

Modus tenendi Parliamenta in Hibernia. 33

Published out of an antient Record
by the Right Reverend Father in
God *Anthony*, Lord Bishop of
Meath.

To which is added the Rules and Customs
of the House, gathered out of the Journal
Books, from the Time of *Edward VI*.

By H. S. E. C. P.

A NEW EDITION.

D U B L I N :

Printed for J. MILLIKEN, Bookseller, in *College-
green*. M,DCC,LXXII.

Published by the
in Dublin.

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D. W. E. C. R.

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DUBLIN

Printed for J. Murray, Bookbinder, in College
Lane, MDCCLXXII.

T H E

P R E F A C E.

Good Reader,

THE News of an approaching Parliament in this Kingdom, has invited me to the publication of this ancient Record, concerning the Manner of holding Parliaments in *Ireland*, which, if I am not much mistaken, is the very original Record said by my Lord Cooke (a) to have been in the Custody of Sir *Christopher Preston*, in the 6th of *Hen. 4.* It came to my Hands among other Manuscripts and Papers of my ever honoured Uncle Sir *William Domville*, late Attorney General in this Kingdom, which he was pleased to bequeath as a Legacy to me, and he told me in his Life-time, upon an occasional Discourse concerning it, that it was bestowed on him by Sir *James Cusse*, late Deputy Vice-Treasurer of *Ireland*, that Sir *James* found it among the Papers of Sir *Francis Aungier*, Master of the Rolls in this Kingdom, and Sir *Francis* his Grandson, the Right Honourable the Earl of

(a) 4 Instit. f. 12.

Longford has lately told me, that Sir *Francis* had it out of the Treasury of *Waterford*.

I am not Ignorant of the Disputes between my Lord *Cooke* and Mr. *Prynne*, concerning the ancient Manner of holding Parliaments in *England*, of which this is said to be a Transcript, the former affirming it to be a genuine Piece of Antiquity, as anti-ent as the Time of *Edward* the Confessor, the latter reputing it as spurious, and no older than the Reign of King *Henry* the 6th, (b) nor that the most learned Mr. *Selden*, (c) in his Titles of Honour, hath decried it as a late Imposture of a bold Fancy, not exceeding the Reign of King *Edward* the 3d, but as I am not concerned to vindicate the Antiquity of the *English Modus*, so I shall not engage myself in that Dispute, but shall only offer to the Reader, some Considerations to justify the Antiquity and Genuineness of our *Irish Modus*.

It is affirmed by my Lord *Cook* (d) that after King *Henry* the 2d had conquered *Ireland*, that he fitted and transcribed the *English Modus* into a Parchment Roll for the Use of *Ireland*, that this Parchment Roll so transcribed remained in *Ireland*, that in the Sixth Year of King *Henry* the 4th, it was in the Custody of Sir *Christopher Preston*, a Man of great Wisdom and Learning, that in the same Year, *de assensu Johannis Talbot* his Lieutenant there, and of his Council of *Ireland*, King *Henry* the 4th, exemplified it for the better holding of Parliaments in *Ireland*, and that it expressly appears in the Ex-

(b) Prin. animad. p. 6.

(c) Part II. c. 5. f. 26.

(d) 4th Institut. f. 12.

emplification, that King *Henry* the 2d did transcribe this *Modus*, as aforesaid, to which give me leave to add these following Particulars.

1st, That it is affirmed by Historians (e) of good Credit, that *William the Conqueror* did in the fourth Year of his Reign by the Advice of his Barons, summon an Assembly of Noble, Wise, and experienced Persons in the Laws of *England*, *ut eorum & jura & consuetudines ab ipsis audiret* that he might know what were their antient Laws and Customs, that twelve Men were elected out of each County, who took an Oath *ut quoad possent recto transmittere neq; ad dextram neq; ad sinistram partem divertentes legum suarum consuetudinū sancita patefacerent nihil prætermittentes nihil addentes nihil prævaricando mutant.* And accordingly it appears by *Mat. Paris* (f) that the Conqueror did confirm those Laws to them with some Emendations : *Legem Regis Edvardi vobis reddo* (saith he) *cum illis emendationibus quibus pater meus eam emendavit cum consilio Baronum suorum.*

2^d, That a Copy of the Exemplification mentioned by my Lord Cook, was communicated to Mr. Selden by Mr. *Hakewell* of *Lincoln's-Inn*, and is to be found in his Titles of Honour (g), wherein an exprefs mention is made, that *Henry* the 2d, Lord and Conqueror of *Ireland*, did send such a *Modus* into this Kingdom, and because that Book of Mr. Selden's is not readily had, I shall therefore for the

(e) Hoveden in Hen. 2. p. 343. book of Litchfield in Selden's Notes on Eadmer, p. 171.

(f) *Invita* Hen. 1. p. 56.

(g) Part 2. c. 5. sect. 26.

ease of the Reader transcribe that Passage out of it. The Stile whereof runs thus :

Henricus dei gratia Rex Angliæ & Franciæ & Dominus Hiberniæ omnibus ad quos præsentēs literæ pervenerint salutem, Inspeximus tenorem diversorū Articulorum in quodam rotulo pergamenæo scriptorum cum Christophero de Preston milite tempore arrestationis suæ apud villam do Clane per Deputatum dilecti & fidelis nostri Johannis Talbot de Halomshire Chivaleri locum nostrum tenentis terræ nostræ Hiberniæ nuper facta inventorum ac coram nobis & Consilio nostro in eadem terra nostra apud villam de Trym. Nono die Januarii ultimo præterito ostensorum in hæc verba. “ Modus
“ tenendi Parliamenti. Henricus Rex Angliæ Con-
“ questor et Dominus Hiberniæ mittit hanc for-
“ mam Archiepiscopis, Episcopis, Abbatiis, Prio-
“ oribus, Comitibus, Baronibus, Justiciariis, Vice-
“ comitibus, Majoribus, prepositis et omnibus fide-
“ libus suis terræ Hiberniæ tenendi Parliamentum.
“ imprimis summonitio Parliamenti precedere de-
“ det per quadraginta dies et.”

Now, I think it hardly credible, that an Exemplification would have been made so solemnly of it by King *Henry* the 4th, that it should refer to a *Modus* transmitted in King *Henry* the 2d's Time, and affirm, that it was produced before the Lord Justice and Council at *Trim*; if no such Thing had been done, this were to call in Question the Truth of all former Records and Transactions, and make the Exemplification to contain an egregious Lye in the Body of it.

3dly, That the Character, Ink and Parchment, are all so many Arguments for the Antiquity of it, and may convince any Person that is unprejudiced in the Controversy, that it could not be so late as the Time of King *Henry* the 6th.

4thly, That there are several internal Arguments contained in the Body of the Record that prove it to have been composed and transcribed in the Reign of King *Henry* the 2d ; as first, That in the Preamble he is stiled *Conquestor Hiberniæ*, which is a Title only proper to himself, for although he fought no Battle in this Kingdom, nor reduced the *Irish* by force of Arms, yet the bare News of his Presence, and the Report of the Forces he brought over with him did open as fair and ready a Way to the Submission of the *Irish*, as if he had conquered them with his Sword. Secondly, That in the Title *Sessiones in Parlamento*, mention is made of the four Archbishops of *Ardmab*, *Dublin*, *Cashell*, and *Tuam*, who had received their Palls, and took on them the fixed Names of those Places not above twenty Years before the Conquest of King *Henry* the 2d, being formerly stiled by the Names of their respective Provinces. Thirdly, That in the last Title *de constitutione Justitiarum*, mention is made of the *procurator terræ*, which was one of the Stiles given to the Kings chief Governor of *Ireland*, in the Reign of King *Henry* the 2d, but disused in after Times, when the Names of *Justitarius* & *locum tenens Hiberniæ* became more frequent ; thus *William Fitz-Adelm* was sent into *Ireland* 23d of King *Henry* the 2d, *Anno Domini* 1177, by the Name

of *Procurator Regis* ; and in the Year 1184, which was the 30th of King *Henry the 2d*, *Philip de Braoso* was sent *Procurator in Hiberniam*, saith *Roger Hoveden*.

