to them by subsequent attendance at prayers.[2]

Places secured at prayers may be retained until the rising of the house.[3] Prior to 1855, the claim to a seat was superseded by a division, or by the members attending the speaker to the House of Lords, when there was a commission for giving the royal assent to bills. Disputes sometimes arise when members leave their seats for a short time, and on returning, find them occupied by others. On the 14th April 1842, Mr. Speaker thus explained the rule of the house upon this point:—

"A member having been present at prayers, and having put a card at the back of his seat, is entitled to it for the whole night." "But should a member who had not been present at prayers, leave his seat, there is no rule of the house which gives him a claim to return to it; but by courtesy it is usual to permit a member to secure it in his absence, by a book, glove, or hat."

Service of Parliament.

Every member of the Parliament is under a constitutional obligation to attend the service of the house to which he belongs. A member of the upper house has the privilege of serving by proxy, by virtue of a royal license which authorises him to be personally absent, and to appoint another lord of Parliament as his proxy.[4] But in the House of Commons, the personal service of every member is required. By the 5 Rich. II., c. 4, "if any person summoned to Parliament do absent himself, and come not at the said summons (except he may reasonably and honestly excuse himself to our lord the king), he shall be

[1] 182 Hans. Deb. 3rd Ser. 1763.

[2] See 20th June 1867; 188 Ib. 163; 2nd April 1868; 191 Ib. 698.

[3] Resolution 29th March 1855, made a standing order 29th April 1858.

[4] During the king's illness in 1811, it was doubtful whether proxies were admissible. See 18 Hans. Deb. 976. See also further concerning proxies, Chapter XII.

amerced, or otherwise punished according as of old times hath been used to be done within the said realm, in the said case." And by an Act, 6 Hen. VIII., c. 16, it was declared that no member should absent himself "without the license of the speaker and Commons, which license was ordered to be entered of record in the book of the clerk of the Parliament, appointed for the Commons' House." The penalty upon a member for absence was the forfeiture of his wages; and although that penalty is no longer applicable, the legislative declaration of the duty of a member remains upon the statute-book. In 1554, informations were filed in the Court of Queen's Bench against several members who had seceded from Parliament, of whom six submitted to fines.[1]

Attendance of members.

On ordinary occasions, however, the attendance of members upon their service in Parliament, is not enforced by any regulation: but when any special business is about to be undertaken, means are taken to secure their presence.

Lords summoned.

In the upper house, the most common mode of obtaining a larger attendance than usual, is to order the lords to be summoned; upon which a notice is sent to each lord who is known to be in town, to acquaint him "that all the lords are summoned to attend the service of the house" on a particular day. No notice is taken of the absence of lords who do not appear: but the name of every lord who is present during the sitting of the house, is taken down each day by the clerk of the house, and entered in the Journal.

Call of the House of Lords.

When any urgent business is deemed to require the attendance of the lords, it has been usual to order the house to be called over; and this order has sometimes been enforced by fines and imprisonment upon absent lords.[2]

[1] 1 Parl. Hist. 625.

[2] 16 Lords' J. 16. 26. 31. 40, &c. All the cases in which this order has been enforced, and the various modes of enforcement, are collected in the 53rd volume of the Lords' Journals, (p. 356 *et seq.*) There is an order on the Roll of Standing Orders (No. 41), which may be regarded as obsolete; viz., "It is to be observed, that the first or second day the house be called, and notice to be taken of

On some occasions the lord chancellor has addressed letters to all the peers, desiring their attendance, as on the illness of George the Third, 1st November 1810.[1] The most important occasion on which the house was called over in modern times, was in 1820, when the bill for the degradation of Queen Caroline was pending. The house then resolved,—

"That no lord do absent himself on pain of incurring a fine of 100 *l.* for each day's absence, pending the three first days of such proceedings, and of 50 *l.* for each subsequent day's absence from the same; and in default of payment, of being taken into custody. That no excuses be admitted, save disability from age, being 70 and upwards, or from sickness, or of being abroad, or out of Great Britain on public service, or on account of the death of a parent, wife, or child. That every peer absenting himself from age or sickness do address a letter to the lord chancellor, stating, upon his honour, that he is so disabled; and that the lord chancellor do write a letter to the several peers and prelates with these resolutions."[2]

Order in which the peers are called.

The lords were accordingly called over by the clerk on each day during the pendency of that bill, beginning, according to ancient custom, with the junior baron. The custom of beginning with the junior baron applies to every occasion upon which the whole house is called over for any purpose, within the house, or for the purpose of proceeding to Westminster Hall, or upon any public solemnity. But when the house appoints a Select Committee, the lords appointed to serve upon it are named in the order of their rank, beginning with the highest; and in the same manner, when a committee is sent to a conference with the Commons, the lord highest in rank is called first, and the other lords follow in the order of their rank.

Call of the House of Commons.

When the House of Commons is ordered to be called over, it is usual to name a day which will enable the members to attend from all parts of the country. The interval, however, between the order and the call has varied from

such lords as either have not sent their proxies, or are excused by His Majesty for some time.

[1] 18 Hans. Deb. 1.

[2] 53 Lords' J. 364.

one day[1] to six weeks.[2] If it be really intended to enforce the call, not less than a week or ten days should intervene between the order and the day named for the call. The order for the house to be called over is always accompanied by a resolution, "that such members as shall not then attend, be sent for, in custody of the serjeant-at-arms." And it was formerly the custom to desire Mr. Speaker to write to all the sheriffs, to summon the members to attend.[3] On the day appointed for the call, the order of the day is read and proceeded with, postponed, or discharged, at the pleasure of the house. If proceeded with, the names are called over from the Return Book, according to the counties, which are arranged alphabetically. The members for a county are called first, and then the members for every city or borough within that county.[4] The counties in England and Wales are called first, and those of Scotland and Ireland in their order. This point is mentioned, because it makes a material difference in the time at which a member is required to be in his place. The Return Book is corrected from time to time: but unless a member, returned after a general election, has produced the certificate of his return (which is delivered at the table when he comes to be sworn), his name will not be entered in the Return Book, and will not therefore be called, at a call of the house.[5] On the 10th May 1858, Baron Rothschild having been returned upon a new writ, and not having brought up the certificate

Order in which names are called.

[1] 87 Com. J. 311.

[2] 77 Ib. 101.

[3] 12 Ib. 552; 16 Ib. 565; 17 Ib. 184, &c.

[4] Who is senior member for a place? He who has sat longest in the house, or he who was returned at the head of the poll? This question arose in 1866, between the Lord Advocate (Mr. Moncrieff) and Mr. M'Laren, members for Edinburgh; and also between Mr. Hastings Russell and Colonel Gilpin, members for Bedfordshire. In each case the junior member, in point of service, was returned at the head of the poll, and therefore first in the Return Book. Earl Russell and the Speaker concurred in opinion that the member who stands first in the Return Book must be accounted the senior member.—*Mr. Speaker's Note-book.*

[5] See Sir R. Peel's Mem. vol. ii. 134 (Clare Election).

of his return, the certificate from the clerk of the crown was ordered to be read, before a motion was made for adding Baron Rothschild to a committee.[1]

When members are absent.

The names of members who do not answer when called, are taken down by the clerk of the house, and are afterwards called over again. If they appear in their places at this time, or in the course of the evening, it is usual to excuse them for their previous default;[2] but if they do not appear, and no excuse is offered for them, they are ordered to attend on a future day.[3] It is also customary to excuse them if they attend on that day, or if a reasonable excuse be then offered; as, that they were detained by their own illness,[4] or by the illness or death of near relations;[5] by public service,[6] or being abroad.[7] If a member should not attend, and no excuse is offered, he is liable to be committed to the custody of the serjeant-at-arms, and to the payment of the fees incident to that commitment.[8] But, instead of committing the defaulters, the house sometimes names another day for their attendance,[9] or orders their names to be taken down.[10] In earlier times it was customary for the house to inflict fines upon defaulters, as well as other punishment.[11] But in later years calls were enforced less strictly. The attendance of members is generally ample; and a call is of little avail in taking the sense of the house, as there is no compulsory process by which members can be obliged to vote.[12] Hence calls of the house have long since ceased to find favour. No call of the house has been enforced since 1836.[13] On several subsequent occasions calls of the house have been ordered;[14] but in every case

[1] 113 Com. J. 162. [2] 80 Ib. 147. [3] 84 Ib. 106. [4] 80 Ib. 130. [5] Ib. [6] 80 Com. J. 130. [7] 91 Ib. 278. [8] 80 Ib. 150. 153. 157. [9] 91 Ib. 278. [10] 90 Ib. 132. [11] 1 Ib. 300. 862; 2 Ib. 294; 9 Ib. 75. [12] See Hans. Deb. 19th and 22nd Nov. 1852, 123, N.S., 266, 302. [13] Mr. Whittle Harvey's motion on the Pension List, April 19th 1836; 91 Com. J. 265. [14] 22nd Feb. 1838; 93 Ib. 300; Repeal of the Corn Laws, 15th March 1839; 94 Ib. 121; National Education, 4th June 1839; 94 Ib., 302; 24th March 1840; 95 Ib. 207; Repeal of the Corn Laws; 19th Nov. 1852; 108 Ib. 53.

the order was subsequently discharged. And on the 10th July 1855, a motion for a call of the house upon a question relating to the conduct of the Government, in reference to the Crimean War, was negatived.[1]

Leave of absence.

On the 3rd March 1801, when a call of the house was deferred for a fortnight, it was ordered, "that no member do presume to go out of town without leave of the house."[2] And, in the absence of any specific orders to that effect, members are presumed to be in attendance upon their service in Parliament. When they desire to remain in the country, they should apply to the house for "leave of absence," for which sufficient reasons must be given; as, that they are about to attend the assizes, or sessions, or to go circuits; or that they desire to be absent on account of urgent business, the illness or death of near relations, domestic affliction, illness in their families, or their own ill-health. Upon these and other grounds, leave of absence is generally given, but has been occasionally refused.[3] Sometimes leave of absence to a member has been enlarged.[4] A member will forfeit his leave of absence, if he should attend the service of the house before its expiration.

Obligation to attend committees.

Attendance upon the service of Parliament includes the obligation to fulfil all the duties imposed upon members, by the orders and regulations of the house. And unless leave of absence has been obtained, a member cannot excuse himself from serving upon committees to which he may be appointed; or for not attending them, where his attendance is made compulsory by the orders of the house.[5] In 1846, Mr. W. Smith O'Brien declined serving as a selected member of a railway committee, and the Committee of Selection, not being satisfied with his excuses, nominated him to a

[1] 110 Com. J. 367; 205 Hans. Deb. 3rd Ser. 746.

[2] 56 Com. J. 103.

[3] 75 Ib. 338; 82 Ib. 376; 86 Ib. 863.

[4] 126 Ib. 266.

[5] See Debates on the absence of Lord Gardner from a private bill committee, 24th and 26th June 1845. 81 Hans. Deb., 3rd Series, 1104. 1190.

committee, in the usual manner. He did not attend the committee, and his absence being reported to the house, he was ordered to attend the committee on the following day. Being again absent, and his absence being reported to the house, he attended in his place, and stated that he adhered to his determination not to attend the committee; upon which he was declared guilty of a contempt, and committed to the custody of the serjeant-at-arms.[1]

Time of meeting.

The Lords usually meet, for despatch of legislative business, at five o'clock in the afternoon, and the Commons at a quarter before four, except on Wednesday, and on other days specially appointed for morning sittings. The sittings were formerly held at an early hour in the morning, generally at eight o'clock,[2] but often even at six or seven o'clock,[3] and continued till eleven, the committees being appointed to sit in the afternoon. In the time of Charles II. nine o'clock was the usual hour for commencing public business, and four o'clock for disposing of it. At a later period ten o'clock was the ordinary time of meeting; and the practice of nominally adjourning the house until that hour continued until 1806, though so early a meeting had long been discontinued. According to the present practice, no hour is named by the house for its next meeting, but it is announced in the Votes at what hour Mr. Speaker will take the chair. Occasionally the house has adjourned to a later hour than four, as on the opening of the Great Exhibition, 1st May 1851, to six o'clock;[4] and on the naval review at Spithead, 11th August 1853, to ten o'clock at night.[5]

Obstructions in the streets, &c.

To facilitate the attendance of members without interruption, both houses order, at the commencement of each session,—

[1] 101 Com. J. 566. 582. 603; and Special Rep. of Committee of Selection, 24th April 1846; Ib. 555. See also case of Mr. Hennessy, March 1860; 115 Com. J. 106; 156 Hans. Deb., 3rd Ser., 2047.

[2] Vowel's Order and Usage of the Parliaments in England, 1572.

[3] 1 Com. J. 156. 705; 2 Ib. 116. 120; 8 Ib. 271; 9 Ib. 606; 13 Ib. 858.

[4] 106 Com. J. 189. [5] 108 Ib. 816.

"That the commissioners of the police of the metropolis do take care that, during the session of Parliament, the passages through the streets leading to this house be kept free and open, and that no obstruction be permitted to hinder the passage of the lords (or members) to and from this house; and that no disorder be allowed in Westminster Hall, or in the passages leading to this house, during the sitting of Parliament; and that there be no annoyance therein or thereabouts; and that the gentleman usher of the black rod (or the serjeant-at-arms) attending this house do communicate this order to the commissioners aforesaid."

Tumultuous assemblages.

And on various occasions, when tumultuous assemblages of people have obstructed the thoroughfares, lobby, or passages, orders have been given to the local authorities to disperse them.[1]

Quorum in Lords and Commons.

The upper house may proceed with business if only three lords be present, of whom one may be a lord attending to take the oath: but the Commons require as many as forty, including the speaker, to enable them to sit. This rule, however, which appears to have been first established in 1640,[2] is only one of usage, and may be altered at pleasure. On the 1st March 1793, the house resolved, that for the purpose of receiving messages from the Lords relating to further proceedings on the trial of Warren Hastings, Mr. Speaker might take the chair and direct the messengers to be called in, although forty members were not present.[3] And such messages were afterwards received when six, three, and even *one* member only were present.[4] In 1833, it was determined that the house should sit from twelve

[1] 31 Lords' J. 206. 209. 213; 32 Ib. 147. 187; 36 Ib. 142; 11 Com. J. 667; 13 Ib. 230; 17 Ib. 661; 33 Ib. 285; 37 Ib. 901.

[2] 5th January 1640, 2 Com. J. 63. "Forty maketh a House of Commons." Gaudy's Notes of Long Parliament; MSS. Brit. Mus. From an entry, 20th April 1607, it would appear that sixty was not then a sufficient number; 1 Com. J. 364. A motion was made by Mr. Pierrepoint, 18th March 1801, being the first Parliament of the United Kingdom, "That Mr. Speaker do not take the chair until, at least, sixty members are present in the house;" but negatived. 35 Parl. Hist. 1203. In both houses of Congress, and the greater part of the state legislatures of the United States, a majority of the house forms a quorum. Cushing on Legislative Assemblies, 96.

[3] 48 Com. J. 305.

[4] Ib. 310. 660. 804.

o'clock till three, for private business, and petitions; when it was resolved, that in the morning sittings, the house should transact business with only twenty members.[1] Immediately after prayers each day, after Parliament has been opened, the speaker, sitting in the clerk's chair, counts the house,[2] and, if forty members be not present, he waits until four o'clock, when, standing on the upper step of the speaker's chair, he again counts; and, if the proper number have not arrived before he has ceased counting, he adjourns the house, without a question first put, until the following sitting day. The only exception to this rule, is when a message is received from the Queen or the lords commissioners, for the attendance of the Commons in the House of Lords. This proceeding often occurs in the course of a session, for the purpose of giving the royal assent to bills, from time to time; and is held to constitute the house, as duly sitting, without the usual number of members. But for that purpose the commission must be appointed before four o'clock; otherwise it is of no avail. On the 3rd June 1856, a commission was appointed for four o'clock. The speaker counted the house, and waited till past four before he proceeded to count it a second time; when, there being thirty-nine members only, including himself, he declared the house adjourned. When the house meets at an earlier hour than four, the speaker cannot adjourn the house for want of forty members: but no business is transacted until the proper number are present; and at four o'clock, he will adjourn the house.

House counted.

Commission makes a house.

But should be appointed before four o'clock.

After the house has been made, if notice be taken by a member, that forty members are not present, the speaker immediately counts the house; and when it is before four o'clock, business is suspended until the proper number come into their places: but if after four o'clock, the speaker at once adjourns the house until the following day.[3] The

House counted out.

[1] 88 Com. J. 95.

[2] See *supra*, p. 203. When the speaker sees a full house, he counts generally with the eye, and not in detail.

[3] See 107 Com. J. 174. The im-

two-minute sand glass is turned, and strangers are required to withdraw from below the bar, before the speaker begins to count*; and thus the same time is given to members to enter the house, as in the case of a division. When it appears, on the report of a division, after four o'clock, that forty members are not present, the house is adjourned immediately; but when the house is in committee, and forty members are discovered to be wanting, either upon a division, or upon notice being taken of the fact, the chairman reports the circumstance; when the speaker again counts the house, and, if forty members be not then present, he adjourns the house forthwith. In the meantime, while the house is being counted, the doors continue open, and members can enter during the whole time occupied by the counting. When these accidents happen on Saturday, the speaker adjourns the house until Monday.[1] Saturday not being an ordinary day of meeting, it was usual, until 1861, at an early hour on Friday, to resolve that the house, at its rising, do adjourn till Monday next, lest the speaker should be obliged, by the want of members, to adjourn the house till Saturday: but, while the committees of supply and ways and means are

Adjournment by the speaker; and on Wednesday by standing order.

portance attached to the hour of four has been said to arise from the provisions of the Acts, which required the oaths to be taken between the hours of nine in the morning, and four in the afternoon; (2 Hatsell, 90): but is, perhaps, more properly referable to usage; four o'clock having been the customary hour for the rising of the house when those Acts were passed. In all times, the proceedings of the house have been liable to such interruptions from the engagements or recreations of members. Writing of the grave Long Parliament in 1641, Mr. Palgrave relates that, "one day's 'discourse' was stopped because 'the Earl of Strafford came in his barge to the upper house from the Tower, and divers ran to the east windows of the house, who with them sat by, looked out at the said windows, and opened them; and others quitted their seats with noise and tumult;' and another sitting was, in like manner, broken up, in the very crisis of national anxiety, because such members preferred 'the play-houses and bowling alleys' to the Committee of Supply."—Death of the Earl ot Strafford, in "Fraser's Magazine," for April 1873, citing D'Ewes Harleian MSS. I have myself seen the benches nearly deserted during a boat race, which could be seen from the same east windows, before the great fire of 1834.

[1] 78 Com. J. 8.

open, this adjournment is now effected by standing order, unless the house shall otherwise resolve. It is not until the end of a session, or on other exceptional occasions, when there is an unusual pressure of business, that the Commons sit on Saturday; in which case it is usual to resolve on Friday, that the house, at its rising, do adjourn till to-morrow, or to appoint a bill for consideration on that day.[1] The Lords very rarely sit either on Wednesday or Saturday.[2] On a Wednesday the speaker, in the Commons, adjourns the house at six o'clock, without putting any question, by virtue of a standing order.[3] Except on these occasions, the house can only be adjourned by Mr. Speaker, upon question put, and resolved in the affirmative.[4]

Occasional sittings on Sunday.

It need scarcely be stated that the meeting of either house on a Sunday, is a very rare occurrence. On the demise of the Crown, as already noticed,[5] Parliament has occasionally been assembled on a Sunday. During the Commonwealth period the Commons met, on several occasions, on a Sunday,[6] as well as on Good Friday[7] and Christmas-day.[8] During the mania of the popish plot, also, both houses met occasionally on Sundays.[9] On the 18th May 1794, the debate on the bill for securing suspected persons was not concluded until nearly three o'clock on Sunday

[1] 25th March 1870; 2nd August 1872; 212 Hans. Deb. 3rd. Ser. 1953.

[2] On Saturday, the 4th April 1829, the debate in the House of Lords, on the second reading of the Catholic Relief Bill, was adjourned from two o'clock in the morning, till two o'clock the same afternoon.

[3] See *infra*, p. 259.

[4] 9 Com. J. 560.

[5] *Supra*, p. 45.

[6] Aug. 8th, 1641, to stay the king's journey into Scotland, 2 Com. J. 245; 6th and 13th June 1647 (chiefly for prayer), 5 Ib. 200. 209; 1st August 1647, for secular affairs, 5 Ib. 263; 8th May 1659, for prayers and a sermon, 7 Ib. 646.

[7] 23rd April 1641; 2 Com. J. 126.

[8] In 1689, the House of Commons met on Easter Monday, as the puritans and latitudinarians objected to the usual adjournment. 3 Macaulay's Hist. 113. See Com. J. 28th March, 1st April 1689.

[9] 1st December 1678, the House of Commons met to take the oaths of allegiance and supremacy under the Act 30 Car. II., recently passed; 9 Com. J. 551; and again 27th April and 11th May 1679; 9 Ib. 605. 619. On the latter day the Lords also met, 13 Lords' J. 506.

morning.[1] The Reform Bill was read a second time by the Commons on Sunday morning, the 18th December 1831.[2] The royal assent was signified to the Habeas Corpus Suspension (Ireland) Act at a quarter before one o'clock on Sunday morning, the 18th February 1866.[3]

Sunday, the 4th May 1856, having been appointed a day of thanksgiving, in respect of the treaty of peace with Russia, the House of Lords met and proceeded to Westminster Abbey;[4] and the speaker and the members of the House of Commons met at the house, and thence proceeded to St. Margaret's church to attend divine service; but in the meantime, the house had adjourned from Friday till the Monday following.[5]

Days of thanksgiving or fast.

Whenever a day of thanksgiving, or of fast and humiliation, is appointed during the sitting of Parliament, it is customary for both houses to attend divine service; the Lords at Westminster Abbey[6] and the Commons at St. Margaret's church.[7] Each house appoints a preacher: the Lords appoint a bishop,[8] the Commons a dean, a doctor of divinity, or the speaker's chaplain.[9] On the 31st January 1699, the house resolved, "that for the future no person be recommended to preach before this house, who is under the dignity of a dean in the church, or hath not taken his degree of doctor of divinity."[10] On the 4th June 1762, this resolution was repeated, making an exception, however, in favour of the chaplain of the house;[11] but a bachelor of divinity has also been selected for this honour.[12] It is customary to thank the preacher, and to desire him to print his sermon.[13]

[1] 49 Com. J. 613.
[2] 9 Hans. Deb., 3rd Ser. 546
[3] 121 Com. J. 89.
[4] 88 Lords' J. 123.
[5] 111 Com. J. 175.
[6] 88 Lords' J. 123.
[7] 40 Com. J. 305; 57 Ib. 483; 111 Ib. 175, &c. On the 13th February 1801, the Commons went to St. John the Evangelist's church, St. Margaret's being then under repair.
[8] 88 Lords' J. 120.
[9] 92 Com. J. 279; 111 Ib. 177.
[10] 13 Ib. 162.
[11] 24 Ib. 272.
[12] Rev. H. Melvill, B.D. 13 March 1855; 110 Com. J. 121.
[13] 88 Lords' J. 124. 98 Com. J. 339.

Houses of Parliament go to St. Paul's.

On some occasions of special solemnity, the King and both houses of Parliament have attended divine service at St. Paul's cathedral; as on the King's recovery from his illness in 1789,[1] after the naval victories in 1797,[2] on the conclusion of peace in 1814,[3] and on the recovery of the Prince of Wales, in 1872.[4] In 1852, both houses attended the Duke of Wellington's funeral, at St. Paul's.[5]

Attendance at coronations.

If Parliament be sitting at the time of a coronation, it has been customary for both houses to attend the ceremony in Westminster Abbey; and to make orders concerning such attendance.[6]

Sittings suspended.

The sitting of the house is often suspended, and afterwards resumed without any formal adjournment.[7] The speaker retires from the house, the mace being left upon the table, and returns at a later hour, when the business proceeds in the accustomed manner without counting the house. When this occurs, there is no entry in the Journal of the circumstance, as technically the house has continued sitting. But when the house meets in the morning, and adjourns to a later hour on the same day, the house is again counted at its second meeting.

The house adjourns without transacting business.

On the 15th September 1646, both houses adjourned to mark their sense of the loss of the Earl of Essex:[8] on the 3rd July 1850 an adjournment was agreed to by the Commons, *nem. con.*, as a suitable mode of expressing the grief of the house on hearing of the death of its most distinguished member, Sir Robert Peel;[9] and on the 14th April 1863, the like tribute was paid to the memory of Sir George Cornewall

[1] 23rd April 1789; 38 Lords' J. 397; 44 Com. J. 288.

[2] 53 Com. J. 140.

[3] 7th July 1814 (the Prince Regent); 49 Lords' J. 1046; 69 Com. J. 441. After the peace of 1815, no day of thanksgiving was appointed.

[4] 127 Com. J. 52. 61.

[5] 108 Ib. 29; Reports of Committee on the Funeral.

[6] William & Mary, 1689; 10 Com. J. 82, &c.; Anne, 1702; 13 Ib. 851; William IV. 1831; 86 Ib. 793, &c. Her Majesty, 1838; 93 Com. J. 621, &c.

[7] See *infra*, p. 259. [8] 4 Com. J. 670.

[9] 105 Com. J. 484. On the 5th July, the French Assembly entered in their Procès Verbal, an expression of regret at the loss of this eminent statesman, 163 Hans. Deb. 772.

Lewis.[1] On the 24th June 1861, the Lords adjourned, *nem. diss.* on the death of the chancellor, Lord Campbell.

Royal funerals.

Occasionally the house adjourns on the occasion of royal funerals. The funeral of the Duke of Sussex was appointed for 4th May 1843, and the house adjourned over that day. The Duke of Cambridge was buried on the 16th July 1850, when the house sat from twelve till three, and then adjourned in consequence of the funeral. But on the funeral of the Princess Sophia, 5th June 1848, the house did not adjourn; and again, the Duchess of Gloucester was buried on Friday, the 8th May 1857 (the day after the lords commissioners' speech had been delivered), but the house sat on that day as usual; and not without due consideration. The funeral was at Windsor, at twelve, and the house did not meet until a quarter before four.

Ash Wednesday, Ascension-day, &c.

The Lords never sit either on Ash Wednesday or Ascension-day. On Ash Wednesday it is customary for the House of Commons to meet at two o'clock, instead of twelve, in order to give members an opportunity of attending divine service.[2] And on Ascension-day, since 1849,[3] orders have frequently been made, for the same purpose, that no committees have leave to sit until two o'clock.[4] But, in 1872, this customary motion was negatived.[5] In 1873, however, a motion restraining committees from sitting until two, but giving them leave to sit until six, was carried by a large majority.[6] On the 19th March 1866, appointed by the

[1] 14 April 1863. Notwithstanding the universal respect in which Sir G. Lewis was held on both sides of the house, the propriety of this proceeding was questioned, in private, by many eminent statesmen, on the ground of the invidious distinctions which might be drawn between the claims of different members to such an honour, and the contentions likely to arise in times of party excitement. — *Mr. Speaker's Note-book.*

[2] 121 Com. J. 63; 122 Ib. 86. Resolved on division, 25th Feb. 1873.

[3] So far back as 15th May 1604, it "being put to question whether we should sit on Ascension-day," upon division "resolved to sit." But on the 1st June 1614, it was resolved, upon division, not to sit.

[4] 122 Ib. 255; 125 Ib. 225; 126 Ib. 202. This order was repeated on nine occasions between 1856 and 1871 inclusive.

[5] Hans Deb. 3rd Series.

[6] 20 May 1873.

Bishop of London, as a day of humiliation, committees had leave to sit until one o'clock.

Queen's birthday and other days.

When the Queen's birthday is kept on any day except Saturday, the house has frequently adjourned over that day;[1] and for many years it has been customary to adjourn over the Derby day.

Speaker of the House of Lords.

The duties of the lord speaker of the upper house, and of the speaker of the Commons, will appear in the various proceedings of both houses, as they are explained in different parts of this work;[2] but a general view of the office is necessary, in this place, for understanding the forms of parliamentary procedure.

His duty to attend.

The lord chancellor, or lord keeper of the great seal of England, is prolocutor or speaker of the House of Lords, by prescription;[3] and by a standing order of the Lords, it is declared to be his duty ordinarily to attend as speaker: but if he be absent, or if there be none authorised under the great seal to supply that place in the House of Peers, the Lords may choose their own speaker during that vacancy.[4]

Not necessarily a peer.

It is singular that the president of this deliberative body is not necessarily a member. It has even happened that the lord keeper has officiated, for years, as speaker, without having been raised to the peerage.[5] On the 22nd November 1830, Mr. Brougham sat on the woolsack as speaker, being at that time lord chancellor, although his patent of

[1] Tuesday, 24th May 1864; Wednesday, 24 May 1865; Wednesday, 2nd June 1869.

[2] See Index, tit. "SPEAKER."

[3] Lord Ellesmere; Office of Lord Chancellor; Ed. 1651.

[4] Lords' S. O. No. 3. And see observations as to the obligations of the lord chancellor to attend, 23rd August 1831, and 20th June 1834; 6 Hans. Deb., 3rd Series, 453; 7 Ib. 646-662; 24 Ib. 597. 600. 604.

[5] "When Sir Robert Henley was keeper of the great seal, and presided in the House of Lords as lord keeper, he could not enter into debate as a chancellor, being a peer, does, and therefore when there was an appeal from his judgments in the Court of Chancery, and the law lords then in the house moved to reverse his judgments . . . . . the lord keeper could not state the grounds of his opinions given in judgment, and support his decisions."—Lord Eldon's Anecdote Book, 1 Twiss, Life, 319. 5 Lord Camp. Lives of Chancellors, 188.

creation as a peer had not yet been made out.[1] On the 4th March 1852, Sir Edward Sugden sat as speaker, before he was introduced as a peer.[2] On the 26th February 1858 a new writ was issued in the room of Sir Frederick Thesiger, who had accepted the office of lord chancellor;[3] and on the 1st March, before he had been called to the upper house, he sat as speaker.[4] On the 27th June 1861, Sir Richard Bethell, having been appointed chancellor, sat as speaker, and was introduced, on the same day, as Baron Westbury. On the 10th, 11th, and 15th December 1868, Sir William Page Wood sat as speaker, and on the latter day was introduced, and sworn as Baron Hatherley. The woolsack, indeed, is not strictly within the house, for the Lords may not speak from that part of the chamber, and if they sit there during a division, their votes are not reckoned.

Great seal in commission.

When the great seal is in commission, it is usual for the Crown to appoint (if he be a peer) the chief justice of the Court of Queen's Bench, or Common Pleas, the chief baron of the Exchequer, or the master of the rolls, to be lord speaker. In 1826, Sir John Leach, Master of the Rolls, and in 1835, Sir L. Shadwell, Vice Chancellor, though not peers, were appointed lord speakers, while the great seal was in commission.[5] On the meeting of Parliament in 1819, the lord chancellor being absent, the Prince Regent appointed Sir R. Richards, Lord Chief Baron of the Exchequer, to supply his place, as speaker.[6]

Deputy speakers.

At all times there are deputy speakers, appointed by commission to officiate as speaker, during the absence of the lord chancellor or lord keeper. When the lord chancellor

[1] 63 Lords' J. 114.

[2] 84 Ib. 34.

[3] 113 Com. J. 73.

[4] Lords' Minutes, 1858; p. 123.

[5] 66 Lords' J. 113; 67 Ib. 118. 291; 70 Ib. 42; 82 Ib. 71; 84 Ib. 126. On the 25th Oct. 1566, Sir R. Cattelyn, C. J. of Q. B., was appointed lord speaker, by commission, which appears to be the first instance of a commoner holding that office. 1 Lords' J. 637.

[6] 52 Lords' J. 7. This was said to be in accordance with the precedent of Sir Robert Atkins in the reign of King William. Lord Colchester's Diary, iii. 68.

and all the deputy speakers are absent at the same time, the Lords elect a speaker *pro tempore*;[1] but he gives place immediately to any of the lords commissioners, on their arrival in the house; who, in their turn, give place to each other according to their precedence, and all at last to the lord chancellor. In 1824, Lord Gifford, Chief Justice of the Common Pleas, was appointed sole deputy speaker;[2] and since 1851, there has been only one deputy speaker in the commission,—the chairman of the Lords' committees. On the 6th July 1865, the lord president of the council, being unanimously chosen lord speaker, *pro tempore*, in the absence of the lord chancellor, and of Lord Redesdale, the deputy speaker, sat as lord speaker, and, as one of the lords commissioners, delivered the royal speech, and prorogued the Parliament.[3]

Duties of speaker in the Lords.

The duties of the office are thus generally defined by the standing orders:

"The lord chancellor, when he speaks to the house, is always to speak uncovered, and is not to adjourn the house, or to do anything else as mouth of the house, without the consent of the Lords first had, except the ordinary thing about bills, which are of course, wherein the Lords may likewise overrule; as, for preferring one bill before another, and such like; and in case of difference among the Lords, it is to be put to the question; and if the lord chancellor will speak to anything particularly, he is to go to his own place as a peer."[4]

His anomalous position.

The postion of the speaker of the House of Lords is somewhat anomalous; for though he is the president of a deliberative assembly, he is invested with no more authority than any other member; and if not himself a member, his office is limited to the putting of questions, and other formal proceedings. Upon points of order, the speaker, if a peer, may address the house: but as his opinion is liable to be

[1] E.g., 24th Feb. 1873, when Lord Chelmsford was chosen speaker.

[2] 56 Lords' J. 39. Lord Colchester's Diary, iii. 311.

[3] 97 Lords' J. 639.

[4] Lords' S. O. No. 2. But if lord chancellor, he goes, by virtue of his office, to the left of the chamber above all dukes not being of the blood royal. 31 Hen. VIII. c. 10, s. 4.

questioned, like that of any other peer, he does not often exercise his right.[1]

Speaker of the Commons.

The duties of the speaker of the House of Commons are as various as they are important. He presides over the deliberations of the house, and enforces the observance of all rules for preserving order in its proceedings; he puts every question, and delares the determination of the house. As "mouth of the house," he communicates its resolutions to others, conveys its thanks, and expresses its censure, its reprimands, or its admonitions. He issues warrants to execute the orders of the house for the commitment of offenders, for the issue of writs, for the attendance of witnesses, for the bringing up prisoners in custody, and, in short, for giving effect to all orders which require the sanction of a legal form. He is, in fact, the representative of the house itself, in its powers, in its proceedings, and its dignity. When he enters or leaves the house, the mace is borne before him by the serjeant-at-arms; when he is in the chair, it is laid upon the table; and at all other times, when the mace is not in the house, it remains with the speaker, and accompanies him upon all state occasions.

His rank.

In rank, the speaker takes precedence of all commoners, both by ancient custom and by legislative declaration. The Act 1 Will. & Mary, c. 21, enacts, that the lords commissioners for the great seal "not being peers, shall have and take place next after the peers of this realm, and the speaker of the House of Commons."[2]

[1] See Debate in the Lords, 22nd June 1869, in which it was suggested that the chancellor should be invested with more extended powers: but it was pointed out, on the other side, by some peers and by the chancellor himself, that as he was a minister of the Crown, not chosen by the house itself, and was often a member of the least experience in the house, he could not properly exercise the same powers as those of the speaker of the Commons.

[2] See also 2 Hatsell, 249 *n*; "I had a correspondence with Garter King-at-Arms about the precedence between the speaker of the House of Commons and a Peer of Ireland, whilst a member of the House of Commons, upon any occasion out of Parliament where strict rank was to be observed, such as the signing solemn instruments of state. Garter

When absent.