4^{thly}, That upon the Authority of this last Title, which grants a Liberty of choosing a Justice for the Kingdom, in the Absence of the King or his Procurator, we find that immediately upon the Death of Earl *Strongbow*, the Council chose *Reymond le Grosse* to govern the Kingdom, till the King's Pleasure should be known ; which, in all Probability, they would not presume to do, unless the King's Permission had authorized the Fact, as well as the Necessity of their Affair, obliged them to it.

Having said thus much in Justification of our *Irish Modus*, it may now seem reasonable to take into Consideration, the several Exceptions of Mr. *Prynne* in his *Animadversions* (b), but because the most that is there offered, doth relate to the Antiquity of the *English Modus*, and there is nothing objected against the Credit of the Record, which I have published (and which I believe was never seen by that learned and industrious Antiquary) further than as it agrees in some Passages with the *English Modus*, and where they agree in the Substance, yet there are such material Differences in the Manner of expressing it, (as any one may perceive that will take the Pains to compare them together) I shall therefore spare the Reader's Pains in making any Remarks upon them, having no other Aim in the Publication of this, than to stir up the Endeavours

(b) p. 2. 3, &c.

of the learned Searchers into Antiquity to find out the true Original and Date of this Record.

There are only one or two Two things more that are necessary to be added for the Reader's Satisfaction. First, That in the Section or Title *de Judiciis casus dubij* there seems to be some Omission of Words, which makes the Sense imperfect, and may easily be supplied out of the *English Modus*, viz. after the Words *Et ipsi sex in tres adde Et hi tres in unum condescendere qui a seipso*, &c.

2dly, That in the last Section *de constitutione Justitiarum*, after the Word *censeatur*, there should be added *constituatur Justitarius per Consilium*, but tho' these Defects are observable in the Record, yet I thought it not convenient to insert them in their proper Places, because I did believe it inconsistent with the Integrity of a Transcriber to add or alter any Thing in the Original.

A. Midenf.

Modus tenendi Parliamenta et Confilia in Hibernia.

HENRICUS Rex Anglie Conquestor et Dominus Hiberniæ, &c. mittit hanc formam Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Justitiariis, Vicecomitibus, Majoribus, prepositis Ministris et omnibus fidelibus suis terræ Hiberniæ tenendi Parliamentum. In primis.

Summonitio.

Summonitio Parliamenti precedere debet per quadraginta dies ante primum diem Parliamenti.

Summonitio Clericorum.

Summoniri et venire debent ad Parliamentum omnes Archiepiscopi, Episcopi, Abbates, Priores, et alii Clerici qui tenent per tenuram Comitatus vel Baronie integre et nulli alii minores custibus propriis causa tenure suæ.

Item, Summoniri debent Archiepiscopi, Episcopi, Abbates, Priores, Decani et Archidiaconi, exempti et alii Privilegii qui habent Jurisdictionem quod ipsi

ipsi de assensu Cleri pro quolibet Decanatu et Archidiaconatu Hiberniæ et pro seipsis Decanis et Archidiaconis facere eligere debent duos sapientes et competentes procuratores pro ipsis Archidiaconatibus adveniendum et essendum ad Parliamentum ad respondendum supportandum alocandum et faciendum quod quilibet et omnes de Decanatibus et Archidecanatibus facerent vel faceret si personaliter interessent vel interesset et quod procuratores veniant eum cum varentis suis dupplicatis sigillatis sigillis superiorum suorum unde unum deliberetur Clerice Parliamenti irrotulandum et aliud secum remaneat.

Summonitio Laicorum.

Summoniri et venire debent omnes Senatores et quilibet comes et Baro et Pares eorum videlicet qui habent terras redditus ad valenciam unius comitatus integri quod viginti feoda militum quolibet computato ad viguit libras que faciunt C C C C vel valorem Barone integre (viz.) tres decem feoda militum et terriam partem feodi unius militis que faciunt C C C C marcas et nulli minores Laici vel Clerici custibus propriis causa tenure suæ nisi Rex summoniat consiliarios suos vel altos sapientes ex necessaria causa quibus mittere solebat precando eos custibus ipsius Regis venire et esse in Parlamento suo.

Milites

Milites Comitatum.

Item, per breve rex mittere debet culibet fenescallo libertatum et culibet vicecomiti suo Hiberniæ quod faciant eligere quilibet de assensu communitatis libertatis et comitatus sui duos Milites competentes honestos et sapientes adveniendum ad Parliamentum ad respondendum supportandum allocandum et faciendum quod omnes et quilibet communitatis libertatis et Comitatus facerent vel faceret si personaliter interessent vel interesset. Et quod milites venient tum warentis ut predictum est de procuratoribus et quod sine licentia Parliamenti non discedant a Parlamento et post licentiam habeant breve directum fenescallo vel vicecomiti quod faciet dictos Milites suos habere de communitate sua rationabiles custus et expensas suas a die remotionis eorum versus Parliamentum usque rationabilem diem quo ad propria revenire a Parlamento potuerunt. Et quod expense non excedunt unam Marcam de duobus militibus per diem.

Cives et Burgentes.

Item, eodem modo mittendum est Majoribus Ballivis prepositis Civitatum et Burgenfibus defranseis quod de communi assensu Communium suorum eligant duos cives vel Burgeneses, &c. ut dictum est supra de Militibus et quod expense duorum civium vel Burgenfium non excedant dimid. Marce ——— per diem.

Prin-

Principalis Clericus.

Item quod Rex inveniet custibus suis principalem Clericum Parliamenti ad irrotulandum communia placita et negotia Parliamenti qui tantummodo — subjectus erit sine medio Regi et Parliamento suo in communi et quum pares Parliamenti sint assignati ad examinandum petitiones per se ipsos et sunt concordēs in iudicio suo tunc Clericus predictus repetet petitiones et processus super ipsos et Pares reddent iudicium in pleno Parliamento. Et iste Clericus sedebit in medio loco Justic.

Item quod Justitiarius nullus sit in Parliamento nec habet per ipsum recordum fieri in Parliamento nisi nova potestas et assignetur per Regem et Pares Parliamenti in Parliamento et dictus Clericus deliberabit rotulos suos in Thesaurum ante finem Parliamenti.

Clericus Parliamenti.

Item Rex assignare solet custibus suis unum bonum Clericum probatum ad scribendum dubitationes et responsiones quas Archiepiscopi et Episcopi facere voluerint Regi et Parliamento, et secundum Clericum procuratoribus eodem modo tertium vero Comitibus Baronibus et Paribus eorum eodem modo quartum Militibus libertatum et Comitatum et quintum Civibus et Burgensibus qui Clerici semper predictis erunt meorum consiliis intendentes quod si vacaverint vel aliquis eorum vacaverit

caverit adjuvare debent principalem Clericum ad irrotulandum et ad minus assignare debet unum dominis et commibus spiritualibus et alium dominis et commibus temporalibus etiam Rex assignabit cum quolibet predictorum Clericorum unum Hostiarium et unum Clamatorem.

Gradus Parliamenti.

De Rege solo est primus gradus Parliamenti quia est caput commensor et finis Parliamenti secundus gradus de Archiepiscopis, Episcopis, Abbatibus, Prioribus et paribus eorum per Comitatum vel Baroniam tenentibus est Tertius Gradus est de procuratoribus quartus gradus est de comitibus Baronibus et eorum paribus Dentus gradus est de militibus libertatum et comitatum Sextus Gradus est de Civibus et Burghensibus et si contingat quod aliquis dictarum graduum excepto Rege absens a Parlamento fuerit nihilominus Parliamentum judicatum est esse plenum.

De presentia Regis et absentia ejus.

Rex tenetur semper esse in Parlamento personaliter ni infirmitate impediatur et tunc infra manerium vel villam Parliamentum debet esse et mittere debet pro duobus Episcopis duobus Comitibus duobus Baronibus duobus Militibus Comitatus duobus Civibus et duobus Burghensibus ad videndum personam suam et testificandum statum suum in quorum etiam presentia committere debet Archiepiscopo loci Comiti Terre et capitali Justitiario suo,

fuo, quod incipiant et continuant Parliamentum nomine suo et Rex absentare non potest ni modo et causa supradictis ni sit ex assensu Parium Parliamenti.

Seffiones in Parlamento.