Until 1853, no provision had been made for supplying the place of the speaker by a deputy speaker or speaker *pro tempore*, as in the upper house;[1] and when he was unavoidably absent, no business could be done, but the clerk acquainted the house with the cause of his absence, and put the question for adjournment.[2] Though doubts were formerly entertained whether the house could be adjourned in this manner, otherwise than from day to day, no such limitation was practically observed.[3] When the speaker was so ill as to be unable to attend for a considerable time, it was necessary to elect another speaker, with the usual formalities of the permission of the Crown, and the royal approval. On the recovery of the speaker, the latter would resign, or "fall sick," and the former was re-elected, with a repetition of the same ceremonies.[4]

Chairman of Ways and Means to take the Chair.

In 1853, a committee was appointed to consider the best means of providing for this obvious defect in the constitution of the house, which on the 4th August resulted in the adoption of the following resolution, the consent of the Crown having been first signified.

"That whenever the house shall be informed of the unavoidable absence of Mr Speaker, the chairman of the committee of ways and means do take the chair for that day only; and in the event of Mr. Speaker's absence continuing for more than one day, do if the house shall think fit, and shall so order it, take the chair in like manner, on any subsequent day during such absence."[5]

No provision, however, was made for the execution of any of the duties performed by the speaker out of the chair,[6] and

King-at-Arms inclined strongly to think that such Irish peer would have the precedence, notwithstanding the express words in the Act of Union, as to the loss of privileges." Lord Colchester's Diary, i. 413. At Mr. Pitt's funeral, "my place was after the eldest sons of viscounts, and before barons' sons." Ibid. ii. 40.

[1] During the Protectorate, speakers *pro tempore* were appointed; 7 Com. J. 482, 483. 612. 811.

[2] 83 Com. J. 547.

[3] 1 Ib. 353; 25 Ib. 532; 39 Ib. 841; 44 Ib. 45.

[4] 9 Ib. 463. 476; 11 Ib. 271, 272.

[5] 108 Ib. 758. 766.

[6] See Report on the Office of Speaker, 1853 (478).

the arrangements were otherwise inadequate, for meeting the emergencies arising out of the speaker's absence.

Cases of Speaker's absence.

On the 7th May 1855, this resolution was acted upon for the first time. The speaker had shown indisposition early in the evening; and afterwards, while the house was in committe of supply, he wrote a letter to the clerk, to inform the house of his unavoidable absence for the remainder of the night, and went home. Meanwhile the committee of supply proceeded with its sitting; and as soon as the chairman[1] left the chair of the committee, to report resolutions, the clerk acquainted the house that he had received a letter from Mr. Speaker, which he read to the house. Whereupon Mr. FitzRoy, the chairman of the committee of ways and means, took the chair, the mace was immediately placed upon the table, and the house proceeded with the business of the evening.[2]

Again, on the 4th June 1855, the house met, and the speaker not being present, no prayers were read.[3] The clerk at the table acquainted the house that he had received a letter from Mr. Speaker, together with a medical certificate, which he read to the house. Whereupon Mr. FitzRoy, the chairman of the committee of ways and means, having counted the house, took the chair. It being afterwards stated that Mr. Speaker's indisposition would probably be of some days' duration, it was ordered, "that in the event of Mr. Speaker's absence continuing for more than this day, Mr. FitzRoy do take the chair on each subsequent day during the present week."[4]

On the 5th, 6th, 7th, and 8th June, the speaker being still absent, Mr. FitzRoy again took the chair, pursuant to the resolution of the 4th, prayers being first said, and the house counted, in the usual manner. On the 11th June

[1] Mr. FitzRoy had given up the chair, before the last vote, to Mr. Bouverie.

[2] 110 Com. J. 210.

[3] The omission of prayers, though consistent with precedent, was unnecessary, and was not afterwards observed.

[4] 110 Com. J. 261. 264.

the speaker returned, and having thanked the house for their indulgence, called attention to the circumstance that two members had taken the oaths and their seats in his absence, and suggested whether any doubts as to the validity of the oaths should not be removed, which led to the passing of the bill already alluded to.[1]

Deputy speaker in the Commons.

The imperfection of the arrangements made in 1853 was now too obvious to be overlooked; and, accordingly, the Queen's consent being signified,[2] the following standing order was agreed to:—

"That whenever the house shall be informed by the clerk at the table of the unavoidable absence of Mr. Speaker, the chairman of the committee of ways and means do perform the duties and exercise the authority of speaker, in relation to all proceedings of this house, as deputy speaker, until the next meeting of the house, and so on from day to day, on the like information being given to the house, until the house shall otherwise order: provided that if the house shall adjourn for more than twenty-four hours, the deputy speaker shall continue to perform the duties and exercise the authority of speaker, for twenty-four hours only after such adjournment."

Recognition of deputy speaker by statute.

An Act was also passed, providing that if in the temporary absence of the speaker, a deputy speaker shall perform his duties and exercise his authority, pursuant to the standing orders or other order or resolution, every act done and proceeding taken in or by the house, pursuant to any statute, shall be as valid as if the speaker himself were in the chair; and every act done by the deputy speaker shall have the same effect and validity as if it had been done by the speaker.[3]

[1] See *supra*, p. 203.

[2] 110 Com. J. 395.

[3] 18 & 19 Vict. c. 84. Report on Office of Speaker, 1855. A bill in almost the same terms had been submitted to the committee of 1853, but they were contented to rely upon a resolution of the house. Under this Act, Mr. Massey, acting as deputy speaker, in May 1861, signed certificates of the withdrawal of the London, Buckinghamshire, and West Midland Junction Railway, and of the Ellesmere and Whitchurch Railway, to authorise the repayment of the deposit required by the standing orders, pursuant to 9 & 10 Vict. c. 20, s. 5. And in March 1866, Mr. Dodson signed several similar certificates (Brecon Waterworks; Dublin Southern Docks, &c.).

The speaker was absent on the 26th April 1861; and again on the 1st, 2nd, and 3rd May 1861, when Mr. Massey, the chairman of the committee of ways and means, officiated as deputy speaker, pursuant to the standing order.[1]

It was not, however, until 1866, that the value and efficiency of this new system were fully tested. In that session, Mr. Speaker being unfortunately disabled by an accident, was absent from Friday the 9th, until Friday the 23rd March, on which latter day the house adjourned for the Easter vacation. On the re-assembling of the house on the 9th April, he resumed the chair, but was obliged to absent himself on this and several other evenings, before the conclusion of the sitting, as well as on the whole of one evening, and three Wednesday sittings, the last of these being on the 25th April. On each of these occasions, on the house being informed of the unavoidable absence of Mr. Speaker, Mr. Dodson, the chairman of ways and means, at once proceeded to act as deputy speaker, and performed all the duties of speaker in and out of the chair. On the 20th April, when Mr. Speaker was convalescent, he informed the house that a commission was ordered, and that being disabled from attending with the house in the House of Peers, he should be obliged, by permission of the house, to withdraw before the arrival of black rod. Thereupon the house resolved that during his absence the chairman of ways and means should take the chair as deputy speaker, and attend with

[1] 116 Com. J. 168. 174, &c. The serjeant accompanied by the chaplain entered the house with the mace, which he placed upon the table. The clerk informed the house of the speaker's unavoidable absence, and read a letter from him. Mr. Massey then proceeded to the table, called in the chaplain, and, after prayers, counted the house and took the chair. On the 2nd May, the principal business being in committee of ways and means, the chairman first took the chair of the house, and then of the committee. It was thought better, however, not to follow the precedent of 1855; and the chairman himself put the question for reporting progress, and then left the house for a time. On returning, he took the chair of the house, and Mr. Peel, the Secretary of the Treasury, reported that the chairman had been directed to report progress.

the house in the House of Peers, and report the royal assent to the acts. On the approach of black rod, Mr. Speaker retired, his place being taken by Mr. Dodson; and when the royal assent to the acts had been reported, he resumed the chair. This proceeding was resorted to on two other occasions;[1] and since that time, the chairman of ways and means has repeatedly taken the chair in the absence of the speaker.[2] On the 20th June 1870, the speaker asked the indulgence of the house to enable him to receive the degree of D.C.L. at Oxford, when the chairman of ways and means was ordered to take the chair, as deputy speaker, during his temporary absence.[3]

Office of speaker in the two houses.

Formerly the difference in the constitution of the office of speaker in the two houses had an important influence upon the power of each house in regard to its own sittings. In the upper house the speaker may leave the woolsack, but his place is immediately supplied by another speaker, and the proceedings of the house are not suspended. Thus, on the 22nd April 1831, when the king was approaching to prorogue Parliament, the lord chancellor suddenly left the woolsack to attend his Majesty, upon which Lord Shaftesbury was appointed speaker, *pro tempore*, and the debate, which had been interrupted for a time, proceeded until his Majesty entered the house.[4] But in the Commons, before these recent arrangements, if the speaker was absent, the house was powerless, except for the purpose of adjournment. This general description of the office of speaker, in both houses, leads to a brief notice of the principal officers whose duties are immediately connected with the proceedings of Parliament.

Assistants of the Lords.

The assistants of the House of Lords are the judges of the Courts of Queen's Bench and Common Pleas, and such barons of the Exchequer as are of the degree of the coif, the

[1] 121 Com. J. 234. 239. 261. 331.
[2] 125 Ib. 356. 126 Ib. 309, &c.
[3] 125 Ib. 265.
[4] 63 Lords' J. 511; 80 Ib. 10. Hans. Deb. 22nd April 1831.

master of the rolls, the attorney and solicitor-general, and the Queen's serjeants. They are summoned, at the beginning of every Parliament, by writs under the great seal, to be "personally present in Parliament, with us and with others of our council to treat and give advice."[1] They were present in the ancient consilium regis, either as members of that high court, or as assistants; and their presence has been uninterrupted until this day. The judges, as assistants of the Lords, held a more important place in Parliament, in ancient times, than that which is now assigned to them, having had a voice of suffrage, as well as a voice of advice.[2] When the petitions of the Commons and the answers of the king were drawn up into the form of statutes after the session, the judges, if not regarded as legislators themselves, were at least concerned in the most important part of legislation. They were also occasionally made joint committees with the Lords of Parliament, a practice which continued until the latter end of the reign of Queen Elizabeth.[3] Their attendance was formerly enforced on all occasions, but they are now summoned by a special order, when their advice is required. Their place is on the woolsacks, and they

> "are not to be covered until the Lords give them leave, which they ordinarily signify by the lord chancellor; and they being then appointed to attend the house, are not to speak or deliver any opinion until it be required, and they be admitted so to do by the major part of the house, in case of difference."[4]

Scotch judges.

After the union with Scotland, it became a question in what manner the Scotch judges should be received by the house, when called upon to deliver their opinions. On the 29th April 1737, the lord justice clerk and the other judges of the Court of Justiciary having been ordered to

[1] Macqueen, 36 *n.*

[2] Hale, Hist. of H. of Lords. Intro. to Sugden's Law of Real Property, 2. See also Lord Lyndhurst's speech, 23rd June 1851; 117 Hans. Deb., 3rd Ser., 1069.

[3] 1 Lords' J. 586. 606, 26th Jan., 20th March 1563. West, Inq. 48.

[4] Lords' S. O. No. 4.

attend, it was referred to a committee of the whole house to consider in what places they should be heard. This committee reported that they should be heard at the bar, to which the house agreed, though not without objection; and chairs were ordered to be set for them at the bar.[1] The question was again raised in 1807, and a committee appointed to search for precedents: but the house adhered to the previous practice, ordering chairs to be placed for the judges below the bar, and desiring them to be seated.[2]

Attendants.

The masters in ordinary in chancery also, until the abolition of their offices, attended in the House of Lords as attendants, and were usually employed in carrying bills and messages to the House of Commons.[3] They were not summoned by writ, but one of them attended each day, by rotation.[4] Like the assistants, they also sat upon the woolsacks, but were never covered.[5]

Chief officers of the Lords.

The chief officers of the upper house are the clerk of the Parliaments,[6] the gentleman usher of the black rod, the clerk assistant, and the serjeant-at-arms. The clerk of the Parliaments is appointed by the Crown, by letters patent. On entering office, he makes a declaration[7] at the table, before the lord chancellor, to make true entries and records of the things done and passed in the "Parliaments, and to keep secret all such matters as shall be treated" therein, "and not disclose the same before they shall be published, but to such as it ought to be disclosed unto."[8] The clerk assistant and the reading clerk attend at the table, with the clerk, and take minutes of all the proceedings, orders, and judgments of the house. These have been published daily since

Lords' Minutes and Journals.

[1] 25 Lords' J. 99, 100.

[2] 46 Ib. 172. 189.

[3] See Chapters XVI. and XVIII. By Act 15 & 16 Vict. c. 80, the office of master in ordinary was abolished, subject to a temporary performance of duties by certain of the present masters.

[4] Macq. 66. [5] Lords' S. O. No. 5.

[6] Until 1855, this office had been executed by the clerk assistant, who, on the death of Sir George Rose, succeeded to his office, pursuant to the Act 5 Geo. IV., c. 82; 87 Lords' J. 243.

[7] By Promissory Oaths Act, 1868.

[8] 87 Lords' J. 44.

1824[1] as the "Minutes of the Proceedings," and they are printed, in a corrected and enlarged form, as the Lords Journals, after being examined "by the sub-committees for privileges and perusal of the Journal Book."[2]

Black rod.

The gentleman usher of the black rod is appointed by letters patent from the Crown, and he, or his deputy, the yeoman usher, is sent to desire the attendance of the Commons in the House of Peers when the royal assent is given to bills by the Queen or the lords commissioners, and on other occasions. He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers, and other ceremonies.

Serjeant-at-arms.

The serjeant-at-arms is also appointed by the Crown. He attends the lord chancellor with the mace, and executes the orders of the house for the attachment of delinquents, when they are in the country. He is, however, the officer of the lord chancellor, rather than of the house.

Chief officers of the Commons.

Clerk of the House.

The chief officers of the House of Commons are, the clerk of the house, the serjeant-at-arms, the clerk assistant, and second clerk assistant. The clerk of the house is appointed by the Crown, for life, by letters patent, in which he is styled "under clerk of the Parliaments, to attend upon the Commons."[3] He makes a declaration[4] before the lord chancellor, on entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons;" he signs all orders of the house, endorses the bills, and reads whatever is required to be read in the house. He has the custody of all records or other documents,[5] and is responsible for the regulation of all matters connected with the business of the house, in the

[1] 56 Lords' J. 369 *a*.

[2] 84 Ib. 91. Lords' S. O. No. 58. Since 1860, the Lords' Minutes have been laid daily on the table of the House of Commons; 149 Hans. Deb., 3rd Ser., 856.

[3] 2 Hatsell, 255. London Gazette, 1st October 1850; 3rd February 1871. See also 3 Com. J. 54. 57.

[4] Substituted for an oath, by the Promissory Oaths Act, 1868.

[5] 1 Com. J. 306; 6 Ib. 542; 17 Ib. 724, &c.

several official departments under his control. The clerks assistant are appointed by the Crown, under the sign manual, on the recommendation of the speaker, and are removable only upon an address of the House of Commons.[1] They sit at the table of the house, on the left hand of the clerk.

Votes and Proceedings, and Journals.

The short entries of the proceedings of the house, which are made by the clerks at the table, have, since 1817, been printed and distributed every day, and are entitled, the "Votes and Proceedings."[2] From these the Journal is afterwards prepared, in which the entries are made at greater length, and with the forms more distinctly pointed out. These records are confined to the votes and proceedings of the house, without any reference to the debates. The earlier volumes of the Journals contain short notes of speeches, which the clerk had made, without the authority of the house:[3] but all the later volumes record nothing but the *res gestæ*. It was formerly the practice for a committee "to survey the clerk's book every Saturday,"[4] and to be entrusted with a certain discretion in revising the entries:[5] but now the votes are prepared on the responsibility of the clerk; and after "being first perused by Mr. Speaker,"[6] are printed for the use of members, and for general circulation. But no person may print them, who is not authorised by the speaker.

Lords' Journals.

A few words may here be interposed in regard to the legal character of the Journals of the two houses. The Journals of the House of Lords[7] have always been held to be public

[1] 19 & 20 Vict. c. 1; Treasury Minute, 1856 (Sess. Paper, No. 132).

[2] They had been printed, with some interruptions, since 1680.

[3] 1 Com. J. 885; 2 Ib. 12. 42. For a history of the early Journals, see 24 Com. J. 262.

[4] 1 Com. J. 673.

[5] 1 Ib. 676. 683; 2 Ib. 42.

[6] Sess. order since 1680. 9 Com. J. 643. In 1866, the old form of Latin dates prefixed to the Votes and Journals of each day's proceedings was discontinued, by order of Mr. Speaker.

[7] Before the commencement of the Lords' Journals, the proceedings of Parliament were recorded in the Rolls of Parliament, A. D. 1278–1503, 6 Edward I. to 19 Henry VII. The Lords'

records. They were formerly "recorded every day on rolls of parchment," and in 1621 it was ordered that the Journals of the House of Commons "shall be reviewed and recorded on rolls of parchment." But this practice has long since been discontinued by the Lords, and does not appear to have been adopted by the Commons.[1] All persons may have access to the Commons' Journals, in the same manner as to the Journals of the other house.

Commons' Journals.

The Journals of the House of Commons,[2] however, are not regarded as records,[3] although their claim to that character is upheld by weighty considerations. Sir Edward Coke speaks of "the book of the clerk of the House of Commons, which is a record, as it is affirmed by Act of Parliament, in anno 6 Hen. VIII., c. 16."[4]

This is the statute already alluded to, which prohibits the departure of any member of the House of Commons "except he have license," &c.; "and the same license be *entered of record* in the book of the clerk of the Parliament, appointed or to be appointed for the Commons' House." This entry was obviously intended to be a legal record, to be given in evidence in any claim for wages, from the payment of which the counties, cities, and boroughs were discharged, in case of the unauthorised departure of their members. The Clerk's Book and the Journals were unquestionably the same, and the latter are still prepared from the former. A license was granted by a vote of the house, and necessarily formed part of its ordinary proceedings, which were entered at the same time, and by the same

Journals commence in 1509, 1 Henry VIII.

[1] 2 Oxford Debs., 22. 1 Com. J. 608. 3 Hatsell, 37.

[2] The Journals of the Commons commence in 1547, 1 Edw. VI.; and, with the exception of a short period during the reign of Elizabeth, are complete to the present time.

[3] Jones *v.* Randall, 1 Cowp. 17. Per Lord Mansfield: "Formerly a doubt was entertained whether the minutes of the House of Commons were admissible, because it is not a court of record: but the Journals of the House of Lords have always been admitted, even in criminal cases." 1 Starkie on Ev. 199. 2 Phil. & Amos, 591.

[4] 4th Inst. 23.

person, in the Clerk's Book; and the words of the statute raise no inference that the entry of a license was distinguishable, in law, from the other entries in the same book. This statute was urged by the Commons in 1606, at a conference with the Lords, as evidence in support of their claim to be a court of record, to which the Lords took no distinct objection, though they answered that "in all points they were not satisfied."[1]

Given in evidence.

The only point of importance in reference to the question, is that of the legal effect of the Journals as evidence in a court of law; and no difference is then perceptible in respect to the Journals of either house. An unstamped copy of the minutes of the reversal of a judgment in the House of Lords, as entered in the Journals, is evidence of the reversal, like the record of a judgment in another court.[2] And an entry in the Lords' Journals has been admitted by the Committee of Privileges, as evidence of limitations in a patent of peerage, without requiring the production of the patent.[3] The Journals of that house would also be evidence of a proceeding in Parliament having taken place, as that an address had been presented to the king, and his answer;[4] and in certain cases they might be admitted as evidence of other facts, as in the cause just cited, that there had been differences between the king of England and the king of Spain; but, undoubtedly, a resolution of the House of Lords, affirming a particular fact, would not be admitted as evidence of the fact itself, although the Journals would be evidence of such a resolution having been agreed to.

In the same manner, a copy of the Journals of the House of Commons has constantly been admitted as evidence of a proceeding in that house:[5] but a resolution would not be evidence of a fact. Thus, upon the indictment of Titus

[1] Com. J. 168. 349.

[2] Jones *v.* Randall, 1 Cowp. 17.

[3] Case of Lord Dufferin, 4 Clark & Finnelly, 568.

[4] Francklin's case, 17 Howell, St. Tr. 635, 636.

[5] Doug. 593. 1 Cowp. 17. Str. 126. See also R. *v.* Knollys, 1 Lord Raym. 10. 15. Bruyeres *v.* Halcomb, 5 Nev. & M. (K.B.) 149. 3 Adol. & Ell. 381.

Oates for perjury, a resolution of the House of Commons, alleging the existence of a popish plot, was rejected as evidence of that fact;[1] and although that trial must be held of doubtful authority, and the reasons assigned for the rejection of the evidence were not sound, yet upon general principles the determination of this matter was right. As evidence, therefore, the Journals of the two houses stand upon the same grounds; they are good evidence of proceedings in Parliament: but are not conclusive of facts alleged by either house, unless they be within their immediate jurisdiction. Thus a resolution might be agreed to by either house, that certain parties had been guilty of bribery: but in a prosecution for that offence, such a resolution would not be admitted as evidence of the fact, although in both cases it may have been founded upon evidence taken upon oath. But the reversal of a judgment by the Lords, and the proceedings of the Commons upon a controverted election, would be equally proved by their respective Journals. In the same manner, a resolution of either house as entered in the Journals, that a party had been guilty of a breach of privilege, would be conclusive evidence of the fact that the party had been adjudged by the house to be guilty of such offence. And indeed, upon all other points, except, perhaps, when the House of Lords is sitting in its judicial capacity, the Journals of the two houses cannot be viewed as differing in character. Every vote of either house upon a bill is of equal force: in legislation their jurisdiction is identically the same: they are equally constituent parts of the High Court of Parliament; and whatever is done in either house, is, in law, a proceeding in Parliament, and an act of that high court at large. There are bills also of a strictly judicial character, in which the Commons have equal voice with the Lords. Acts of attainder, of pains and penalties, of grace or pardon, and

[1] R. *v.* Oates, 10 Howell, St. Tr. 1165-1167.

of divorce, require the sanction of the Commons to become law. The endorsement of these bills by the clerk of the house is evidence of their agreement, by whom an entry is made at the same time in the Journal Book, to record the same proceeding. To use the words of Sir Edward Coke, "The Lords in their house have power of judicature, and the Commons in their house have power of judicature, and both houses together have power of judicature."[1] Their legislative and judicial functions are sometimes merged; at one sitting, they constantly exercise both functions separately, and their proceedings upon both are entered by their sworn officers, in the same form and in the same page of one book. If the judicature of the Lords be held to constitute them a court of record, and their Journals a public record, the judicature of the Commons in Parliament, it may be argued, would constitute them equally a court of record, and would also give to their Journals the same character as a public record. When the Commons desire information concerning any proceeding in the House of Lords, they appoint a committee to search the Lords' Journal. The Lords, on their side, have appointed committees to search the Commons' votes:[2] but their Lordships have also accepted the votes on the table of the house as sufficient evidence of proceedings of the Commons, without further search, or authentication.[3]

How authenticated.

When the Journals of the House of Lords are required as evidence, a party may have a copy or extract, authen-

[1] 4th Inst. 23.

[2] 75 Lords' J. 590; 77 Ib. 505.

[3] On the 31st Dec. 1691, they resolved, "That the printed vote of the House of Commons is sufficient ground for the Lords to take notice of that vote, to the House of Commons." And again, on the 2nd Jan. following, they considered a resolution of the Commons, as it appeared in their printed votes; 3 Hatsell, 33. 59. In 1704, the Lords took notice of the votes of the Commons, as evidence of the proceedings of that house in the conferences relative to the case of Ashby and White, Ib. 304. On the 24th Feb. 1820, they resolved, "That it appears from the votes of the House of Commons, now on the table of the house, that the Commons have voted the following resolutions," which are entered at length in the Lords' Journal; 53 Lords' J. 17; 41 Hans. Deb. 1632.

ticated by the signature of the clerk of the Parliaments, which it may be as well that he should be able to prove on oath, by having been personally present when the copy was signed by that officer; and in some cases the Lords have allowed an officer of their house to attend a trial with the original Journal.[1] In the Commons it is usual for an officer of the house to attend with the printed Journal, when a cause is tried in London: but when it is tried at the assizes, or at a distance, a party may either obtain from the Journal Office a copy of the entries required, without the signature of any officer, and swear himself that it is a true copy; or, with the permission of the house, or, during the recess, of the speaker, he may secure the attendance of an officer to produce the printed Journal, or extracts which he certifies to be true copies; or, if necessary, the original manuscript Journal book.[2] In some cases the printed Journals have not been admitted by the courts as evidence, unless examined with the original Journal.[3] On the trial of Lord Melville, a printed copy of the Journal of the House of Commons was tendered in evidence: but Lord Erskine, C., ruled that "the printed Journal, if the party producing it had examined it with the original, would be as good evidence as the original Journal itself; but unless your copy be so examined, you must produce the original Journal."[4] By Act 8 & 9 Vict. c. 113, s. 3, it is enacted that all copies of the Journals of either House of Parliament purporting to be printed by the printers to either House of Parliament, or by any or either of them, shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed. This Act does not extend to Scotland. But in *Chubb* v. *Salomons*,[5] a printed copy

[1] Lords' J., 13th and 15th February 1844.

[2] 99 Com. J. 128; 100 Ib. 114.

[3] See Lord Melville's case, 29 Howell, St. Tr. 683. R. *v.* Lord G. Gordon, 2 Doug. 593.

[4] 29 St. Tr. 685.

[5] 3 Carrington & Kirwan, 75.

of the Journal of the House of Commons was produced, and a witness proved that he had "examined the printed book with the manuscript from which it was printed," or rather "the proof-sheets with the manuscript and not the last printed copy;" and the court rejected the printed Journal as evidence. An examined extract of the minute book kept by the clerk at the table, was afterwards given in evidence.

Entries in the Journal expunged.

Entries in the Journal have occasionally been ordered to be expunged.[1] When the resolution of the 17th February 1769, affirming the incapacity of Wilkes, was ordered to be expunged, on the 3rd May 1782, "the same was expunged by the clerk at the table accordingly;"[2] and the entry is found to be erased in the manuscript Journal of that day: but the printed Journal, though reprinted since that time, still contains the obnoxious resolution.

Expunging motions from the clerk's minute book.

On the 16th May 1833, a motion was made by Mr. Cobbett, impugning the conduct of Sir Robert Peel. Lord Althorp moved "that the resolution which has been moved be not entered in the minutes:" but the speaker put the question thus, "that the proceedings be expunged," on the ground that the minutes had already been entered in the clerk's book. The question thus put was carried by 295 to 4, and no entry of the motion or other proceedings was made in the Votes.[3]

On the 6th March 1855, a motion was made relative to the appointment of a recorder for Brighton; and on proceeding to a division the mover was left alone, his seconder, *pro formâ*, declining to vote with him. A member immediately rose and moved that the motion should not be entered in the Votes, which was agreed to by all the members except the mover of the original motion. Accordingly, there is no entry of either motion in the Votes.[4]

[1] 4 Com. J. 397, &c.; 5 Ib. 197; 7 Ib. 317, &c.; 9 Ib. 126; 11 Ib. 210; 33 Ib. 509.

[2] 38 Ib. 977.

[3] 2 Peel's Speeches, 704; 17 Hans. Deb., 3rd Ser., 1324.

[4] 137 Hans. Deb., 3rd Ser., 202.

In extreme cases the house, in this manner, marks its indignant reprobation of an unseemly motion: but the practice is resorted to with caution, as it infringes upon the rights of individual members, and, unless exercised with forbearance, would be liable to dangerous abuse. The expunging of a motion from the minutes is also deprived of much of its significance, by the publication of all parliamentary debates and proceedings in every public journal.

This notice with regard to the Journals has necessarily interrupted the account of the chief officers of the House of Commons, to which it is now time to return.

Serjeant-at-arms.

The serjeant-at-arms is the last officer, immediately connected with the proceedings of the house, to whom reference need be made. He is appointed by the Crown, under a warrant from the lord chamberlain, and by patent under the great seal, "to attend upon her Majesty's person when there is no Parliament; and, at the time of every Parliament, to attend upon the speaker of the House of Commons:[1] but after his appointment he is the servant of the house, and may be removed for misconduct. On the 2nd June 1675, the house committed Sir James Norfolke to the Tower, for "betraying his trust," and addressed the Crown to appoint another serjeant-at-arms "in his stead."[2] His duties are, to attend the speaker with the mace on entering and leaving the house, or going to the House of Lords, or attending her Majesty with addresses; to keep clear the gangway at the bar, and below it; to take strangers into custody who are irregularly admitted into the house, or who misconduct themselves there; to cause the removal of strangers whenever they are directed to withdraw; to give orders to the doorkeepers and other officers under him, for the locking of all doors upon a division; to introduce, with the mace, peers or judges attending within the bar, and messengers from the Lords; to attend the sheriffs of

[1] Officers and Usages of the House. MS. 1805. [2] 9 Com. J. 351.

London at the bar, on presenting petitions; to bring to the bar prisoners to be reprimanded by the speaker, or persons in custody to be examined as witnesses. For the better execution of these duties he has a chair close to the bar of the house, and is assisted by a deputy serjeant. Out of the house, he is entrusted with the execution of all warrants for the commitment of persons ordered into custody by the house, and for removing them to the Tower or Newgate, or retaining them in his own custody. He serves, by his messengers, all orders of the house, upon those whom they concern. He also maintains order in the lobby and passages of the house.

On the 5th March 1807, complaints having been made by members of the crowds of strangers which had collected in the lobby, to their obstruction, the speaker "declared it to be the duty of the serjeant, when he found that the accesses to the house were crowded with strangers, to provide proper persons to clear them and to maintain order."[1]

It is another of his duties to give notice to all committees, when the house is going to prayers. He has the appointment and supervision of the several officers in his department; and, as housekeeper of the house, has charge of all its committee-rooms and other buildings, during the sitting of Parliament.

Admission of strangers.

By the ancient custom of Parliament,[2] and by orders of both houses, strangers are not to be admitted while the houses are sitting.

Lords.

It is ordered by the Lords,

"That for the future no person shall be in any part of the house during the sitting of the house, except lords of Parliament and peers of the United Kingdom not being members of the House of Commons, and heirs apparent of such peers or of peeresses of the United Kingdom in their own right, and such other persons as attend this house as assistants"[3]

Strangers, however, are regularly admitted below the

[1] 9 Hans. Deb. 1.
[2] 1 Com. J. 105. 118. 417. 484; 2 Ib. 74. 433, &c.
[3] Lords' S. O. No. 12.

bar, and in the galleries: but the standing order may at at any time be enforced.

Until 1845, the sessional orders of the Commons had also contemplated the entire exclusion of strangers from every part of the house: but since that time the presence of strangers has been recognised in those parts of the house not appropriated to the use of members. On the 3rd May 1836, the house, in pursuance of the report of a select committee, ordered that arrangements should be made for the accommodation of ladies, during the debates.[1]

Ladies' gallery.

Commons.

By the standing orders of the Commons, the serjeant-at-arms is directed,

"From time to time to take into his custody any stranger or strangers that he shall see, or who may be reported to him to be, in any part of the house or gallery appropriated to the members of this house, and also any stranger who, having been admitted into any other part of the house or gallery, shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the house, or any committee of the whole house, is sitting; and that no person, so taken into custody, be discharged out of custody without the special order of the house." And it is also ordered, "That no member of this house do presume to bring any stranger into any part of the house or gallery appropriated to the members of this house, while the house, or a committee of the whole house, is sitting."[2]

And in compliance with the general orders of the house, the serjeant has accordingly taken strangers into custody who have come irregularly into the house, or have misconducted themselves there.[3] The exclusion of strangers can at any time be enforced without an order of the house; for, on a member taking notice of their presence, the speaker is obliged, by ancient usage, to order them to withdraw, without putting a question.[4] Nor has the recognition of

[1] 91 Com. J. 319.

[2] Orders 5th Feb. 1845, made Standing Orders; and see 15 Com. J. 527, from which it appears that members had been prevented from sitting by the pressure of strangers. See also Hans. Deb., 12th Feb. 1844 (Mr. Christie's motion).

[3] 29 Com. J. 23; 74 Ib. 537; 86 Ib. 323; 88 Ib. 246.

[4] 15 Hans. Deb. 310 (Walcheren Expedition, 1810); 77 Hans. Deb., 3rd Series, 138 (Mr. Speaker's explanation of the rule).

their presence by the standing orders of 1845 superseded the ancient usage, which was founded upon the principle of their entire exclusion. On the 18th May 1849, a member took notice that strangers were present, who were ordered to withdraw.[1] The doors were accordingly closed for upwards of two hours, and no report of the debates, during that time, appeared in the newspapers. Strangers were re-admitted without any order of the speaker; and again, on the 8th June, in the same year, strangers were ordered to withdraw.[2] The revival of this exceptional practice led to the appointment of a committee, which unanimously declared against any alteration of the rules of the house.[3] It was not until the 23rd May 1870, that strangers were again ordered to withdraw, in order to avoid publicity being given to a debate upon the Contagious Diseases Acts.[4] This led to further discussion:[5] but the house adhered to the old rule of exclusion, which was again enforced on the 19th March 1872.[6] Upon divisions of the house, they were entirely excluded until 1853, but are now merely desired to withdraw from below the bar and the front gallery.[7]

Soldiers in uniform.

On the 3rd August 1855, notice was taken that two soldiers in uniform, lately returned from the Crimea, had been refused admission to the strangers' gallery. The speaker stated that there was no rule for their exclusion: but since a complaint had been made of their admission (it was afterwards said by Sir F. Burdett), they had not been admitted except in plain clothes.[8] Soldiers in uniform, but unarmed, are now freely admitted.

The only other matters connected with the meeting and sitting of the two houses, which will not be more particularly described elsewhere, are the forms observed on the

[1] 105 Hans. Deb., 3rd Ser., 662.
[2] Ib. 1320.
[3] Rep. 1849 (498).
[4] 201 Hans. Deb., 3rd Ser., 1307.
[5] 30th May; Ib. 1640.
[6] 203 Hans. Deb., 3rd Ser., 651.
[7] See *infra*, Chapter XII. DIVISIONS.
[8] 139 Hans. Deb., 3rd Ser., 1748.

prorogation of Parliament. Some of these, also, will be adverted to again: but a general description of the ceremony of prorogation will bring this chapter to a close.

Parliament prorogued before its first meeting.

According to former usage, when a new Parliament was prorogued to any further day than was appointed for its meeting by the writ of summons, it was prorogued by writ directed to both houses. On the day first appointed for the meeting of Parliament, the Commons proceeded directly to the door of the House of Lords, without going into their own house, or expecting any message from the Lords. They were admitted by the usher of the black rod to the bar, and the writ being read, the Parliament stood prorogued by virtue of the writ, without further formality.[1] But, in 1867, this ceremony was superseded by the simpler form of a royal proclamation.[2]

After its first meeting.

If her Majesty attend in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament: the attendance of the Commons in the House of Peers is commanded; and, on their arrival at the bar, the speaker addresses her Majesty, on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session.[3] The royal assent is then given to the bills which are awaiting that sanction,[4] and her Majesty reads her speech to both Houses of Parliament herself, or by her chancellor;[5] after which the lord chancellor, having received directions from her Majesty for that purpose, addresses both houses in this manner,—"My lords and gentlemen, it is her Majesty's royal will and pleasure that this Parliament be prorogued to" a certain day, "to be then here holden; and this Parliament is accord-

[1] Lords' S. O. No. 7. 59 Lords' J. 3. 82 Com. J. 4. 2 Hatsell, 328.

[2] 30 & 31 Vict. c. 81.

[3] See debate in 1814, on Mr. Speaker Abbot's speech, referring to a bill which had not received the assent of the house. 27 Hans. Deb. 466. See also Chapter XXI. SUPPLY. Lord Colchester's Diary, ii., 453–459. 483–496.