Rex sedebit in medio principalis Scamni et ad ejus dextram Archiepiscopus loci Ardmachanus vel Dublin et si extra eorum limites Parliamentum sit tunc a dexteris Regis Archiepiscopi Armach et Casselen et a sinistris Regis Archiepiscopi Dublin et Tuamen deinde vero a dextris Episcopi, Abbates, Priores, in secunda formula secundum ordinem a sinistris in formula Comites Barones et eorum Pares secundum ordinem ad pedem per terum Regis sedebit Cancellarius Capitalis Justiciarius cum suis sociis et eorum Clericis, et ad pedem sinistrum sedebunt Thesaurarius et Camerarii et Barones de scacario : Justitiiarii de Banco et eorum Clerici si sint de Parlamento deinde procuratores terre sedebunt.

Amerciamenta Absentium.

Rex cum Consilio suo tenetur esse primo die in Parlamento et quarto die omnes summoniti ad Parliamentum erint vocati et eorum defectus recordatur et per considerationem Regis et omnium Parium Parliamenti amerciamenta defectuum taxata.

Dies

Dies et hore Parliamenti.

Parliamentum non debet teneri diebus dominici nec die omnium sanctorum nec die animarum nec in nativitate Sancti Johannis baptiste omnibus aliis diebus Rex cum gradibus Parliamenti debent esse in Parlamento media hora ante primam Festivalibus vero diebus propter servitium divinum ad horam primam est sit Parliamentum in aperto loco semper.

Ordo deliberand. Parliamentum.

Petitiones sint afflati sicut deliberantur et sic per Ordinem legantur et respondeantur (viz.) primo determinentur que ad guerram pertinent postea de persona Regis et Regine et principis sui ac Gubernatione eorum ac postea de communibus negotiis terre sicut est delegibus faciendis et emendandis videlicet originalibus judicialibus et executoriis post Judicium reddit et postea singulares petitiones secundum quod sunt super filatoria et primo die Parliamenti sit proclamatio facta in villa et in loco Parliamenti quod omnes qui querelas vel petitiones velint deliberare Parlamento id quod faciant infra quintum diem sequentem.

Inceptio Parlamento.

Quarto die Parliamenti vel quinto predicatio fiat ab aliquo solemni Clerico ejusdem Diocefeos

B

et

et post predicationem Cancellarius vel alius sapiens et eloquens ac honestus pro Cancellario electus monstrabi causas Parliamento primo generaliter et postea specialiter stando. Quia quilibet loquens in Parliamento tenetur stare loquendo excepto Rege ut ab omnibus audiatur et post promotionem Parliamenti Rex debet precare Clericos et Laicos quod quilibet in suo gradu diligenter studiose et corditer laboret ad tractandum et deliberandum negotia Parliamenti sicut principaliter intendunt hoc esse primo ad voluntatem Domini et postea ad honorem et proficuum Regis et ipsorum presentium.

De Adjutoriis postulandis.

Rex non solet petere auxilium de populo suo nisi pro guerra sua existente vel filiabus maritandis que petitiones in pleno Parliamento debent in scripto deliberari cuilibet gradui parliamenti et in scripto respondere unde sciendum est quod in talibus concessionibus necessarium est ut majores partes cuilibet statuo sint ad hoc consentientes et sciendum quod duo milites electi habent plus vocis in concedendo vel negando pro Comitatu suo quam Comes ejusdem Comitatus et eodem modo procuratores Clericorum plus Episcopis suis in concedendo vel negando quod apparet. Quia Rex cum Comunitate sua potest tenere parliamentum sine Episcopis, Comitibus et Baronibus si rationabiliter summoniri non venirent quia aliquando fuit quod non fuerunt Episcopus Comes nec Baro, et tunc Reges tenebant parliamentum et si Comunes Clericorum et Laicorum sint sumoniti modo debito ad Parliamentum
et

et pro rationabili causa venire volunt similiter si assignaverint specialiter causas in quibus Rex eos non recte gubernavit tunc Parliamentum tenebitur pro nullo quamvis alii status ibidem plenaris intersint et ideo necessarium est quod in omnibus concedendum et faciendum affirmandum et donandum per Parliamentum quod sint concessa per communes parliamenti qui constant ex tribus gradibus videlicet de procuratoribus Clericorum Militibus Comitatum Civibus et Burgensibus et quilibet parium Parliamenti est pro seipso in parlamento et omnes pares parliamenti sunt Judices et Justitarii in parlamento et sedebunt nisi quum loquunter. Communes vero sunt querentes et necessitatibus subvenientes et stabunt.

Judicium casus dubii.

Di dubius casus vel durus guerre vel pacis in terra advenerit vel extra terram ista causa sit scripta in Parlamento pleno et sit ibidem inter pares parliamenti disputata et tractata et tunc si necesse per Regem injungatur cuilibet gradui quod eat quilibet gradus per se habens Clericum cum causa scripta ubi recitabunt causam Ita quod Ordinet et considerent inter eos in quo meliori modo et justo procedere possunt in casu illo sicut pro persona Regis et seipsis ac pro quibus presentes sunt velint coram Deo respondere. Et sic responsiones eorum in scriptis reportent ut omnibus responsionibus et consiliis auditis secundum melius consilium procedatur sicut si sit discordia inter Regem et alias Mag-nates par terre facta fuerit vel inter populum Ita
quod

quod videtur parlamento quod talis causa sit per omnes gradus terre tractanda et per eorum considerationem emendenda vel si per guerram Rex et terre turbetur vel si durus Casus eorum Cancellario vel Justitiario aut durum iudicium advenerit vel aliquis alius similis casus et si in talibus deliberationibus omnes vel saltem major pars cujuslibet gradus non consenserint tunc de quolibet gradu Parlamento excepto Rege eligatur unus qui omnes vel eorum tres ad minus eligant duos Episcopos tres procuratores pro toto clero duos Comites tres Barones quinque Milites Comitatum quinque Cives et quinque Burghenses qui faciunt xxv. personas in *ipsis et ipsi sex in tres & condescendere qui a seipso descendere non potest*, cujus ordinatio erit pro toto Parlamento nisi in altero ipsorum potest condescendere major numerus concentire possit salvo Rege et consilio etiam quod ipsi tales ordinationes postquam scriptum fuerit examinare et corrigere si sciverint, possunt in pleno parlamento et non alibi et hoc ex Parlamenti assensu. Transcript.

Transcriptum.

Clerici Parlamenti non denegabunt alicui transcripta vel processum aut recordum parlamenti qui solvere voluerint pro quibuslibet decem lineis continentibus decem pollices in longitudine que est mensura rotuli parlamenti unum denarium.

Perjurus

Perjurus Rex.

Parliamentum erit tentum in loco competenti terræ quo Regi placuerit et parliamentum non debet departiri quando aliqua petitio est pendens non determinata quod si Rex contrarium fecerit Perjurus est et Parliamentum non debet adjornari ni de concensu omnium parium parliamenti et de omnibus gradibus parliamenti nullus solus potest nec debet decedere a parlamento sine licentia Regis et omnium parium parliamenti et hoc in pleno parlamento.

De fine Parliamenti.

Ita quod inde fiat mentio in rotulis parliamenti et si aliquis parliamenti durante parlamento infirmitate detineatus ita quod parlamento accedere non possit tunc infra quartum diem mittat excusatores parlamento quo die si non venerit mittantur ei de paribus suis ad videndum et testificandum infirmitatem suam per recordum eorum sit excusatus vel in misericordia pro defectu quod suspicio ficta infirmiter sit tunc mittat aliquam sufficientem coram ipsis ad effendum pro ipso in parlamento quia sanus desana memoria non potest excusari ad deparationem parliamenti primo demandari et Proclamari debet aperte in Parlamento si aliquis deliberaverit petitionem parlamento cui factum non est responsum, et si nullus reclamationis est supponendum quod culibet petitioni medicina rationabilis facta est et tunc Cancellarius vel alius assignatus per Re-

gem et parliamentum debet dicere alta voce nos
damus parlamento licentiam dissolvi et sic finitur
parliamentum.

De Consiliis.

Et etiam Rex vult quod eadem forma in consiliis
per summonitionem factam observetur excepto quod
pro rege et legibus in ipsis consiliis erunt ordina-
tiones in Parlamento vero Statuta.

Constitutio Justic. in Hibernia.

Et etiam Rex vult ut absente Rege a dicta terra
sine procuratore ejusdem terræ quocunque alio
nomine senceatur.

F I N I S.