[4] See Chapter XVIII.

[5] See *supra*, p. 204.

ingly prorogued," &c. When her Majesty is not present at the end of the session, Parliament is prorogued by a commission under the great seal, directed to certain peers, who by virtue of their commission, prorogue the Parliament. The attendance of the Commons is desired in the House of Peers; and, on their coming, with their speaker, the lord chancellor states to both houses, that her Majesty, not thinking fit to be personally present, has caused a commission to be issued under the great seal, for giving the royal assent to bills. The commission is then read, and the speaker, *without any speech*, delivers the money bills to the clerk of the Parliaments, who comes to the bar to receive them. The royal assent is signified to the bills in the usual manner; after which the lord chancellor, in pursuance of her Majesty's commands, reads the royal speech to both houses. The commission for proroguing the Parliament is next read by the clerk, and the lord chancellor, by virtue of that commission, prorogues the Parliament accordingly. On further prorogations, prior to 1867, the Commons were represented at the bar of the House of Lords by their clerk, clerk assistant, or second clerk assistant;[1] the commission was read, and the lord chancellor prorogued the Parliament in the usual manner: but by the 30 & 31 Vict. c. 81, this obsolete and unimpressive ceremony was discontinued, and Parliament has since been prorogued by royal proclamation only.

[1] The speaker formerly attended: the earliest instance of the clerk attending being in 1672 (9 Com. J. 244); and of the clerk assistant in 1706 (15 Ib. 199). George III. assigned a later date to this practice, saying, "Oh! I'll tell you how all that came about. Sir John Cust wanted to go to Spa, and desired I would excuse his attendance upon the prorogation during the recess. Then came Sir Fletcher Norton, and he took advantage of the last precedent; Mr. Cornwall followed the same; and so the speakers have all considered themselves as going to Spa ever since." Lord Colchester's Diary, Nov. 1st, 1809, ii. 213.

CHAPTER VIII.

MOTIONS AND QUESTIONS. NOTICES OF MOTIONS, AND ORDERS OF THE DAY. QUESTIONS MOVED AND SECONDED. MOTIONS WITHDRAWN. QUESTIONS SUPERSEDED BY ADJOURNMENT; OR BY READING THE ORDERS OF THE DAY. PREVIOUS QUESTIONS. NEW QUESTIONS SUBSTITUTED BY AMENDMENT. COMPLICATED QUESTIONS. QUESTIONS PUT.

Questions a part of every proceeding.

EVERY matter is determined in both houses, upon questions put by the speaker, and resolved in the affirmative or negative, as the case may be. As a question must thus form part of every proceeding, it is of the first importance that good rules should prevail for stating the question clearly, and for enabling the house to decide upon it. However simple such rules may be, the complexity of many questions, and the variety of opinions entertained by members, must often make it difficult to apply them. Very few general rules have been entered in the Journals of either house; but the practice of Parliament has established certain forms of procedure, which numerous precedents rarely fail to make intelligible.

Notices of motions.

Every member is entitled to propose a question, which is called "moving the house," or, more commonly, "making a motion:" but in order to give the house due notice of his intention, and to secure an opportunity of being heard, it has long been customary to state the form of the motion on a previous day, and to have it entered in the Order Book or Notice Paper.[1]

[1] 3rd Feb. 1806. Before the rising of the house, Mr. Fox moved for leave to bring in a bill to enable Lord Grenville to hold the two offices of auditor of the Exchequer and first Lord of the Treasury. "I objected to such a motion without notice. Mr. Fox inclined to persist: but the house was of my opinion for adhering to the present practice of giving notice of new matters. And he gave a notice accordingly." Lord

Formerly, the pressure of business in the House of Lords had not been so great as to require any strict rules in regard to notices: but on the 26th March 1852, the following resolutions were agreed to:[1] House of Lords.

"That all notices of proceedings on public bills, and of other matters, be inserted in the minutes of each day, according to the priority of every such notice, or as the lords giving the same may have agreed, and that the house do always proceed with the same in the order in which they shall so stand, unless the lord who shall have given any such notice shall withdraw the same, or shall, with the leave of the house, consent to its postponement, or shall be absent at the appointed time after the house shall have entered upon the consideration of the said notices, in which latter case it shall be held to be a lapsed order, and not be proceeded with, until after the notice shall have been renewed.

"That on all occasions notices to suspend any of the Standing Orders of the house, and notices relating to private bills, shall be disposed of before the house proceeds to the other notices.

"That on Tuesdays and Thursdays the bills which are entered for consideration on the minutes of the day, shall, with the before-mentioned exception, have precedence of all other notices: but petitions relating to any such bill may be presented immediately before the motion is made to proceed with the bill.

"That any business for which notice is not required, and all proceedings relating to private bills, may, in accordance with present usage, be entered upon before the notices of the day are called for: but the house will proceed with the notices in preference to other matters at any time after a quarter past five o'clock, at the request of any lord who may have a notice on the minutes."

In the Lords, the usual order of business is occasionally changed, by special order. For example, on the 9th July 1868, it was ordered that third readings, on the orders of the day, for this day, be taken after the City of London Gas Bill, and before the other orders of the day.[2] And on the 10th July, it was ordered that the Representation of the People (Scotland) Bill, and the bills appointed for

Colchester's Diary, ii. 35. On the 27th of the same month, Mr. Speaker Abbot stated it to be then a settled practice, that previous notice was required to be given of motions of a public nature. 6 Hans. Deb., 1st Ser., 229. 2 Lord Colchester's Diary, 41.

[1] 84 Lords' J. 74.

[2] 100 Ib. 393.

third reading, be taken before the notices and the other orders of the day.[1]

On the 20th July 1868, it was ordered "that for the remainder of the session, the bill or bills which are entered for consideration on the minutes of the day, shall have the same precedence which bills have on Tuesdays and Thursdays."[2] A similar order was made on the 14th August 1871,[3] and has become usual at the close of a session. The regular business appointed for the day commences at a quarter past five o'clock.

House of Commons.

In order to apportion the public business according to the convenience of the house, it is usual for the House of Commons to set apart certain days for considering the "orders of the day" (or matters which the house have already agreed to consider on a particular day), and to reserve other days for original motions.

Restriction in giving notices.

Subject to this regulation, it was formerly the practice to allow members to give notices for any day, however distant: but by a standing order, it is now provided,

"That no notice shall be given beyond the period which shall include the four days next following, on which notices are entitled to precedence; due allowance being made for any intervening adjournment of the house, and the period being in that case so far extended as to include four notice days falling during the sitting of the house."

The Order Book cannot, therefore, be occupied in advance, with notices, for a longer period than a month, when the house is sitting without interruption. No allowance is made for an intended adjournment, until the house has actually agreed upon it. Thus, for example, if it be intended to move the Easter adjournment on a Thursday until the Monday week following, a member cannot, on the Tuesday preceding such adjournment, give notice for a later day than that day month: but immediately the house has agreed, at its rising, to adjourn for the holidays, notices may be given for the four next notice nights during the

[1] 100 Lords' J. 401. [2] Ib. 442. [3] 103 Ib. 656.

sitting of the house after the adjournment. Notices may be given for days on which orders of the day are allowed precedence, as well as for notice days: but as the orders usually occupy the greater part of the night, notices of importance are rarely given for such days, unless it has been agreed that the orders shall be postponed. The priority of members desiring to give notices on the same day is determined by ballot; and on being called by Mr. Speaker, they rise and give their notices, without debate or comment.

By the latest Standing Orders of the House, it is directed,

Orders of the day.

"That unless the house shall otherwise direct, all orders of the day set down in the Order Book for Mondays, Wednesdays, Thursdays, and Fridays, shall be disposed of before the house will proceed upon any motions of which notices shall have been given; the right being reserved to Her Majesty's ministers of placing government orders at the head of the list on every order day, except Wednesday."[1]

Orders of the day read.

"That at the time fixed for the commencement of public business, on days on which orders have precedence of notices of motions, and after the notices of motions have been disposed of on all other days, Mr. Speaker do direct the clerk at the table to read the orders of the day, without any question being put."

Precedence of orders of the day.

"That the orders of the day be disposed of in the order in which they stand upon the paper, the right being reserved to her Majesty's ministers of placing government orders at the head of the list, in the rotation in which they are to be taken, on the days on which government bills have precedence."[2]

Supply on Friday.

"That while the committees of supply and ways and means are open, the first order of the day on Friday shall be either supply or ways and means, and that on that order being read, the question shall be proposed 'that Mr. Speaker do now leave the chair.'"

Distribution of business.

Monday, Thursday, and Friday are accordingly set apart

[1] The first resolution giving precedence to orders of the day was in 1811, and applied to Monday and Friday only; 66 Com. J. 148; 19 Hans. Deb. 106. 244. In 1835, it was extended to Wednesday.

[2] The origin of government nights may probably be traced to the following order, 15th November 1670: "That Mondays and Fridays be appointed for the only sitting of committees to whom public bills are committed; and that no private committee do sit on the said days." 9 Com. J. 164. See also 1 Ib. 523. 640 (Committee of Grievances, 1621).

for the government orders, Wednesday for the orders of independent members, and Tuesday for notices of motions. But as the committee of supply or ways and means is the first order on Friday, it is practically a notice night, the government merely having the residue of the evening, after all the notices and debates on going into committee have been disposed of. At the close of the session, Tuesday has also been appropriated, when necessary, for orders of the day, government orders having priority.[1] Occasionally, also, the orders of the day have been directed to take precedence of notices, on a particular day.[2]

Government orders.

Wednesday having been recognised as the day set apart for the bills promoted by members unconnected with the government, there is a tacit understanding that, at the commencement of the session, no government orders shall be set down so as to compete, for precedence, with other orders of the day. Towards the end of the session, however, when the pressure of public business becomes excessive, and the greater part of the bills of private members have been disposed of, or are without hope of further progress, government orders are continually appointed for Wednesday, and are taken in their turn with the other orders.[3] But the interposition of government orders, though exercised with much forbearance, is liable to objections on the part of independent members in charge of other bills. On Wednesday, 5th August 1857, the committee of supply stood the fourth order, and notice had been given of moving estimates in committee. On the order of the day being read, and motion made for the speaker leaving the chair, an amendment was moved to postpone that and the seven succeeding (government) orders, till after the Election Petitions Bill, which was the first order of the day of a

[1] 112 Com. J. 360; 113 Ib. 264; 115 Ib. 421. 15th June 1868; 123 Ib. 243. 25th July 1870; 125 Ib. 358. 31st July 1871; 126 Ib. 382. 19th July 1872; 127 Ib. 365.

[2] 17th Aug. 1860, 115 Com. J. 477.

[3] The committee of supply has frequently sat on Wednesday; 109 Com. J. 465; 112 Ib. 377; 113 Ib. 311; 122 Ib. 417.

private member. This amendment was withdrawn on the government consenting to postpone the committee of supply till after the other orders, but taking all the other government orders as they stood in the Order Book.[1] On the 8th August 1853, and on the 6th August 1872, an order was made that government orders have precedence on Wednesday next.[2] On the 4th August 1871, it was ordered that during the remainder of the session, government orders should have precedence upon Wednesdays.[3] Occasionally the standing orders relating to Wednesday sittings have been suspended.[4] On Wednesday, 7th August 1872, these orders were suspended until the proceedings upon the Licensing Bill had been concluded.[5]

Orders of the day postponed till after certain notices.

When it becomes necessary to disturb the appointed order of business, and to give precedence to some important subject of debate, a special order is made for that purpose. If it be desired to give priority to a notice of motion on any day on which orders of the day are entitled to precedence, notice having previously been given, a motion is made that the orders of the day be postponed until after such notice of motion. On the 11th March 1873, in order to give precedence to the adjourned debate on the University Education (Ireland) Bill, it was ordered that the notices of motions, and the first six orders of the day appointed for this day, be deferred till Thursday next, when they shall be taken into consideration before the orders of the day now standing in the Order Book for Thursday. On the 12th May 1873, it was ordered that the orders of the day subsequent to the order for the committee of supply be postponed till after the notice of motion for the appointment of a select committee on the boundaries of parishes, unions, and counties. Similar orders were made on the 9th and 12th June 1873.

[1] 112 Com. J. 377; 147 Hans. Deb., 3rd Ser., 1083.

[2] See Debate, 129 Hans. Deb., 3rd Ser., 1463. 127 Com. J. 421.

[3] 126 Ib. 397.

[4] 4th July 1865; the house then sat on the 5th, at a quarter before four, instead of 12; 120 Com. J. 449.

[5] 127 Ib. 426.

The orders being thus postponed by order of the house, the particular notice of motion is accordingly called by the speaker, and proceeded with.[1] When it has been disposed of, the house reverts to the orders of the day. Sometimes the orders of the day have been postponed, generally, until after the notices of motions.[2] Occasionally, also, some of the orders of the day have been disposed of, and others postponed until after a particular notice of motion.[3] And again, some orders of the day are postponed until after the other orders, or until after particular orders of the day.[4] On Tuesday, the 21st February 1860, the house adopted an unprecedented course. Mr. Ducane having given notice of a resolution in committee on the Customs Acts, which could not regularly be proposed in that committee, Sir J. Graham suggested that it might be moved as a substantive motion after the other notices. Though this course was at variance with the standing orders, which require the orders of the day to be proceeded with after the notices, and the speaker pointed out its irregularity, the house agreed to it by acclamation.[5] On Monday the 22nd June 1863, Lord Palmerston having agreed to give up that evening to Mr. Hennessy's motion relative to Poland, moved the postponement of the orders of the day for that purpose: but the house did not concur in

[1] 14th July 1856 (Italy), 111 Com. J. 346; 27th July 1857 (India), 112 Ib. 351; 3rd August 1857 (Oaths of Members), Ib. 369; 5th February 1858 (Princess Royal's Marriage); 26th April 1858 (Government of India); 8th Aug. 1859 (Affairs of Italy), 114 Ib. 354; 6th June 1861, orders postponed till after the three first notices relating to India, 116 Ib. 250; 27th April 1863 (Cotton Manufacturing Districts), 118 Ib. 184. Education (Inspectors' Reports), 12th May 1864; 119 Ib. 240. Redistribution of Seats, &c., 7th May 1866; 121 Ib. 289. O'Sullivan's Disability Bill, motion for leave, 5th May 1869, 124 Ib. 180; Peace Preservation (Ireland) Bill, motion for leave, 17th March 1870, 125 Ib. 89; Conference of London, 30th March 1871, 126 Ib. 120; Sir R. Collier's Appointment, 19th February 1872, 127 Ib. 52.

[2] 3rd and 5th June 1852; 107 Com. J. 186. 320.

[3] 25th July 1856 (Motion for return of Public Bills); 111 Com. J. 386.

[4] 115 Com. J. 97. 158; 117 Ib. 81; 119 Ib. 93; 176 Hans. Deb., 3rd Ser., 826; 6th July 1868; 123 Com. J. 298; 17th June 1869; 124 Com. J. 256; 125 Ib. 106.

[5] 156 Hans. Deb., 3rd Ser., 1473.

this arrangement, and upon a division refused, by a large majority, to postpone the orders of the day.[1]

Facilities, of this kind, are conceded by Government according to the importance and urgency of the motions to be discussed, and the state of public business.[2] They have generally been given to motions amounting to a vote of want of confidence in ministers; but not to bills of independent members, which if carried in opposition to ministers, would probably cause their resignation: for if such a principle were admitted, the arrangement of public business entrusted to them, would be taken out of their hands.[3]

Notices postponed until after an order of the day.

When it is desired to resume an adjourned debate, or to give precedence to any other order of the day, on a notice day, it is usual to induce members, who have notices on the paper, voluntarily to postpone them: but when they decline to forego their privilege, or it is deemed right to interpose the authority of the house, notice having previously been given, an order is made that the notices of motions be postponed until after the particular order of the day, which it is desired to consider,[4] or that such order of the day have precedence of notices.[5] Such order of the day is then read and proceeded with, after which the notices of motions are called, and, lastly, the other orders of the day.

On Tuesday, 29th April 1856, the mover of the first notice having refused to postpone it, his motion, together with all the other notices, was disposed of by a motion that the house do now pass to the orders of the day, which being at once put and agreed to, the orders of the day were read

[1] 118 Com. J. 303; 171 Hans. Deb., 3rd Ser., 119.—*Mr. Speaker's Note-Book.*

[2] Special facilities were afforded in 1868, to the discussion of Mr. Gladstone's resolutions upon the Irish Church; 257 Hans. Deb., 3rd Ser., 31–35. 826. 1679. 1707. 1745.

[3] See Debates, April 1872, in relation to Mr. Fawcett's University of Dublin Bill. In 1873, facilities were given to this bill, in a form modified.

[4] Tuesday, May 6th, 1856, adjourned debate on the Treaty of Peace; Tuesday, March 3rd, 1857, adjourned debate on China.

[5] April 23rd, 1860, third reading of Church Rates Abolition Bill, 115 Com. J. 199.

and proceeded with.[1] On Thursday 15th May 1873, the orders of the day having been postponed till after a notice of motion for a Select Committee to inquire into the case of the Callan Schools, an amendment was moved to that motion, to the effect that the house having already papers before it upon that subject, "do pass to the orders of the day." If this amendment had been carried, the house would have immediately reverted to the orders of the day, which had lately been postponed.

Orders appointed for half-past four.

Occasionally an order of the day is specially appointed for half-past four o'clock, and is considered at that hour, by itself, before the other business is proceeded with.[2] This course is generally adopted in regard to the third reading of the mutiny bills, and of financial bills, which it is important to have read a first time, in the Lords, on the same day; and the regularity of the practice, in such cases, has been fully recognised.[3]

Orders cannot be changed to an earlier day.

When the house has appointed a day for the consideration of a bill or other matter, no earlier day can afterwards be substituted. This rule is necessary to avoid surprises, and so rigorously is it enforced, that even when it has been admitted that a day had been named by mistake, and no one objected to the appointment of an earlier day, the change was not permitted.[4]

The business of the house on Wednesday is regulated by the following standing orders:

Sittings on Wednesday.

"That the house do meet every Wednesday, at twelve o'clock at noon,

[1] Depopulation of rural districts in Ireland, 111 Com. J. 167.

[2] Exchequer Bills Bill, and Ways and Means Report, Tuesday, 9th May 1854; 109 Com. J. 226. Annuities Bill, Tuesday, 27th May, 1856; 111 Com. J. 220. Oaths Bill, adjourned debate, Tuesday, 11th May, 1858; 113 Com. J. 167. Tobacco Duties Bill, third reading, 23rd March 1863; 118 Com. J. 130. Consolidated Fund Bill, third reading, 28th March, 1873.

[3] Speaker's ruling, 31st March, 1868; 191 Hans. Deb., 3rd Ser., 573.

[4] London, Chatham, and Dover Railway Bill, 6th July 1863. In this case the standing orders were suspended in order to accelerate the next stage of the bill; 118 Com. J. 237; 172 Hans. Deb., 3rd Ser., 246.

for private business, petitions, orders of the day, and notices of motions and do continue to sit until six o'clock, unless previously adjourned.

"That when such business has been disposed of, or at six o'clock precisely, notwithstanding there may be business under discussion, Mr. Speaker do adjourn the house, without putting any question.

"That the business under discussion, and any business not disposed of at the time of such adjournment, do stand as orders of the day, for the next day on which the house shall sit.

"That at a quarter before six o'clock on Wednesday, the debate on any business then under discussion shall stand adjourned until the next day on which the house shall sit; after which no opposed business shall be proceeded with.

"That whenever the house shall be in committee on Wednesday, at a quarter before six o'clock, the chairman do report progress, and Mr. Speaker do resume the chair.[1]"

Other morning sittings.

The forced adjournment of a debate, under these orders, at a quarter before six, frequently causes the anomaly of such an adjournment immediately following upon a determination of the house that the debate shall not be adjourned.[2] And by other standing orders of the 5th August 1853, and 19th July 1854, provision was made for morning sittings on other days from twelve till four: the sittings being resumed at six. Under these orders it was customary, during the later months of the session, to appoint morning sittings, from twelve till four, on Tuesdays and Fridays.

In 1867, the progress of the Reform Bill was facilitated by a change in the hours of these morning sittings. The house met at two on Tuesdays and Fridays, instead of twelve; its sitting being suspended at seven, and resumed at nine. The only difficulty incident to this arrangement was in securing the attendance of 40 members at nine o'clock;[3] and after several efforts to obviate this inconvenience, the house at length agreed, on the 29th April 1873, to the following resolution:—

[1] On Wednesday, 28th March 1860, it being a quarter before six, the chairman reported progress on the Income Tax Bill, when, as there was no opposition to it, the house again resolved itself into committee on the bill, and the committee proceeded through the bill, and reported it.

[2] 127 Com. J. 105. 187. 356.

[3] 122 Ib. 247. 331.

"That when the house after a morning sitting resumes its sitting at nine o'clock, and it appears, on notice being taken, that forty members are not present, the house shall suspend debates and proceedings until a quarter past nine, and Mr. Speaker shall then count the house, and if forty members are not then present, the house shall stand adjourned."

Notwithstanding the difficulty of securing a house at nine o'clock, the new arrangement was found so convenient, that it has since virtually superseded the 12 o'clock sittings; but hitherto it has been founded upon resolutions, renewed each session, and not by standing orders. These resolutions are as follow:—

"That, unless the house shall otherwise order, whenever the house shall meet at two o'clock, the house will proceed with private business, petitions, motions for unopposed returns, and leave of absence to members, giving notices of motions, questions to ministers, and such orders of the day as shall have been appointed for the morning sitting.

"That on such days, if the business be not sooner disposed of, the house will suspend its sitting at seven o'clock; and at ten minutes before seven o'clock, unless the house shall otherwise order, Mr. Speaker shall adjourn the debate on any business then under discussion, or the chairman shall report progress, as the case may be, and no opposed business shall then be proceeded with.

"That when such business has not been disposed of at seven o'clock, unless the house shall otherwise order, Mr. Speaker (or the chairman, in case the house shall be in committee) do leave the chair, and the house will resume its sitting at nine o'clock, when the orders of the day not disposed of at the morning sitting, and any motion which was under discussion at ten minutes to seven o'clock, shall be set down in the order book after the other orders of the day.

"That whenever the house shall be in committee at seven o'clock, the chairman do report progress when the house resumes its sitting."

Government orders have precedence at these morning sittings. On the 26th June 1851, Mr. Speaker Shaw-Lefevre said, "that the practice of the house,—for no rule existed on the subject,—had always been, since he had had the honour of sitting in that chair, that at the morning sittings, the Government bills took precedence over other bills: but other members were not precluded from putting down their own bills for the morning sittings; and if they were

put down, they would come on, in the regular order, after the Government bills, if there were any."[1] Again, on the 21st June 1872, Mr. Speaker Brand, being referred to, upon the same subject, after citing the above ruling, added: "There has been no departure from that ruling, nor could any departure from such ruling be sanctioned without the express authority of the house itself."[2]

Sometimes a special order is made at the commencement of a morning sitting, that a Committee have leave to sit till seven, and report at nine; in which case the speaker is not required to resume the chair during the morning sitting.[3] It is ordered—

Dropped orders.

"That all dropped orders of the day be set down in the Order Book, after the orders of the day for the next day on which the house shall sit."

But in construing this order it must be understood, that if an order of the day has been read and proceeded with, and the house is adjourned before it is disposed of, it is not treated as a *dropped order*, but, being superseded, must be revived before it takes its place again in the Order Book.[4]

Orders of the day read.

When the clerk is proceeding to read the orders of the day, the course of business may not be interrupted by any other business or debate which members may endeavour to interpose.[5] So soon as an order of the day has been read, the business to which it relates is to be immediately proceeded with; and the speaker, therefore, will not permit any question to be put to a minister or other member, unless it relate to such order of the day. Petitions, however, relating to the order of the day may be presented after it has been read, but not after the next question consequent upon it, has been proposed. Thus, when the order for resuming

[1] 117 Hans. Deb., 3rd Series, 1254; see also Ib. 1150.

[2] 212 Ib. 22; see also Ib. 704–708.

[3] Irish Land Bill, 1870; 125 Com. J. 137. 314.

[4] Reformatory Schools (Scotland) Bill, 8th May 1856; Joint Stock Companies Winding-up Acts Amendment Bill, 19th May 1856. See also 119 Com. J. 131. 256; 120 Ib. 225. 352; 121 Ib. 78; 122 Ib. 377. 404.

[5] 213 Hans. Deb., 3rd Ser., 644.

an adjourned debate on the second reading of a bill had been read, and the question had been again proposed, the speaker would not permit petitions to be presented relating to such bill, as the adjourned debate had then been, in fact, resumed.[1] When an order of the day has been read, the minister or member having charge of the bill or proceeding, is entitled to priority in making a motion concerning it, and no other member will be allowed to interpose, unless with his consent.[2]

Notices, how given.

When a member desires to give notice of a motion, he should first examine the Order Book,[3] or the printed notices and orders of the day, which are printed with the Votes every Saturday morning.[4] When he has fixed upon the most convenient day, he should be present at the meeting of the house, and enter his name on the notice paper, which is placed upon the table. Each name upon this paper is numbered; and when the speaker calls on the notices, at half-past four o'clock,[5] the clerk-assistant having put the numbers into a glass, draws them out, one by one. As each number is drawn, the name of the member to which it is attached, in the notice paper, is called by the speaker. Each member, in his turn, then rises and reads the notice he is desirous of giving, without comment or debate,[6] and afterwards takes it to the table, and delivers it, fairly written out, and with the day named, to the second clerk assistant: but only one notice may be given by

[1] 27th Feb. 1849; Dublin Consolidation Waterworks Bill.

[2] Refreshment Houses Bill, March 26th 1860; 157 Hans. Deb., 3rd Ser., 1301. See also 160 Ib. 349. Sir J. Fergusson on the Representation of the People Bill, 7th June 1860. 159 Hans Deb. 3rd Ser. 26.

[3] Since 1856, the convenient practice has been adopted, of printing the Order Book daily.

[4] Since February 1865, this paper has comprised the Order Book for the whole session. 177 Hans. Deb., 3rd Ser., 323.

[5] When the private business of the session has been advanced, public business is commenced at quarter-past four.

[6] On the 30th April 1792, the speaker allowed Mr. Grey to make a speech on giving notice of a motion on the subject of Parliamentary representation, which was followed by a debate. He said to Mr. Pitt, "that in strictness it was not allowable; but that it was the spirit of his duty to consult the wishes of the house." 1 Lord Sidmouth's Life, 88.

a member, until the other names upon the list have been called over. When all the names have been called, any members may give further notices. It is not necessary that the notice should originally comprise all the words of the intended motion: but if the subject only be stated in the first instance, the question, precisely as it is intended to be proposed, should, if possible, be given in some days before that on which it stands in the Order Book; or, at least, it should be printed at length with the Votes of the previous day.[1] And the same rule is generally applicable to notices of amendments on going into committee of supply.[2] It is not sufficient to give notice of calling attention to a question, and moving a resolution, without stating the actual words of the motion.[3] But it is not necessary to give notice of the express terms of resolutions intended to be proposed in committee of the whole house.[4] Should a member desire to change the day, after he has given his notice, he must repeat it for a more distant day, it being irregular to fix an earlier day than that originally proposed in the house;[5] even if it should assume the form of an amendment to another question.[6] One member may give notice for another, not present at the time, by putting his name upon the list, and answering for him when his name is called at the ballot.[7]

It is usual to concede priority to the government in making announcements relative to public business; and on the first day of the session, members of the government

[1] Vote of Thanks for services in India, 8th Feb. 1858; 148 Hans. Deb., 3rd Ser., 865.

[2] 191 Hans. Deb. 3rd Ser. 2053.

[3] 205 Ib. 774. 207 Ib. 143.

[4] Navigation Laws, 15th May, 1848; Sardinian Loan, 12th June 1856; Annual Budgets.

[5] Mirror of Parl. 1835, p. 275; 122 Hans. Deb., 3rd. Ser., 959. 154 Ib. 537. In 1814, Mr. Brougham gave notice of an address, on the subject of the orders in council, for the 23rd June, which he afterwards changed for the 16th. Objections were taken by Mr. Rose to the irregularity of this proceeding, but were not sustained by the speaker; Lord Brougham's Life, ii., 19. Subsequently, however, it was found necessary to introduce a stricter practice.

[6] 21 Hans. Deb., 3rd Ser., 225; 30 Ib. 8.

[7] Hans. Deb., 27th April 1843.

are allowed to give their notices before the ballot. But they do not avail themselves of this privilege, to anticipate other members, on the days appropriated to notices.[1]

No positive rule has been laid down as to the time which must elapse between the notice and the motion: but the interval is generally extended in proportion to the importance of the subject. Notices of motions for leave to bring in bills, or for other matters to which no opposition is threatened, are constantly given the night before that on which they are intended to be submitted to the house.[2] Notices for unopposed returns are printed in their order, amongst the other notices: but members who enter their names in a paper for unopposed returns, upon the table of the house, are called out of their turn, before the commencement of the regular business of the day. For the purpose of gaining precedence, the more usual mode and time for giving notices are those already described; yet it is competent for a member to give a notice at a later hour, provided he does not interrupt the course of business, as set down in the Order Book; or he may give his notice, at the table, without further formality.

On the 11th April 1854 (the last day before the Easter recess), it was ordered that members wishing to move amendments to the Oxford University Bill, do send them to the clerk of the house on or before Monday, 24th day of this instant April, and that the same be printed and circulated with the Votes.[3]

Motions without notice.

An unopposed motion can be brought on, by consent of

[1] On the 26th Feb. 1867, this privilege gave ministers a strategic advantage over their opponents. Mr. Gladstone desired to give notice of an amendment for the 28th, on going into committee to consider resolutions on the representation of the people: but before the ballot, he was anticipated by the Chancellor of the Exchequer, who rose and announced, with reference to public business, that he should not ask the house to proceed with that committee.

[2] It was ruled, July 9th 1861, that a notice could not be given, at a morning sitting, for the same evening. Mr. Speaker's note-book; 164 Hans. Deb., 3rd Ser., 630.

[3] Votes, p. 295.

the house, without any previous notice: but if any member should object, it cannot be pressed. If a minister moves for a return which he is prepared to present immediately at the bar, it is customary to make such a motion without previous notice. Questions of privilege, also, and other matters suddenly arising may be considered without previous notice; and the former take precedence, not only of other motions, but of all orders of the day. But in order to entitle a question of privilege to precedence, it must refer to some matter which has recently arisen, which directly concerns the privileges of the house, and calls for its present interposition.[1]

Questions of privilege, &c.

Where the question is *bonâ fide* one of privilege, the house will at once entertain it before any other business. This ancient rule was thus expressed in debate by an eminent authority: "Nothing can be so regular, according to the practice of this house, as when any member brings under the consideration of the house a breach of its privileges, for the house to hear it—nay, to hear it with or without notice—whether any question is or is not before it; and even in the midst of another discussion, if a member should rise to complain of a breach of the privileges of the house, they have always instantly heard him."[2] The latter part of this statement, it need scarcely be said, is limited to breaches of privilege committed during a discussion, or so immediately before it that no earlier opportunity of making a complaint had arisen; as, for example, an insult or assault upon a member,[3] or any sudden act of disorder.[4] In such

[1] 12th May 1848, interference of a peer with the election for Stamford; 98 Hans. Deb., 3rd Ser., 931. 22nd May 1848, Sligo election compromise; 98 Hans. Deb., 3rd Ser., 1236. Peterborough election, appointment and nomination of committee, 18th and 21st July 1853; 108 Com. J. 691. 703. Ameer Ali Moorad's claim, 22nd Feb. 1858; 113 Com. J. 68. Lisburn election, 21st April 1864; 119 Ib. 184. Azeem Jah (forged signatures to petitions), 8th May 1865. 120 Ib. 247. King's County election, 12th Feb. 1866; 121 Ib. 55. Complaint of Mr. Plimsoll's book, 20th Feb. 1873.

[2] Mr. Williams Wynn, Feb. 11th 1836; 31 Hans. Deb., 3rd Ser., 274.

[3] 79 Com. J. 483. [4] 65 Ib. 134.

cases, debates have been interrupted by complaints of breaches of privilege.

But in other cases, equally affecting the privileges of the house, but of less immediate urgency, the matter is ordinarily brought forward, without notice, at the commencement of public business.[1] Such priority is conceded on the assumption, that the earliest opportunity has been taken for bringing such a question before the house, which precludes previous notice; and that the dignity of the house demands its immediate consideration.

When such a question is not at once disposed of, but a future day is appointed for its consideration, it has been customary, on that day also, to give it priority. Thus, on Tuesday, the 16th February 1836, the consideration of a petition relating to a corrupt agreement between Mr. O'Connell and Mr. Raphael, in connexion with the Carlow election, stood ninth order of the day, but was taken before all the notices of motions, which had precedence of orders on that day.[2] So also on the 5th June 1837, similar precedence was given to the consideration of petitions from the printers of the house, on a matter of privilege.[3] On the 6th May 1842, precedence was given to Mr. Roebuck's motion for a committee to inquire into election compromises.[4] Again, on Friday 26th April 1844, the consideration of the complaint against Mr. Ferrand for a breach of privilege stood eleventh order of the day, but was taken first; and, not to enumerate other intermediate cases, on Tuesday the 1st June 1858, precedence was given to the consideration of the petition of a person in custody, praying for his discharge, though standing sixth order of the day on a notice night; and again, on the following day, the like precedence was given to a second petition from the same

[1] Forgery of a petition, 1829, 84 Com. J. 187. Complaints against newspapers, 93 Ib. 306; 106 Ib. 320, &c.

[2] 91 Com. J. 24. 42, and Votes; 31 Hans. Deb., 3rd Ser., 272 *et seq.*

[3] 92 Com. J. 436.

[4] 97 Ib. 263.

person.[1] In 1859, other questions connected with election compromises were allowed precedence.[2] On the 5th July 1860, Lord Palmerston proposed resolutions founded on the report of the committee on Tax Bills, as a matter of privilege, before the orders of the day: but on the 17th, Lord Fermoy having given notice of another resolution on that subject, the speaker held that he was not entitled to precedence, his object being merely to review a former determination of the house. On the 22nd July 1861, a motion being proposed concerning the conduct of a member, in connexion with a joint-stock company, the speaker said it was doubtful whether it was properly a matter of privilege: but as it affected the character of a member, it could be proceeded with, if it was the pleasure of the house. The member concerned having expressed his desire that the discussion should be proceeded with, the motion was made at once.[3]

It has been said that a question of privilege is, properly, one not admitting of notice: but where the circumstances have been such as to enable the member to give notice, and the matter was, nevertheless, *bonâ fide* a question of privilege, precedence has still been conceded to it.[4] Yet the giving notice has sometimes been a test of the character of the motion, and of its title to precedence on the ground of privilege. Thus precedence has always been given to a motion for a new writ, and such a motion is ordinarily made without notice: but since 1848, the house having, from time to time, resolved that where a seat has been declared void, on the ground of bribery and treating, no motion for a new writ should be made without previous notice, it

[1] Case of Washington Wilks: Votes 1st and 2nd June 1858.

[2] Mr. Roebuck (Chiltern Hundreds), 155 Hans. Deb., 3rd Ser., 945, &c.; Mr. Bright (Pontefract election), Ib. 1254; 114 Com. J. 357. 362. 376.

[3] 164 Hans. Deb., 3rd Ser., 1285.