R U L E S
A N D
C U S T O M S,

Which by long and constant Practice have
obtained the Name of

O R D E R S of the H O U S E.

G A T H E R E D

By Observation, and out of the Journal Books,
from the Time of EDWARD VI.

By *H. S. E. C. P.*

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B 4

Houses of the Oireachtas

RULES and CUSTOMS, &c.

CHAP. I.

The Manner of chusing a Speaker in Parliament.

THE Day the Speaker is chosen, the Proceeding hath been in this Manner : Some Person (when the generality of Members are come and sit) doth put the House in Mind, That for their better Proceedings in the weighty Affairs they are come about, their first Work is to appoint a Speaker ; and recommends to the House some Person of fitness and ability for that Service and Dignity ; which usually hath been one of the long Robe. If the House generally give a Testimony of their Approbation, two of the Members (which for the most Part were of the Council or chief Officers of the Court) going to the Gentleman named, and agreed to be Speaker, take him from his Place, and lead him unto the Chair, where being set, they return to their Places.

If

If more than one Person be named for Speaker, and it be doubtful who is more generally chosen; sometimes one of the Members standing in his Place, doth by Direction or Leave of the House, put a Question for determining the same.

In the first Session of the Parliament 1^o *Jacobi*, Sir *Edward Phelips*, the King's Serjeant at Law was first named by Mr. Secretary *Herbert*, as fit for that Place, in Regard of his Knowledge of the Laws, the gift of Utterance, his long Experience and Practice in Parliament; after some Silence, the Names of others were mentioned, but the more general Voice ran upon Sir *Edward Phelips*, who thereupon stood up, and made a Speech to excuse and dis-able himself; but the House, notwithstanding his Excuse, was willing to proceed to a Question, and directed the Clerk sitting at the Board (as the Order is before the Speaker be chosen, so it is entered in the Journal of that Session) to make the Question upon his Name, viz. *All that will have Sir Edward Phelips Speaker, say Yea, &c.* Which done, and he being by general Acclamation chosen Speaker, he was, by Sir *John Herbert* and Sir *Edward Stafford*, (leading him as the Form is) placed in the Chair, the antient Seat of Speakers: where being set, after some Silence, he stood up, and made a gratulatory Speech of Form and Thanks.

The first Business in the House is, ordinarily, to read a Bill that was not passed in the last Parliament preceding, or some new Bill; as in that of 1^o *Jacobi*, a new Bill, intituled, *Touching common Recoveries against Infants*, was read.

But

But on that Day before that was done, there was a Motion made for Privilege of Sir Thomas Shirley, who was chosen a Member to serve in that Parliament, but detained by an Arrest; upon which a *Habeas Corpus* was awarded, and the Serjeant that arrested him and his Yeoman sent for, and a Committee for Elections and Privileges chosen.

C H A P. II.

Decorum to be observed in the House.

WHEN the Speaker is set in his Chair, every Member is to sit in his Place with his head covered.

No Member in coming into the House, or in removing from his Place, is to pass between the Speaker and any Member then speaking; nor may cross or go overthwart the House; or pass from one side to the other while the House is sitting.

No Member is to come into the House with his Head covered, nor to remove from one Place to another with his Hat on, nor is to put on his Hat in coming in or removing, until he be sat down in his Place.

While the House is sitting, no Man ought to speak or whisper to another, to the end the House may not be interrupted when any are speaking; but every one is to attend unto what is spoken. In which Case, Penalties have been imposed; as, 4th December 1640, and at other Times.

When any Member intends to speak, he is to stand up in his Place uncovered, and address himself

self to the Speaker, who usually calls such Person by his Name, that the House may take Notice who it is that speaks.

If more than one stand up at once, the Speaker is to determine who was first up, and he is to speak, and the other sit down, unless he who was first up, sit down again, and give way to the other, or that some other Member stand up and acquaint the House, that another was up before him, whom the Speaker calls, and the House adjudge it so.

While one is speaking, none else is to stand up or interrupt him, until he have done speaking and be sat down, and then any other may rise up and speak, observing the Rules.

21 *Junii*, 1604. It was agreed for an Order, 'That when Mr. Speaker desires to speak, he ought to be heard without Interruption, if the House be silent and not in dispute.'

12 *Jacobi*, It was vouched by Sir *Dudley Diggs*, (a Person of much Experience in Parliament) 'That when the Speaker stands up, the Member standing up ought to sit down.'

27 *April*, 1604. Agreed for a Rule, 'That if any Question be upon a Bill, the Speaker is to explain, but not to sway the House with Argument or Dispute.'

4 *June* 1604. Agreed for an Order, 'That whosoever hisseth or disturbeth any Man in his Speech, shall answer it at the Bar.'

7 *Maii*, 1607. Ordered upon the Question, 'That in going forth, no Man should stir until Mr. Speaker do arise and go before, and then all the rest to follow after him.'

C H A P. III.

Standing Committees.

IN Parliament there have usually been Five standing Committees appointed in the beginning of the Parliament, and remaining during all the Session ; other Committees were made occasionally, and dissolved after the Business committed unto them was reported.

The standing Committees are for	{	<i>Privileges and Elections.</i> <i>Religion.</i> <i>Grievances.</i> <i>Courts of Justice.</i> <i>Trade.</i>
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The Committees for Religion, Grievances and Courts of Justice, are always *Grand Committees* of the House, which are to sit in the Afternoon upon such Days as the House doth appoint to them respectively.

The Committee for Trade hath sometimes been a select Committee particularly named, and all such Members as should come to it, to have Voices, as in *November 1640.* Sometimes a Grand Committee of the whole House, as *21 Jacobi.*

C H A P. IV.

Power and Proceedings of the Committee for Privileges.

BUT the Committee for Privileges and Elections hath always had the Precedence of all other Committees, being commonly the first Committee appointed, and ordinarily the first Day after, or the same Day the Speaker did take his Place.

This Committee is constituted of particular Members named by the House.

21 *Jacobi*. Upon naming a Committee for Privileges and Elections, a Motion was made, That all that come should have Voices : but Sir *Thomas Crew* then Speaker (and well versed in Rules of Parliament) minded the House, That by the Orders of the House, that was not to be done ; and by divers other Members, it was insisted on, to be contrary to all former Precedents ; yet upon the Debate a Question was put, Whether all that should come should have Voices at that Committee ; and it passed in the Negative. And another Question being put, Whether the Persons nominated only should be of that Committee ; it was resolved in the Affirmative.

It was then also agreed, That *Council* should be admitted at that Committee.

The Power anciently given to this Committee, appears by the Entry in the Journal Book, 26th February 1600, in 39 *Eliz.* ‘ That this Committee
‘ should

‘ should, during all that present sitting of Parliament, examine and make Report of all such Cases touching the Elections and Returns of any the Knights, Citizens, Burgesses and Barons of the House.’ And also, ‘ of all such Cases for Privileges, as in any wise may occur or fall out during all the same Session of Parliament; to the End, the House upon Report of the same Examinations, might proceed to such further Course in every the same Cases as shall be thought fit.’

And Notice was given, That all the Members of the House might repair thither as there should be Cause.

This latter Power touching Privilege, seems to have been inserted, to prevent the Houses being troubled with Informations, until they were examined and ripe for a Determination.

But in other Parliaments, both before and since, that Power doth not appear to have been given them so absolutely; but Matters of Privilege were, upon Information to the House, there heard, and not in a Committee, unless in some special Cases, wherein there was Cause of Examination, or of some Preparation of a Charge; as in Case of *Smaley*, 20 *Eliz.* and many other Cases.

The Power of this Committee usually was, as it is entered 6th *November*, 1640. ‘ To examine and consider all Questions which shall grow and arise in that Parliament about Elections, Returns, and other Privileges.’ Or, as in the Parliament 1 *Jacobi*, thus: ‘ This Committee are to examine all Matters questionable, touching Privileges and Returns, and to acquaint the House with their Proceed-

‘Proceedings, from Time to Time, so, as Order
‘may be taken, according to the Occasion, and
‘agreeable to ancient Custom and Precedent.’

And to the End these Questions might be speedily determined ; and the House might know their Members, Days are usually assigned, beyond which there shall be no questioning a former Election.

So in the Parliament of 21^o *Jacobi*, the second Day of sitting, It was ordered, ‘That all Petitions
‘about Elections and Returns should be preferred
‘to the Committee of Privileges within a Fortnight
‘from that Day, or else to be silenced for that Session.’

16th *April*, 1640. Ordered, ‘That those who
‘would question Elections, should do it within ten
‘Days by Petition.’

6th *November*, 1640. Ordered, ‘That all such
‘as will question Elections now returned, should
‘do it in fourteen Days, and so within fourteen
‘Days after any new Return.’

Some Questions have been, where there have been double Indentures returned for several Persons for the same Place, whether all or any, or which of them should sit.

The general Rule and Practice hath been in such Case, That neither one nor other should sit in the House, until it were either decided or ordered by the House : Therefore in *April* 1640, the Lord High Steward, who had Power by himself or his Deputies, to minister the Oaths of Supremacy and Allegiance to all Members returned, before they sat in the House, gave Order, That where there were more returned for any one Place than ought to be,
there

there should be none of them sworn till it were decided by the House who were duly elected. But that which may satisfie herein, is the Order of the House, in that Parliament, that if any sit in the House, that are returned by more Indentures than usual, they should withdraw till the Committee for Privileges had further ordered.

In the Parliament begun *April* 1640, and *November* 1640, it was moved ; That where some are returned by the Sheriff or such other Officer, as in Law hath Power to return, and others by private Hands ; there those returned by the Sheriff or such Officer, should sit till the Election be quashed by the House.

But nothing was ordered upon it.

24th *Feb.* 1623. Sir *Francis Popham* being returned a Burgefs for *Chippenham* by one Indenture, and another Person returned for the same Place by another Indenture : it was moved he might be admitted into the House, till the Matter were determined against him, and a Precedent quoted in Sir *Thomas Wentworth's* Case the last precedent Parliament. But it was then insisted on by the Chancellor of the Dutchy and others, That this being the Case of a double Return, he was not to be admitted, and so it was referred to the Committee for Privileges. His Case being reported 9th of *April*, he was judged to be duly elected.

21 *Jacobi*, Two Indentures were returned for *Southwark*, the one returned *Yarrow* and *Mingy*, the other *Yarrow* and *Bromfield* ; upon a Report from the Committee for Elections, it was resolved, That

the Election and Return for *Yarrow* should stand good, and that he should sit in the House.

22 *Martii*, 21 *Jacobi*. The House was acquainted that Sir *John Jackson* and Sir *Thomas Beaumont*, were both returned for one Burgesse's Place for *Pomfret* ; and therefore it was moved, That both might be suspended till it were determined. Mr. *Glanvill* made Answer to that Motion, That he that was returned might sit in the House until it were determined ; which being contradicted by others, and much Dispute on both Sides, it was lastly urged by Sir *Robert Phelips*, That there was not any Precedent for it, and therefore moved the Committee might take the Election into Consideration, to-morrow, and that in the mean Time, the Parties might forbear to come into the House ; which was ordered accordingly.

4th *November* 1640. Upon a Report from the Committee for Privileges, That several Indentures were returned for Burgesse's for the Borough of *Bos-finy* in the County of *Cornwall*, the one by the Mayor of the Town, the other promiscuously: The Committee were of Opinion, upon View of the bare Indenture, That Sir *Charles Harbord*, who was returned by the Mayor, was well returned ; but the House declared he should not sit till the Election were decided.

In the same Parliament, two Returns were made for *Marlo Magna*, in both Indentures *John Burlace*, Esq; was returned ; therefore, upon Report from the Committee, he was admitted to sit, but the other to forbear till the Question be determined.

17th April, 19 Jacobi. It was ordered, ' That
 ' no Petition should be received by a Committee,
 ' but openly at the Committee, and read at the
 ' Committee before the party go that preferred it,
 ' and the parties Name that preferred it be sub-
 ' scribed.'

In the Parliament in 21 Jacobi, upon a Report made from the Committee for Elections and Privileges, praying the Direction of the House, whether Affidavits might be made use of at that Committee.

These Reasons being insisted upon, that Affidavits should not be admitted.

1st, Because it makes the Parliament lame without the Chancery.

2^d, It intitled the Chancery to judge of Returns.

3^d, Affidavits are oftentimes cautiously made by Council or Parties.

4th, Witnesses produced *viva voce*, by Words, Actions, Gestures, or the like, may discover much, whereby the Committee may judge.

It was likewise informed by Sir *Edward Cooke*, late Lord Chief Justice, That in the Parliament when he was Speaker, which was in 35 Eliz. Affidavits were not used, nor since, until of late.

5th, Though the Committee examine not an Oath, yet they may punish any that shall testify untruly : of which an Instance was given in the last preceding Parliament in the Case of one *Damport* ; It was resolved, ' That all Affidavits to be taken
 ' in any Court concerning Elections, Returns, or

‘ any Thing depending thereupon, should be rejected, and not hereafter to be used.

C H A P. V.

Member chosen in several Places.

IT falling out ordinarily, that one Person is chosen and returned to serve for several Places, it is in his Election to make his choice in the House in his own Person, for what Place he will serve; and wave the other Elections, so as a Writ may go out for a new Election for such Place waved; that the Number may be full: but if he shall not do it by the Time which the House shall appoint, then it hath been said, the House will appoint for what Place such Person shall continue a Member, and that Writs may go out for the other Places: but Query, Whether it hath been done.

Oftentimes on the first Day of the Meeting of the House, as soon as the Speaker hath been approved, and sometimes before, such Persons as have been so doubly returned have made their Choice.

In the first Session of Parliament, 1 *Jacobi*, the same Day Sir *Edward Phelips* was chosen Speaker, (before he was presented to the King) he signed a Warrant as Speaker, by command of the House, for election of another Person in the Place of Sir *Francis Bacon*, being chosen in two Places. And in the same Session, the same Day after the Speaker had taken his Place, divers Members who were severally returned, as elected in several Places, made their choice for what Places they would stand and new Writs ordered.

The Parliament beginning the 13th of *April* 1640, and the Speaker being presented the 15th, upon the 16th Day divers made their Choice upon such double Returns.

The Parliament beginning the 3d of *November* 1640, upon a long Debate for granting time for Elections on double Returns of this Nature, it was resolved, 'That all such as are doubly returned, shall make their Choice for which Place they will serve on Monday next.

9 *Martii*, 21^o *Jacobi*. Resolved, 'That all Members of this House doubly returned, shall make their Election for which they will serve, and that those in the House shall do it presently, or else new Writs to issue for both.'

C H A P. VI.

New Writs for vacant Places.

A General Order hath usually been made in the beginning of the Session, to authorize the Speaker to give Warrant for new Writs, in case of Death of any Member, or of double Returns, where the party makes his choice openly in the House during that Session; so it was Ordered in the beginning of the Parliaments 18. and 21. *Jacobi*.

Where such general Order is not made, Writs have issued by Warrant of the Speaker, by virtue of special Order, upon Motion in the House.

This

This Warrant is to be directed to the Clerk of the Crown in Chancery, by Order of Parliament
13. *Novemb.* 1601.

C H A P. VII.

Rules and Methods of Debates in the House.

WHEN a Motion hath been made, the same may not be put to the Question until it be Debated, or at least have been seconded and prosecuted by one or more persons standing up in their places as aforesaid, and then the same may be put to the Question, if the Question be called for by the House, or their general sense be known, which the Speaker is to demand, unless any Member stand up to speak.

When a Motion hath been made, that Matter must receive a determination by a Question, or be laid aside by the general Sense of the House before another be entertained. An instance is in the Journal 28. *June* 1604. A Motion being made, another interposed a Speech tending to another Business: but it was answered, ‘ That there was ‘ no Precedent for that Speech to be used, before ‘ the other Motion, which was made before, had ‘ received an Answer and an end.’ And the House did accordingly determine the first Motion in the first place.

4 *Decemb.* 1640. Ordered ‘ That till the Business in agitation be ended, no new Motion of any ‘ new Matter shall be made without leave of the ‘ House.’

If

If the Matter moved do receive a Debate *pro & contra*, in that Debate none may speak more than once to the Matter: And after some time spent in the Debate, the Speaker collecting the Sense of the House upon the Debate, is to reduce the same into a Question, which he is to propound; to the end, the House in their Debate afterwards may be kept to the Matter of that Question, if the same be approved by the House to contain the substance of the former Debate.