[4] Stamford Borough, 12th May 1848; 98 Hans. Deb., 3rd Ser., 931. Sligo Election Compromise, 22nd May 1848; 98 Hans. Deb., 3rd Ser., 1236. Peterborough Election, 18th and 21st July 1853; 108 Com. J. 691. 703. Expulsion of James Sadleir, 24th July 1856, and 16th February 1857; 143 Hans. Deb., 3rd Ser., 1386; 144 Ib. 702.

has been held that a motion for a new writ, under those circumstances, is not entitled to the customary precedence on the ground of privilege.[1] The resolutions of the house had excepted these cases from privileged motions, and placed them in the category of ordinary motions, requiring notice, and they were accordingly taken in their turn upon the notice paper. As precedence is naturally desired by members, care is taken not to extend that claim to any motion which does not strictly relate to a matter of privilege.[2]

Adjourned debates on questions of privilege.

Where debates have been adjourned upon urgent questions of privilege, similar precedence has been given to the adjourned debates. Thus, on the 8th June 1837, the adjourned debate on the petitions of the printers of the house, relating to Stockdale's action, was resumed before all other business;[3] and in 1840, adjourned debates upon the same important question of privilege were repeatedly renewed at the commencement of public business.[4] So also, on Tuesday, 27th February 1838, the adjourned debate on the question of privilege arising out of Mr. O'Connell's case, was taken first, before all the notices which had precedence on that day. And, again, on Tuesday, 9th May 1865, the adjourned debate on the consideration of the report of the committee on the forgery of signatures to the petitions in favour of the claims of Azeem Jah, which stood as the third order of the day, was resumed before all the notices, and other orders of the day.[5] But in some other cases of

[1] New writs for Berwick-upon-Tweed, Rye, Maidstone, Chatham, Harwich, Durham, Peterborough, and Clitheroe, 1852-53; 108 Com. J. 447. 451. 472. 596. 831. Galway and Mayo writs, 1857; 113 Com. J. 354, 355. Gloucester and Wakefield writs, 20th June 1861. But on the 23rd March 1860, Mr. Duncombe having given notice of a motion to issue a new writ for Norwich, at half-past four o'clock, claimed the indulgence of the house to make his motion at that time, and, being in ill-health, was permitted to proceed, instead of waiting to a later hour.

[2] 146 Hansard's Debates. 3rd Ser., 769.

[3] 92 Com. J. 450; 38 Hans. Deb., 3rd Ser., 1249.

[4] 95 Com. J. 13. 15. 19. 23. 70; 51 Hans. Deb., 3rd Ser., 196. 251. 358. 422; 52 Ib. 7.

[5] 120 Com. J. 252.

privilege, of a less urgent character, it has been ruled that adjourned debates were not entitled to precedence.[1]

Motions taken at half-past four o'clock.

It may here be noticed that precedence is given, by usage, to a particular class of motions relating to the business of the house, which are usually set down for half-past four o'clock; and are disposed of before the commencement of the public business appointed for the day. In this class are comprehended motions for the adjournment of the house, at its rising, beyond the next day, the postponement of the orders of the day, leave of absence to members, and other formal motions relating to public business. It is usual to give precedence, as a matter of courtesy, to a motion for a vote of thanks.[2]

Votes of thanks.

Leave to make motions.

Entries are occasionally found in the Journals, of leave being given to make a motion.[3] In these cases, it appears that all the orders of the day had been previously disposed of; and that the house allowed members to bring on motions which they had not entitled themselves to make, according to the ordinary regulations. But as unopposed motions only can be made without previous notice, they are now offered with the general assent of the house, and without any formal leave being given.

Notices expunged.

As motions for which notices have been given, need not be actually made when the time arrives, the Order Book is sometimes used for the expression of opinions, not intended to be ultimately proposed for adoption. This is a deviation from the true object of the Order Book: but it is not a practical evil of much importance, nor is there, perhaps, any remedy for it: but in resorting to this practice, mem-

[1] Bridport election; 63 Hans. Deb., 3rd Ser., 561. Aylesbury election, 5th May 1851.

[2] 24th April 1849. Operations in the Crimea, 15th December 1854. Operations in India, 8th February 1858; 148 Hans. Deb., 3rd Ser., 865.

[3] 75 Com. J. 155, 156; 85 Ib. 107; 86 Ib. 857. There was an order of the house, 25th November 1695, that no new motion be made after one o'clock. This probably occasioned the practice of giving leave to make motions, although the order has long since been inapplicable to modern usage and regulations. See also 1 Com. J. 45.

bers must be careful, lest they give offence to the house by unbecoming expressions; for the notice may, for such a cause, be expunged from the notice paper.[1] In one case, the speaker having observed in a notice unbecoming expressions affecting religion, directed them to be altered, and called the attention of the house to the alteration.[2] Where a notice infringes any rules of the house, or is otherwise irregular or informal, it is corrected by the clerks at the table, before it is printed,—if possible in communication with the member himself, and, in cases of special difficulty, under the direction of Mr. Speaker.[3] If a notice, when publicly given, is obviously irregular or unbecoming, the speaker will interpose, and the notice will not be received in that form.[4]

Notice refused to be received.

On the 7th June 1858, the House of Lords adopted a novel and very effectual course in regard to a notice. The Lord Kingston having proposed to renew a notice of putting certain questions, the house resolved "that the said questions have been sufficiently answered, and ought not to be renewed;"[5] and, accordingly the proposed notice was not received by the clerk.

Dropped notices.

If a notice of motion be dropped, by the adjournment of the house, before it has been disposed of, it is usually renewed and put down in the notice paper for some other day, under the same conditions as an original notice. If, however, it be merely a motion for an unopposed return, a member is permitted to make it on the next sitting day, without renewing the notice.

Motions made.

When a member is at liberty to make a motion, he may speak in its favour, before he actually proposes it: but a speech is only allowed upon the understanding, 1st, that he speaks to the question; and, 2ndly, that he concludes by

[1] 90 Com. J. 435.

[2] 12th Feb. 1861; 161 Hans. Deb., 3rd Ser., 342.

[3] 188 Hans. Deb., 3rd Ser., 1066. 206 Ib. 468; 207 Ib. 1881.

[4] Mr. Rearden's notice, 22nd May 1868; 192 Hans. Deb., 3rd Ser., 711.

[5] Lords' Minutes, 7th June 1858.

proposing his motion formally. In the case of unopposed returns, or other formal or uncontested business, one member is permitted, by courtesy, to bring forward the motion of another:[1] but it has been pointed out from the chair that it would be highly inconvenient to extend this practice to motions open to controversy and debate;[2] nor has the making of motions by proxy ever received parliamentary sanction. In the absence of one minister, however, another minister has been allowed to make motions standing in his name.[3]

Questions moved and seconded.

In the upper house, any lord may submit a motion for the decision of their lordships without a seconder,—the only motion requiring a seconder, by usage, being that for the address in answer to the Queen's speech: but in the Commons, after a motion has been made, it must be seconded by another member; otherwise it is immediately dropped, and all further debate should be discontinued, as no question is before the house.[4] When a motion is not seconded, no entry appears in the Votes, as the house is not put in possession of it, and *res gestæ* only are entered. In the case of an original motion, the speaker satisfies himself that the motion has been formally seconded, before he puts the question: but where an unopposed return is moved, or other formal motion made, the formality of seconding the motion is not generally observed, but is taken to be tacitly complied with. An order of the day may be moved without a seconder.

Motions not seconded.

The motion to be in print or writing.

The motion should be carefully prepared, and placed, in

[1] On the 12th May 1864, Mr. Carnegie was allowed to move for a bill, of which Mr. Dunlop had given notice.

[2] Church Rates Abolition Bill, 11th Feb. 1862 (Sir C. Douglas). Colonel Dunne, and the nomination of the Committee on Holyhead Harbour, May 19th 1863.

[3] 12th May 1864, in the absence of Lord Palmerston, Sir G. Grey was permitted, on behalf of the government, to move the postponement of the orders of the day, and make a motion relating to inspectors of schools. On the 28th November 1867, in the absence of the Chancellor of the Exchequer, Mr. Hunt, the secretary of the Treasury, made his financial statement in Committee of Ways and Means.

[4] But see Debates, 8th February 1844.

print or writing, in the speaker's hands; as, except in the event of any informality in the form of the motion, the speaker proposes the question in the words of the mover. Formerly it was customary for the speaker, when he thought fit, to frame a motion out of the debate.[1] This ancient custom, however, was open to abuses and misconception,[2] and has long since been disused. On the 15th February 1770, Sir Fletcher Norton revived it in the debate on the Sudbury election petition. No notice was taken of it at the moment, but it did not afterwards escape animadversion;[3] and the practice has not since been reverted to.

Objectionable words omitted form a motion.

In 1794, Earl Stanhope had proposed a resolution with a long preamble, which, on putting the question, the lord chancellor had omitted.[4] On a subsequent day, complaint was made of this omission, and a question was proposed by Lord Lauderdale, "That any motion proposed by any lord of Parliament, and given to the speaker of that house, ought to be put in the words given by the mover, and the question of content or not content decided upon it in that form." After a debate, from which it appeared that the words omitted had been of an objectionable character, and that the lord chancellor had collected the unanimous opinion of the house for their omission, the question was superseded by adjournment.[5]

Irregular questions not put from the chair.

If any motion or amendment be offered in contravention of the rules and orders of the house, the speaker will decline to put the question, or will call the attention of the house to the irregularity; as if the question had already been

[1] Scobell, 22; 2 Hatsell, 112.

[2] Bishop Burnet relates of Mr. Speaker Seymour, that, "if anything was put, when the Court party was not well gathered together, he would have held the house from doing anything, by a wilful mistaking, or misstating the question. By that he gave time to those who were appointed for that mercenary work, to go about and gather in all their party. And he would discern when they had got the majority; and then he would very fairly state the question, when he saw he was sure to carry it." 2 Burnet's Own Time, 72.

[3] 1 Cavendish Deb. 458.

[4] 31 Parl. Hist. 149; 6 Lord Campbell's Lives of the Chancellors, 271.

[5] 31 Parl. Hist. 197.

decided in the same session,[1] or required the recommendation or consent of the Crown, which had not been signified:[2] or anticipated the discussion of another motion appointed for a later day,[3] or were otherwise out of order.[4] But the formal interposition of the speaker is ordinarily avoided, by a private intimation to the member who has given notice of an irregular motion.

Proposed by the speaker.

In the Lords, when a motion has been made, a question is generally proposed "that that motion be agreed to:" but on the stages of bills, and on some other occasions, the motion is put directly as a question. In the Commons, when the motion has been seconded, it merges in the question, which is then proposed by the speaker to the house, and read by him; after which the house are said to be in possession of the question, and must dispose of it in one way or another, before they can proceed with any other business.

When debate arises.

At this stage of the proceeding, the debate upon the question arises in both houses. If the entire question be objected to, it is opposed in debate: but no amendment or form of motion is necessary for its negation; for when the debate is at an end, the speaker puts the question, and it is resolved simply in the affirmative or negative. The precise mode in which the determination of the house is expressed and collected, will be explained hereafter.[5]

Motions, by leave, withdrawn.

It may happen, however, that it is desired by members to avoid any distinct expression of opinion; in which case it is competent for the majority of the house to evade the question in various ways: but the member who proposed it, can only withdraw it by leave of the house, granted without any negative voice.[6] This leave is signified, not upon question, as is sometimes erroneously supposed, but by the speaker

[1] 95 Com. J. 495; 76 Hans. Deb., 3rd Ser., 1021.

[2] Hatsell, 168, *n.*; 59 Com. J. 335; 63 Ib. 266.

[3] 207 Hans. Deb., 3rd Ser., 500. 1640.

[4] 112 Com. J. 157; 115 Ib. 494.

[5] See *infra*, p. 284, and Chapter XII. (Divisions).

[6] A motion cannot be withdrawn in the absence of the member who proposed it; 159 Hans. Deb., 3rd Ser., 1310.

taking the pleasure of the house. He asks, "Is it your pleasure that this motion be withdrawn?" If no one dissents, he says, "The motion is withdrawn:" but if any dissentient voice be heard, he proceeds to put the question, which, under such circumstances, is ordinarily negatived without a division.[1] Sometimes the house have refused to allow a motion to be withdrawn: but after further debate have consented to its withdrawal. Occasionally a motion is, by leave, withdrawn, and another motion substituted, in order to meet the views of the house, as expressed in debate: but that course can only be taken with the general assent of the house.[2]

Withdrawing motions and amendments.

Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first withdrawn, or negatived; as the latter, until disposed of, is in fact more immediately under consideration, having been interposed after the original question was proposed.

Question superseded.

The modes of evading or superseding a question are, 1, by adjournment of the house; 2, by motion "that the orders of the day be read;" 3, by moving the previous question; and 4, by amendment.

By adjournment.

1. In the midst of the debate upon a question, any member may move "that this house do *now* adjourn," not by way of amendment to the original question, but as a distinct question, which interrupts and supersedes that already under consideration. It need scarcely be explained that such a motion cannot be made while a member is speaking, but can only be offered by a member who, on being called by the speaker in the course of the debate, is in possession of the house. If this second question be resolved in the affirmative, the original question is superseded; the house must immediately adjourn, and all the

[1] 186 Hans. Deb., 3rd Ser., 887.

[2] See discussion on Fiji Islands, 25th June 1872; 212 Hans. Deb., 3rd Ser., 219.

business for that day is at an end.[1] The motion for adjournment, in order to supersede a question, must be simply that the house do *now* adjourn: it is not allowable to move that the house do adjourn to any future time specified; nor to move an amendment to that effect, to the question of adjournment.[2] The house may also be suddenly adjourned, even while a member is speaking, by notice being taken that forty members are not present; and an adjournment, caused in that manner, has the effect of superseding a question, in the same way as a formal question to adjourn, when put and carried. In either case the original question is so entirely superseded, that if it has not yet been proposed to the house by the speaker, it is not even entered in the Votes, as the house was not fully in possession of the question before the adjournment. But where the question is superseded in this manner, after it has been proposed from the chair, the question, having been entered on the Minutes, is, of course, printed in the Votes.[3] If the second reading or other stage of a bill be superseded by adjournment, the bill disappears from the Order Book, until the house appoints another day for proceeding with it.

Motions for adjourning the house and the debate.

If a motion for adjournment be negatived, it may not be proposed again without some intermediate proceeding;[4] and, in order to avoid any infringement of this rule, it is a common practice for those who desire to avoid a decision upon the original question, on that day, to move alternately that "this house do now adjourn," and "that the debate be now adjourned."[5] But a member who has moved the adjournment of the house is not entitled to move the

[1] Third reading of Justices of the Peace qualification bill, 10th July 1855; 110 Com. J. 367. Volunteers (Ireland) Bill, 17th July 1860; 115 Ib. 393, &c.

[2] 2 Hatsell, 113–115.

[3] This distinction is not explained by Hatsell (ii. 115).

[4] 2 Hatsell, 109, *note*. Lord Colchester's Diary, ii. 129.

[5] See proceedings, Nov. 23rd, 1819; 41 Hans. Deb. 136. Ecclesiastical titles bill, 12th May 1851; 106 Com. J. 216. Election petitions bill, 29th June 1857. Night poaching prevention bill, 1st Aug. 1862; 117 Ib. 388, &c.

adjournment of the debate, as he has already spoken to the main question.[1] The latter motion, if carried, merely defers the decision of the house, while the former, as already explained, supersedes the question altogether: yet members who only desire to enforce the continuance of the debate on another day, often vote for an adjournment of the house, which, if carried, would supersede the question which they are prepared to support. This distinction should always be borne in mind, lest a result should follow that is widely different from that anticipated. Suppose a question to be opposed by a majority, and that the minority are anxious for an adjournment of the debate: but that, on the failure of a question proposed by them to that effect, they vote for an adjournment of the house, the majority have only to vote with them, and carry the adjournment, when the obnoxious question is disposed of at once, and its supporters have themselves contributed to its defeat.[2]

By reading the orders of the day.

2. On a day upon which notices of motions have precedence, a motion, "that the orders of the day be now read," is also permitted to interrupt the debate upon a question; and, if put by the speaker, and carried in the affirmative, the house must proceed with the orders of the day immediately, and the original question is thus superseded.[3] A motion for reading a particular order of the day, however, will not be permitted to interrupt a debate; and when the house are actually engaged upon one of the orders of the day, a motion for reading the orders of the day is not admissible, as the house are already doing that which the motion, if carried, would oblige them to do. Sometimes questions have been superseded by *amendments* for reading the other orders of the day. On the 10th May 1852, the orders of the day having been postponed until after the motion for assigning the vacant seats of St. Alban's

[1] 184 Hans. Deb., 3rd Ser., 1450.

[2] An instance of this occurred on the 23rd March 1848, on a motion relative to the game laws; 97 Hans. Deb., 3rd Series, 963.

[3] 77 Com. J. 356; 111 Ib. 167.

and Sudbury, an amendment was made to the question for leave to bring in the bill, by leaving out all the words after "that" in order to add the words "this house do pass to the other orders of the day."[1] And on the 19th May 1852, on resuming an adjourned debate on the Colonial Bishopricks Bill, an amendment was made to the question for the second reading, by leaving out all the words after "that the," and adding, "other orders of the day be now read."[2] A question has also been superseded by an amendment for reading a particular order of the day.[3]

Previous question.

3. The previous question is an ingenious method of avoiding a vote, upon any question that has been proposed: but its technical name does little to elucidate its operation. When there is no debate, or after a debate is closed, the speaker ordinarily puts the question, as a matter of course, without any direction from the house: but, by a motion for the previous question, this act of the speaker may be intercepted and forbidden. In the Lords, the Lord Speaker puts the question, "whether the original question be now put." In the Commons, the words of this motion are, "that that question be *now* put;" and those who wish to avoid the putting of the main question, vote *against* the previous (or latter) question; and, if it be resolved in the negative, the speaker is prevented from putting the main question, as the house have thus refused to allow it to be put.[4] It may, however, be brought forward again on another day; as the negation of the previous question merely binds the speaker not to put the main question at that time. If the previous question be put, and resolved in the affirmative, no words can be added to, or taken from, the main question by amendment; nor is any further debate allowed, or motion for adjournment, before the question is put, as the house have resolved "that that question be *now*

[1] 107 Com. J. 205. [2] Ib. 225. Bill, 28th June, 1854; 109 Ib. 342.
[3] Negro Apprenticeship, 30th March 1838; 93 Com. J. 418. Mortmain
[4] For examples of this question, see App.; and 71 Lords' J. 581; 74 Ib. 87.

put," and it must accordingly be put at once to the vote.[1] The anomaly of this proceeding is very obvious. The members who move and second the previous question, which is put in the affirmative form, yet vote against it, and are generally appointed tellers for the "noes"; being thus the most prominent opponents of the motion which they have themselves proposed. In 1778, the congress of the confederation of the United States adopted the "previous question" in a negative form, *i.e.*, "that the main question be *not* now put," which appears to be a superior form to that used in this country, and is still followed, though with different objects, in America.[2]

Previous question cannot be amended.