After such Question is propounded, any Member may offer his Reasons against that Question, in whole or in part, which may be laid aside by a general Consent of the House without a Question put.

But without such general Consent no part of the Question propounded may be laid aside or omitted; and although the general Debates run against it, yet if any Member, before the Question be put without that Part, stand up and desire that such Words or Clause may stand in the Question, before the main Question is put; a Question is to be put, whether those Words or such Clause shall stand in the Question.

The like Method is observed where any other Alteration is debated upon, to be made in a Question propounded; but upon putting a Question for such Addition, Alteration, or Omission, any Person who hath formerly spoken to the Matter of the Question, may speak again to shew his Reasons for, or against such Alteration, Addition or Omission, before such Question be put.

When the Speaker (the House calling for a Question) is putting the same, any Member that hath not before spoken to the Matter, may stand up before the Negative be put.

13 Junii 1604. A Bill touching a Subsidy of Tonnage and Poundage having been formerly upon a third Reading recommitted, was returned, and a Proviso being tendered for *Chester*, which was twice read, the Question was put for Commitment in the Affirmative : but before the Negative was put, one stood up and spake to it, which was admitted for Orderly. Because it is no full Question without the negative Part be put as well as the Affirmative.

Every Question is to be put first in the Affirmative, viz. *As many as are of opinion that* (repeating the Words of the Question) *say Yea.* And then the Negative thus : *As many as are of another Opinion say No.* To which Question every Member ought to give his Vote one way or other, and the Speaker is to declare his Opinion whether the *Yeas* or the *Noes* have it, which is to stand as the Judgment of the House. But if any Member, before any new Motion made, shall stand up and declare, That he doth believe the *Yeas* and *No's* (as the Case shall be) have it contrary to the Speaker's Opinion, then the Speaker is to give Direction for the House to divide, declaring whether the *Yeas* or the *No's* are to go forth.

Upon the dividing of the House, those are to go forth who are for varying from or against the constant Orders of the House (as that a Question shall not be put, or not be now put, it being the Course
of

of the House, that after a Debate, the same should be determined by a Question or the like) or against any positive Order made by the House, or for the passing any new Thing, as reading a Petition or Bill, and committing, ingrossing or passing such a Bill, or the like.

10 Decem. 1640. An Order being made the 9th Day, That the House should be resolved into a grand Committee the next Day, for debating the Way for raising Money : Upon the tenth Day, a Question was, upon Debate, put, Whether the House should be resolved into a grand Committee ; upon which the House was divided, and a Doubt moved, which were to go forth. It was declared for a constant Rule, ' Those that give their Votes ' for Preservation of the Orders of the House, should ' stay in ; and those who give their Votes otherwise, ' to the introducing any new Matter, or for any ' Alteration should go forth.'

24 Martii, 21 Jacobi. Upon a Report from the Committee for Privileges, a Question was put, That Sir *Thomas Holland* and Sir *John Corbet* were well elected Knights for *Norfolk*. The House was divided, and a Contest which should go forth ; it was over-ruled by the House, the *No's* should go forth.

Which is also the Course upon any Question to agree with a Report in favour of the Opinion of a Committee.

Upon dividing the House, the Speaker is to nominate two of those that are in the Affirmative, and two of the Negatives, to count the House ; which four (each of them having a Staff in his Hand)

Hand) are to count the Number of the Persons who remain sitting in the House, and then to stand within the Door, two on the one Side and two on the other, and to count the Number of them who went forth as they come in.

While the House is thus divided or dividing, no Member may speak, nor (unless it be to go forth upon the Division) remove out of his Place.

When the House is thus told, those two of the Tellers who are of the Number of those who have the major Votes, standing on the right Hand, and the two others on the left at the Bar (the rest being all set in their Places) are to come from thence up to the Table together, (making the usual Obeisance to the House three times; once at the Bar, again in the middle of the House, and again when they are come to the Table) and that Person who stands on the right Hand, is to declare to the Speaker the number of the *Yeas*, (who sat or went out as the Case is) and of the *Noes*; and then with like Reverence to depart into their Places; after which, Mr. Speaker is to report the same to the House.

If the Affirmatives have the major Votes by the Judgment of the Speaker, or (in case of Division) upon the Division, the Clerk is to enter the Vote, *resolved*. If the Negatives, then he is to enter it thus: The Question being put, (setting down the Words of the Question) it passed in the Negative.

Upon the Division, if the Members appear to be equal, then the Speaker is to declare his Vote, whether he be a *Yea* or *No*, which in this Case is the casting Voice; but in other Cases, the Speaker gives no Vote.

1 *Mai* 1606. A Question was moved, whether a Man saying *Yea*, might afterwards sit and change his Opinion ; and a Precedent was remembered by Mr. Speaker (Sir *Edward Phelips*) of Mr. *Morris* Attorney of the Wards, in 39 *Eliz.* that in like Case changed his Opinion.

If upon a Debate it be much controverted, and much be said against the Question, any Member may move, That the Question may be first made, whether that Question shall be put, or whether it shall be now put ; which usually is admitted at the Instance of any Member, especially if it be seconded and insisted on ; and if that Question being put, it pass in the Affirmative, then the main Question is to be put immediately, and no Man may speak any Thing further to it, either to add or alter : But before the Question, whether the Question shall be put, any Person who hath not formerly spoken to the main Question, hath liberty to speak for it, or against it ; because else he shall be precluded from speaking at all to it.

If in a Debate there arise more Questions than one, and if it be controverted which Question should be first put ; the Question first moved and seconded is regularly to be first put, unless it be laid aside by general consent. If the first Question be insisted upon to be put, and the major Part seem against it, the Question is to be, Whether that Question shall be now put : If that pass in the Negative, then the other Question may be put, if desired : Nevertheless, any Person may speak to it again before it be put. If in the Affirmative then it is to be put without any Addition or Alteration, as before :
And

And after that Question is put, if any Member move to have the other Question put, every one hath leave to speak to it again, as if it were a new Question.

If a Matter be received into Debate, and a Question grow, whether the House shall proceed in that Debate at this Time, and it fall out that the House be divided ; in such Case the *Noes* are to go forth, it being contrary to the Course of the House, that any Business should be laid aside till it were determined by a Question ; if the Question be for an adjournment of a Debate, the *Yeas* are to go forth upon the same Reason.

After a Question is propounded, no Man may speak more than once to the Matter ; but having spoken to the Matter, when the Question comes to be put, he may speak to the manner or words of the Question, keeping himself to that only, and not ravelling into the Merits of it.

If a Question upon a Debate contain more Parts than one, and Members seem to be for one Part, and not for the other, it may be moved that the same may be divided into two or more Questions : As 2 *December* 1640. The Debate having been, whether the election of two Knights for the County of *Warwick* were void ; a Question was put, Whether it should be two Questions : And that being resolved in the Affirmative, the Questions were put severally, upon the Election of the one first and then of the other.

No Member in his Discourse in the House may mention the Name of any other Member then present, but to describe him by his Title or Addition ;

as,

as, that noble *Lord*, worthy *Knight* ; or by his Office, as *Judge*, *Serjeant*, *Gentleman* of the long or short Robe, or by his Place, as the Gentlemen near the Chair, near the Bar, on the other Side ; or thus, the Gentleman that spoke last, or last save one, or the like.

During any Debate, any Member though he have spoken to the Matter, may rise up and speak to the Orders of the House, if they be transgressed, in Case the Speaker do not ; but if the Speaker stands up, he is first to be heard, and when he stands up, the other must sit down till the Speaker sit down. But if any Person rise up to speak to the Orders of the House in the midst of a Debate, he must keep within that line, and not fall into the Matter itself ; if he do, he may be taken down by the Speaker, or any other Member, calling to the Orders of the House.

Whilst a Member is speaking to a Debate or a Question, he is to be heard out, and not taken down, unless by Mr. Speaker, in such Cases as you find therein expressed, or that he speak of such Matter as the House doth not think fit to admit.

24 January, 23 Eliz. Upon a Debate in the House, Mr. Carleton, endeavouring to speak contrary to the Sense of the House, was interrupted ; and afterwards offering to speak again, saying with some repetition, that it was for the Liberty of the House, the Speaker and the House did stay him.

April 1604. Agreed for a Rule of the House,
 ‘ He that digresseth from the Matter to fall upon
 ‘ the Person, ought to be suppressed by the Speak-
 ‘ er.’

17 April

17 April 1604. Agreed for a general Rule, 'If any superfluous Motion or tedious Speech be offered in the House, the Party is to be directed and ordered by the Speaker.'

2 Maii 1610. A Member speaking, and his Speech seeming impertinent, and there being much hissing and spitting; it was conceived for a Rule, 'That Mr. Speaker may stay impertinent Speeches.'

18 Maii 1604. It was resolved, That eight ingrossed Bills should be read the next Day half an Hour after Eight: The next Day about that Time, a Member entering into a long Discourse *De mera fide & sola fide*, &c. was interrupted, and the Question offered, whether he should go on in respect of the Order. But it was agreed for a Rule, 'If any man speak not to the Matter in Question, the Speaker is to moderate.'

14 April 1604. In a Matter formerly proposed, touching the Abuse of the Purveyors, it was argued, Whether it were fittest to proceed by way of Petition to the King or by Bill: which was spoken to by Mr. Marten, Mr. Hoskins and others, and lastly by Sir Henry Jenkin, who was observed to mistake the Question; and therefore (to prevent the idle Expence of Time) was interrupted by Mr. Speaker, and thereupon a Rule conceived, 'That if any Man speak impertinently, or besides the Question in hand, it stands with the Orders of the House for Mr. Speaker to interrupt him, and to know the Pleasure of the House, whether they will further hear them.'

A Matter upon Debate having been once finally deter-

determined by a Question, ought not to be again brought into dispute.

27 Martii 1604. Sir Edward Coke, Attorney-General, and Doctor Hone bring a Message from the Lords, desiring a Conference about the Case of Sir Francis Goodwyn : Upon this message it was argued, That now the Judgment having passed the House, it could not, nor ought to be reversed by them ; and upon the Question it was resolved, There should be no Conference.

In sapientum decretis non est litura.

2 April 1604. A Vote having passed some Days past, That no Conference should be admitted with the Lords, the same Question was again moved, but was carried in the Negative ; and it was then urged for a Rule, That a Question being once made and carried in the Affirmative or Negative, cannot be questioned again, but must stand as the Judgment of the House.

In the Answer of the Commons House of Parliament to King James, his Objections in Sir Francis Goodwyn's Case, 3d of April 1604. The Objection being, that they refuse Conference with the Lords.

The Answer is in these Words, ' Concerning our
' refusing Conference with the Lords, there was
' none desired until after our Sentence passed ; and
' then we thought that in a Matter private to our
' own House, *which by Rules of Order might not be by*
' *us revoked*, we might without any Imputation re-
' fuse to confer.

CHAP.

CHAP. VIII.

Grand Committees, and their Manner of Proceeding.

A Grand Committee consists of as many Members, at least, as constitute the House (less may not sit or act as a Committee) who have general Powers to consider of any Matters touching the subject Matter referred, and to present their Opinions therein to the House, the better to prepare Matters of that Nature, or Bills therein, for the House ; which may better be prepared by the Liberty that every Member hath in a Grand Committee, as well as in other Committees, to speak more than once to the same Business, (if there be Cause) which is not permitted in the House.

But Grand Committees have their Powers and Rules, in other Circumstances, given them in express Words by the House ; as, to send for Witnesses, to hear Council, or assign them on either Part, to send for Records ; which appears by several Motions made in the Parliament 21 *Jacobi*. Sir Robert Phelips ? (a Person of much Experience in the Course and Orders of Parliament) moved the House from the Grand Committee for Courts of Justice, that they might have Power in the particulars aforesaid.

8 & 13 *Martii*. In the same Parliament, upon Report from the Committee aforesaid, (which then was a Grand Committee) the House was moved for their Order to the Merchant Adventurers to bring in their Patents, and that the Inventor of the
preter-

pretermitted Customs should attend the Committee.

15. *Maii. 22. Jacobi*, Upon complaint from the grand Committee for Grievances, that they had sent several Warrants for divers Persons to bring in their Patents, which they had not done; The House Ordered the Serjeant at Arms to be sent for them.

When any great business is in agitation that requires much Debate, or a Bill for a public Tax is to be Committed, the House doth use to resolve itself into a Grand Committee of the whole House; which is done by a question, and then the Speaker leaves his Chair: and thereupon the Committee (which must consist of as great a Number as constitutes a House, as is before declared) makes choice of a Chair-man, in which case, if more then one be generally called to the Chair, any Member may stand up, and by consent of the Committee, put a question for one of those named to be the Chair-man.

19 *Jacobi*, A dispute being in the Committee, which of two Members named should go to the Chair, the Speaker was called to his Chair, and put the question, that Sir *Edward Coke* (who was one of the persons named) should take the Chair, and then the Speaker left his Chair.

The Chair-man of the Grand Committee is to sit in the Clerks place at the Table, and to write the Votes of the Committee.

If upon putting a question, the Chair-man (who is to judge by the Voices) have delivered his opinion, that the *Yea's* have it, and any Member

stand up and say, He believes the *No's* have it, (or contrariwise) the Committee is to divide within the House; the Chair-man directing the *Yea's* to go that side of the House, that is on the one hand, and the *No's* to the other side, and then he is to appoint one of each to count the numbers and report them; which is to be done in the same order as in the House, saving that the Obedience, is twice in the Committee, thrice in the House. If the numbers be equal, the Chair-man hath a casting voice, in the Committee.

When the Committee hath gone through the Matter referred to them, the Chair-man having read all the Votes, is to put the Question, that the same be reported to the House: if that be resolved, He is to leave the Chair, and the Speaker being again called to the Chair, (or at the next Sitting of the House, if it be then adjourned) the Chair-man is to report what hath been resolved at the Committee, standing in his usual place, from whence (if it be not in the seat next the Floor) he is to go down to the Bar, and so to bring up his Report to the Table.

If the Committee cannot perfect the business at that sitting, they may not adjourn as other Committees; but a Question is to be made for Reporting to the House, and that leave be asked, that the Committee may sit at another time, on that Business.

But if, as sometimes it falls out, the Matter hath received a full debate in the Committee, and it is judged fit to be resolved in the House, the
Speaker

Speaker is again called to the Chair, for that purpose.

In other things then as aforesaid, the Rules of Proceedings are to be the same, as are in the House.

4. *Junii*, 1607. Agreed for a Rule.

1. "Every Question upon the voices of a Committee bindeth, and cannot be altered by themselves."

2. "Every thing directed and agreed to be Reported, ought to be accordingly Reported; but not every thing spoken, or debated at a Committee."

28. *July*, 1641. Declared by the House, "that no Committee ought to Vote, to determine the Right or Property of the Subject, without first acquainting the House therewith."

6. *Aug.* 1641. Resolved, "That no Vote past at a Committee, and not Reported nor confirmed by the House, shall be any Rule, or Direction for any Court of Justice in *Westminster* Hall, to ground any Proceedings thereon."

C H A P. XI.

In what Cases Members are to withdraw.

18^o *JACOBI*, Upon the Report from the Committee for Privileges, touching Election for *Gatton*, Sir *Henry Brittain* being concerned, and offering to speak in his own Case; it was resolved upon long Debate, he should be heard to inform the House, and then go forth.

21 *Jacobi*, A Bill which concerned the Master and Fellows of *Magdalen* College in *Cambridge*, being read the second time, and in Debate, It was removed, that Dr. *Gooch* Master of *Magdalen* College (who served for the University) and so a party ought to withdraw; It was resolved, He may first speak, and then withdraw.

June 1604. A Bill for establishment of divers Mannors, &c. of the late Duke of *Somerset*, being offered to the question of Commitment; it was moved, That Mr. *Seymour*, a Member of the House and party to the Bill, might go forth during the Debate; which was conceived to be agreeable to former Orders and Precedents in like Cases, and was so Ordered, and Mr. *Seymour* went presently forth of doors.

When any Complaint is made against a Member, or Exceptions taken to any thing spoken by him (after he had been heard to explain himself, if he desire, or the House command it, which is usually done by him standing in his place) if the House be not satisfied, but fall in Debate thereof, such Member is to withdraw; as in the several Cases of Doctor *Parry*, the Chancellor of the Dutchy, and others appears.

C H A P. X.

Censures of Members for Offensive Words or Misbehaviour.