No amendment may be proposed to the previous question, which, in this respect, stands in the same position as a question of adjournment.

Previous question on stages of bills.

The previous question is, perhaps, less applicable to the different stages of bills than to other questions: but it has been frequently resorted to.[3] The first instance of its being moved on the second reading of a bill occurred on the 10th June 1858, on the second reading of the County Franchise Bill;[4] and this precedent has since been followed on several occasions.[5] The previous question cannot be moved upon an amendment,[6] nor upon any question in a committee of the whole house.

[1] 2 Hatsell, 122, *n.* Lex Parl. 292. Harbours of Refuge, 19th June 1860; 115 Com. J. 316. See also 2 Lord Sidmouth's Life, 136. 1 Twiss, Life of Eldon, 232.

[2] In America, the effect of the previous question is immediately to suppress all further discussion of the main question; Cushing, Law and Practice of Legislative Assemblies, 1855, pp. 553, 554. And see Com. J. 25th May 1604, and 22nd Jan. 1628, where the previous question appears to have been put in a simpler form.

[3] 1 Com. J. 226. 825; 7 Ib. 420; 8 Ib. 421; 10 Ib. 762; 13 Ib. 292; 17 Ib. 310; 26 Ib. 270. 594; 30 Ib. 418 (that a bill be re-committed); 99 Ib. 504 (that Mr. Speaker do now leave the chair).

[4] 113 Com. J. 220.

[5] Second reading of County Franchise Bill, Borough Franchise Bill, and Presentment Sessions (Ireland) Bill, 1861; 116 Ib. 103. 135. 177. Second reading of County Franchise Bill, 1864, and Borough Franchise Bill, 1864 and 1865; 119 Com. J. 160. 234; 120 Ib. 247.

[6] 2 Hatsell, 116.

The last two questions, viz., for reading the orders of the day and the previous question, may both be superseded by a motion for adjournment; for the latter may be made at any time (except, as already stated, when the previous question has been resolved in the affirmative), and must always be determined before other business can be proceeded with. The debate upon the previous question may also be adjourned; as there is no rule or practice which assigns a limit to a debate, even when the nature of the question would seem to require a present determination. But when a motion has been made for reading the orders of the day, in order to supersede a question, the house will not afterwards entertain a motion for the previous question; as the former motion was itself in the nature of a previous question.

By amendments.

4. The general practice in regard to amendments will be explained in the next chapter: but here such amendments only will be mentioned as are intended to evade an expression of opinion upon the main question, by entirely altering its meaning and object. This may be effected by moving the omission of all the words of the question, after the word "that" at the beginning, and by the substitution of other words of a different import. If this amendment be agreed to by the house, it is clear that no opinion is expressed directly upon the main question, because it is determined that the original words "shall not stand part of the question;" and the sense of the house is afterwards taken directly upon the substituted words, or practically upon a new question. There are many precedents of this mode of dealing with a question:[1] but the best known in parliamentary history are those relating to Mr. Pitt's administration, and the peace of Amiens, in 1802. On the 7th May 1802, a motion was made in the Commons, for an address, "ex-

[1] 24 Com. J. 650; 30 Ib. 70; 52 Ib. 203; 93 Ib. 418. Protection of Life (Ireland) Bill, 30th March 1846. Navigation Laws, 29th May 1848. Mr. Churchward, 19th March 1867.

pressing the thanks of this house to his Majesty for having been pleased to remove the Right Hon. W. Pitt from his councils;" upon which an amendment was proposed and carried, which left out all the words after the first, and substituted others in direct opposition to them.[1] Not only was the sense of the original question entirely altered by this amendment, but a new question was substituted, in which the whole policy of Mr. Pitt was commended. Immediately afterwards an address was moved in both Houses of Parliament, condemning the treaty of Amiens, in a long statement of facts and arguments. In each house an amendment was moved and carried, by which all the declamation in the proposed address was omitted, and a new address resolved upon, by which Parliament was made to justify the treaty.[2]

This practice has often been objected to as unfair, and never with greater force than on these occasions. It is natural for one party, commencing an attack upon another, to be discomfited by its recoil upon themselves, and to express their vexation at such a result: but the weaker party must always anticipate defeat, in one form or another. If no amendment be moved, the majority can negative the question itself, and affirm another in opposition to the opinions of the minority. On the very occasion already mentioned, of the 7th May 1802, after the address of thanks for the removal of Mr. Pitt had been defeated by an amendment, a distinct question was proposed and carried by the victorious party, "That the Right Hon. W. Pitt has rendered great and important services to his country, and especially deserves the gratitude of this house."[3] Thus, if no amendment had been moved, the position of Mr. Pitt's

[1] 57 Com. J. 419. 36 Hans. Parl. Hist. 598-654. 3 Lord Stanhope's Life of Pitt, 375-379.

[2] 57 Com. J. 450. 43 Lords' J. 603. 36 Hans. Parl. Hist. 686.

[3] A case precisely similar occurred on the 14th May 1806, when a vote of censure on Earl St. Vincent's naval administration having been negatived, was followed by a vote of approbation immediately moved by Mr. Fox. 7 Hans. Deb. 208.

opponents would have been but little improved, as the majority could have affirmed or denied whatever they pleased. It is in debate alone that a minority can hope to compete with a majority. The forms of the house can ultimately assist neither party: but, so far as they offer any intermediate advantage, the minority have the greatest protection in forms, while the majority are met by obstructions to the exercise of their will.

Questions interrupted.

These are the four modes by which a question may be intentionally avoided or superseded: but the consideration of a question is also liable to casual interruption and postponement from other causes; as, by a matter of privilege; by words of heat between members in debate; by a question of order; by a message from the Queen or lords commissioners, requiring the attendance of the house in the House of Peers;[1] by an answer to an address;[2] by a message from the other house;[3] by a conference with the Lords;[4] or by the clerk of the Crown amending a return.[5] A motion for reading an Act of Parliament, an entry in the Journal, or other public document, which is not uncommon as a preliminary to other proceedings, has, also, in some cases, been interposed: but the practice by which such documents have been permitted to be read, after the commencement of the debate,[6] though not absolutely without

[1] 93 Com. J. 227; 106 Ib. 443. On the 20th April 1863, the reading of a petition was so interrupted, and was resumed on the return of the speaker from the Lords.

[2] 108 Ib. 438. 125 Ib. 377. This rule, however, does not apply to a message from the Crown. On the 5th June 1866, a message relating to the marriage of Princess Mary of Cambridge was brought up between one motion and another: but not so as to interrupt a debate. A message is clearly entitled, in principle, to the same courteous reception as an answer to an address: but it might be very inconvenient to permit it to interrupt a debate, as it is customary at once to found a motion upon it, which might give rise to discussion.

[3] By the recent practice, a message brought by the clerk does not interrupt the business under discussion: but a message brought by one of the judges would still interrupt the business. See Chap. XVI.

[4] 98 Com. J. 347. 484.

[5] 93 Ib. 276. 308.

[6] 2 Hatsell, 121.

recognition in modern times,[1] may be regarded as obsolete. In one case certain acts were directed to be read, by way of amendment to the original question.[2] An interruption, thus commenced, is sometimes continued by further interruptions, before the resumption of the debate.[3]

These proceedings, however, while they obstruct and delay the decision of a question, do not alter its position before the house; for, directly they are disposed of, the debate is resumed at the point at which it was interrupted. In the House of Commons, another interruption was sometimes caused by moving that candles be brought in: but, by a standing order of the 6th February 1717, it was ordered, "That when the house, or any committee of the whole house, shall be sitting, and daylight be shut in, the serjeant-at-arms attending this house do take care that candles be brought in, without any particular order for that purpose."[4] And this order, again, has been practically superseded by the instantaneous illumination of the house, by gas.

In 1872, and again in 1873, the house endeavoured to limit the transaction of opposed business after midnight, by the following resolution:

Opposed business after half-past twelve.

"That, except for a money bill, no order of the day or notice of motion be taken after half-past twelve of the clock at night, with respect to which order or notice of motion, a notice of opposition or amendment shall have been printed on the notice paper, or if such notice of motion shall only have been given the next previous day of sitting, and objection shall be taken when the notice is called."[5]

It has been ruled that this resolution does not extend to amendments in committee upon a bill, or upon the report, but solely to amendments upon the order of the day itself. It has further been ruled, that an order of the day, upon which notice of an amendment has been given, cannot be pro-

[1] 80 Com. J. 537; 93 Ib. 204; 97 Ib. 129; 98 Ib. 112.

[2] 9th March 1854; 109 Com. J. 124.

[3] 98 Com. J. 198; 103 Ib. 551. 755, &c.

[4] 18 Ib. 718.

[5] 4th March 1873.

ceeded with, even when the amendment is withdrawn.[1] It has been held that an instruction to the committee on a bill is not to be regarded as an amendment upon the order of the day.

Complicated questions.

If a question be complicated, the house may, if it think fit, order it to be divided, so that each part may be determined separately.[2] A right has been claimed, in both houses, for an individual member to insist upon the division of a complicated question: but it has not been recognised, nor can it be reasonable to allow it, because, 1st, the house might not think the question complicated; and, 2ndly, the member objecting to its complexity may move its separation by amendments. On the 19th February 1770, a resolution, "That it is a rule of this house, that a complicated question which prevents any member from giving his free assent or dissent to any part thereof, ought, if required, to be divided," was proposed and negatived. This motion, however, was intended to assert the right of any one member to have the question divided;[3] and immediately afterwards, the very question in dispute was separated, by order of the house.

On the 29th January 1722, a protest was entered on the Journals of the Lords, in which it was alleged "to be contrary to the nature and course of proceedings in Parliament, that a complicated question, consisting of matters of a different consideration, should be put, especially if objected to, that lords may not be deprived of the liberty of giving their judgments on the said different matters, as they think fit."[4]

It is probable that this claim arose out of the ancient custom by which the framing of a question was entrusted to the speaker, who prepared it during the debate. The member who had introduced the matter to the notice of the house,

[1] 210 Hans. Deb., 3rd Ser., 1977; 212 Ib. 302.

[2] 2 Com. J. 43; 32 Ib. 710; 33 Ib. 89; 34 Ib. 330; 35 Ib. 217 (a question divided into five). 17 Parl. Hist. 429; 2 Hatsell, 118.

[3] See 1 Cavendish Deb. 460–475. 2 Woodfall's Junius, 139.

[4] 22 Lords' J. 73. See also 24 Ib. 466, 467. 4 Timberland's Debates of the Lords, 392.

would then very naturally have objected to a question which did not express his own opinion only, but included also the opinions of others. At that time also, the subtle practice of amendments was less perfectly understood. But, as the house can order a question to be divided, it may be moved for that purpose, and it is difficult to state an objection to such a proceeding, although the ordinary practice has been to resort to amendments, instead of attempting the dissection of a question, in another form. When several resolutions are proposed, each is the subject of a separate question.

Question put.

When all preliminary debates and objections to a question are disposed of, the question must next be put, which is done in the following manner. The speaker, if necessary, takes a written or printed copy of the question, and, rising from his chair,[1] states or reads it to the house, at length, beginning with "The question is, that." This form of putting the question is always observed, and precedes (or is supposed to precede) every vote of the house, however insignificant, except in cases where a vote is a formal direction, in virtue of previous orders.[2]

In the Lords, when the question has been put, the speaker says, "As many as are of that opinion say 'content,'" and "as many as are of a contrary opinion say 'not content;'" and the respective parties exclaim "content," or "not content," according to their opinions. In the Commons, the speaker takes the sense of the house by desiring that "as many as are of that opinion say 'aye,'" and "as many as are of the contrary opinion say 'no.'" On account of these

[1] On the 9th April 1866, the speaker, on returning to the house after an illness, said he should still be obliged to claim some further indulgence; and he hoped he might be permitted to sit while putting the questions. 121 Com. J. 197.

[2] "Order, that nothing pass by order of the house without a question, and that no order be without a question, affirmative and negative." (1614.) 1 Com. J. 464. "Resolved, that when a general vote of the house concurreth in a motion propounded by the speaker, without any contradiction, there needeth no question." (1621.) Ib. 650.

forms, the two parties are distinguished in the Lords as "contents" and "not contents," and in the Commons as the "ayes" and "noes."[1] When each party have exclaimed according to their opinion, the speaker endeavours to judge, from the loudness and general character of the opposing exclamations, which party have the majority. As his judgment is not final, he expresses his opinion thus: "I think the ('contents,' or) 'ayes' have it;" or, "I think the ('not contents,' or) 'noes' have it." If the house acquiesce in this decision, the question is said to be "resolved in the affirmative" or "negative," according to the supposed majority on either side; but if the party thus declared to be the minority dispute the fact, they say "the 'contents' (or 'not contents') the 'ayes' (or 'noes') have it," as the case may be; and the actual numbers must be counted, by means of what is called a division.[2]

Questions again stated.

The question is stated distinctly by the speaker: but in case it should not be heard, it will be stated again. On the 15th April 1825, notice was taken that several members had not heard the question put, and the speaker desired any such members to signify the same; which being done the question was again stated to them, and they declared themselves with the "noes."[3]

Voices on the question.

It must be well understood by members that their opinion is to be collected from their voices in the house, and not merely by a division; and that if their voices and their votes should be at variance, the former will be held more binding than the latter.

On the 7th July 1854, on the Middlesex Industrial Schools Bill, notice was taken after the numbers had been reported,

[1] The form of putting the question, and taking the vote, was very similar in the Roman senate. The consul who presided there, was accustomed to say, "Qui hæc sentitis in hanc partem; qui alia omnia, in eam partem, ite, quâ sentitis."—Plinii Epistolæ., lib. viii. ep. 14. In the Scottish Parliament, the form of putting the question was "approve or not approve the article." 3 Lord Macaulay's Hist. 693.

[2] See Chapter XII.

[3] 80 Com. J. 307.

that a member had given his voice with the "noes," and had voted with the "ayes"; and the speaker directed his vote to be recorded with the "noes."[1]

All authorities have agreed that a member giving his voice with the "ayes" (or "noes"), when the speaker takes the voices, is bound to vote with them. But members, after giving their voices with that party with which they desire to vote and actually divide, have occasionally questioned the speaker's decision, though given in their favour, in order to force the opposite party to a division. It was for a long time unsettled, whether a member, having given his voice with the "ayes," may yet say "the 'noes' have it," without being obliged to vote with the "noes." On the 29th February 1796, this question was debated in the house, Mr. Pitt maintaining that a member was quite at liberty to force his opponents to a division; and though the speaker pronounced such conduct to be "unbecoming and contrary to the rules and practice of Parliament," the house arrived at no conclusion upon the subject.[2] But it is obviously for the minority alone, to appeal from the speaker's decision to the ultimate test of a division. If they are satisfied, the determination of the house is at once arrived at, upon the question, without resorting to a division; and, upon this principle, it has, of late years, been acknowledged as a rule, that a member exclaiming "the 'noes' have it," will be taken to have declared himself with the "noes," without inquiring on which side his voice may previously have been given.

On the report of the Holyrood Park Bill, August 10th, 1843, a member called out with the "noes," "the 'noes' have it," and thus forced their party to a division, although he was about to vote with the "ayes" and went out into the lobby with them. On his return, and before the numbers were declared by the tellers, Mr. Brotherton addressed the speaker, sitting and covered[3] (the doors being closed), and

[1] 109 Com. J. 373.

[2] 2 Hatsell, 201, *n.* The debate is not to be found in the Parl. Hist.

[3] The committee of ways and means was addressed in this manner, 6th May 1853.

claimed that the member's vote should be reckoned with the "noes." The speaker put it to the member, whether he had said, "the 'noes' have it;" to which he replied that he had, but without any intention of voting with the "noes." The speaker, however, would not admit of his excuse, but ordered that his vote should be counted with the "noes," as he had declared himself with them in the house. Again, on the 24th June 1864, notice being taken that a member having given his voice with the "ayes" had voted with the "noes," he was called to the table by Mr. Speaker, and stated that he had given his voice with the "noes," but had called out "the 'ayes' have it," in order to force a division; whereupon Mr. Speaker directed his vote to be recorded with the "ayes;"[1] and lastly, on the 4th June 1866, Mr. Speaker condemned this practice of forcing a division as "irregular and unparliamentary."[2] Such an objection should be taken either before the numbers are reported by the tellers, or immediately afterwards; and will not be entertained after the declaration of the numbers from the chair.[3]

It would seem, however, that by the ancient rules of the house, a member was at liberty to change his opinion upon a question. On the 1st May 1606, "A question moved, whether a man saying yea, may afterwards sit and change his opinion. A precedent remembered in 39 Eliz., of Mr. Morris, attorney of the court of wards, by Mr. Speaker, that changed his opinion. Misliked somewhat, it should be so; yet said that a man might change his opinion."[4]

Orders and resolutions.

Every question when agreed to, assumes the form either of an order, or a resolution of the house. By its orders, the house directs its committees, its members, its officers, the order of its own proceedings, and the acts of all persons whom they concern: by its resolutions, the house declares its own opinions and purposes.

[1] National Education, Ireland. Votes, p. 595.

[2] 183 Hans. Deb., 3rd Ser., 1919.

[3] Maynooth College Acts Committee, 15th April 1856.

[4] 1 Com. J. 303.