THOUGH freedom of Speech and Debates be another undoubted Privilege of the House: yet whatsoever is spoken in the House, is subject to the censure of the House: and where they find cause (as, *in licitis facile fines transgredimur*) offences of this kind have been severely punished, by calling the person to the Bar, to make submission; committing him to the Tower, (being the usual Prison to which the Commons did commit Delinquents) expelling the House; disabling him to be a Member during that Parliament, and sometimes of any future Parliament.

The Entries in the Journal I find to be as followeth:

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

On Monday following, Mr. *Hall* was brought to the Bar by the Serjeant, was charged with several Articles, and confessed his folly; and hum-

bly submitted himself to the House, and was remitted.

8. *Feb.* 1575. *P. W.* Esq; one of the Burgeses of *Tregony* in the County of *Cornwall*, was, for unreverend and undutiful Words uttered by him, in the House, touching the Queen, sequestered; that the House might proceed to conference and consideration of his said Speech: upon Debate whereof he was committed to the Serjeant's Ward, as prisoner, and so remaining, should be examined upon his said Speech, for extenuating his fault therein.

The next day a Report was made of his examination and confession of the words; he was brought to the Bar by the Serjeant, received this Judgment by the mouth of Mr. Speaker.

That he should be committed close prisoner to the Tower, till the House should take further consideration concerning him.

4. *Feb.* 1580. Being the third Session of the Fourth Parliament of Queen *Elizabeth*, 23 Year of her Reign, complaint was made in the House against *Arthur Hall*, Esq; before named, who had caused a Book to be printed, wherein was published the Conferences of the House; and in it was contained matter of Reproach against some particular Members of the House, derogatory to the general Authority, Power, and State of the House, and prejudicial to the validity of the proceeding of the same. The matter was referred to a Committee to examine, and upon Report thereof, and bringing the said Mr. *Hall* to the Bar several times to Answer; he was sentenced by the House to be committed

mitted to the Tower, (as the prison proper to this House) there to remain for the space of six months, and so much longer, as until he should himself willingly make a Retractation of the said Book, to the satisfaction of the House, or of such Order as the House should make during that Session.

That the said *Arthur Hall* should be fined to the Queen, five hundred Pounds, for his said Offence.

That he should be presently severed, and cut off from being a Member of this House, during this Parliament, and a Writ to Issue for Election of a new Burgess, for the Borrough of *Grantham* in his stead,

That the said Book should be deemed and adjudged false and erroneous.

Thereupon, the said Mr. *Hall* was brought to the Bar, unto whom Mr. *Speaker* in the name of the whole House pronounced the said Judgment, in form aforesaid; and the Serjeant was commanded to take the charge of him, and to convey him to the Tower, and deliver him to the Lieutenant of the Tower, by Warrant of this House to be signed by the Speaker.

18. *March*, 1580. He having continued prisoner in the Tower without any Retractation, the House appointed a Committee to allow the said Retractation, and to Report it the House at the next Session.

It appeared by the Journal, 21st *November*, 1586. That he was disabled for ever, to serve in Parliament.

17. *December, 1584.* A Bill passed against Jesuits and Seminary Priests, passed upon the Question: Dr. *Parry* only gave a Negative, and after inveighed in violent Speeches against the whole Bill. Upon which he was sequestered from the House, into an outer-room, into the hands of the Serjeant, and not to confer with any, while the House was in Debate of that business. Afterwards he was brought to the Bar, and there kneeling, was told by the Speaker, if he thought fit the House was content to hear his Reasons; but he refusing, was committed to the Serjeants Ward.

The next Day he was brought to the Bar, and kneeling, confessed that he had undutifully behaved himself; and rashly and unadvisedly uttered those Speeches he had used, and was with all his heart very sorry for it; alledging withal he had never been of the House till that Session, and so could not so well know the Orders of the House as he should do; and that he would not henceforth willingly offend the House, nor any one Man in it; and so humbly prayed for their good Favour towards him. Whereupon, being again sequestered out of the House, after some Arguments and Debates, it was Resolved, upon this acknowledgment of his Fault, and his humble submission, he should be received into the House again, as Member thereof, and take his Place as before, so that he would still afterwards behave himself in good sort as he ought to do; and thereupon being called again to the Bar, and there kneeling, directly reiterating his former Confession of his Fault, and humble submission,

mission, with promises of better demeanor, he was admitted.

13. *Feb.* 1606. Upon a Report made in the House of the Remembrances formerly set down of the particulars of a Conference, the Speaker offering to read the Paper, and being interrupted by some Motions and Disputes, whether they should be Read one by one, and so Debated, or all at once: In that difference, one of the Knights for *Buckingham-shire*, with a loud Voice, (not standing up bare-headed as the Order is) pressed to have them Read. The House observing his earnestness, and manner of sitting and calling, for Order sake urged him to stand up and Speak; he stood up, and pretending to offer some Reasons, fell into an Invektive against the *Scots*, much distasting the House; yet out of a common Care to expedite the weighty Business then in hand, his Speech was neglected without Tax of Censure.

But on *Monday* following it was remembered, and his Words of Offence recited in particular, the Gentleman being absent, was sent for by the Serjeant.

Touching the Manner of Proceeding in this Case, many Motions and Questions were moved. As, 1. Whether to name a Committee to consider wherewith to charge him. 2. Whether to censure him upon their own Knowledge, without other Circumstances, the Fault being apparent. 3. Whether to charge him in general, or with particular Words; much was said upon these Questions, *pro* and *contra*, and the Precedents of *Parry* and *Throckmorton* remembered wherein for Words spoken in the

the House, the Proceedings was by the House, and not by the Committee; the Offences generally charged and punished, and the Words put in Oblivion: And so in this Case, the Judgment and Proceeding resolved to be accordingly.

The Serjeant having brought the Offender, it was moved he might be heard at the Bar, which was assented unto; and after he had spoken, he was commanded to retire, and not long after was called in again to the Bar, where kneeling, Mr. Speaker acquainted him, since the Offence was so apparently heinous, the House did not hold it fit, that any particulars should be named, or to give any reason of their Judgment; but the Order was, He would be carried to the Prison of the Tower, and there remain during the Pleasure of the House; and that he should be dismissed from his place of Knight of the Shire for *Bucks*, and a new Writ to issue for a new Choice.

15 Febr. 18 *Jacobi*. A Bill being read the second time, for the better observation of the Sabbath; one of the Members made an Invective against it, and something which seemed to reflect on a Member of the House, who presented it as favouring of a puritan and a factious Spirit. Exceptions were taken at the Words. After he had explained himself, he was ordered to withdraw out of the House; and a Debate being had, he was called to the Bar, and upon his Knees, he received the Judgment of the House, pronounced by the Speaker, That he should be discharged from the Service of the House; with an intimation, that his Judgment was very merciful, for that the House might

might for so exorbitant an Offence, have imprisoned and further punished him.

3. *April*, 1604. In a Debate upon a Bill, a Member of the House uttered some Speeches highly distasteful to the House; but no Notice was taken of it till the Bill was committed, and then the Words being repeated, he was called to the Bar, when he made his excuse, and was pardoned.

26. *April*, 1641. Great Offence was taken by the House, at Words spoken by Mr. *J. H.* He was first heard to explain himself, and then commanded to withdraw, and was called to the Bar, and suspended the House during that Session of Parliament.

27. *May*, 1631. A Paper was brought in, containing Words spoken by Mr. *Taylor*, a Member of the House, concerning the passing the Bill of Attainder of the Earl of *Stafford*, who being heard to explain himself, and then commanded to withdraw. After some Debate in the House, it was resolved, That he should be expelled the House, be made incapable of being a Member of this House, and should forthwith be committed Prisoner to the Tower, there to remain during the Pleasure of the House, and should make an acknowledgment of his Offence, both at the Bar, and at *Windsor*, publicly, and he was called to the Bar, and there kneeling, Mr. Speaker pronounced the Sentence accordingly.

Of later times it hath been observed, as most conducive to the Service of the House, that if in Debate words be let fall that give offence, exceptions should be taken the same day, and before such

such Member go out of the House; or he who is offended may move, that such person may not go out of the House, until he hath given satisfaction in what was by him spoken. And in such Case, after the present Debate is over, the words must be repeated by the Persons excepting; and in Case he desire, or the House command him, he is to explain himself, standing in his place, which if he refuse to do, or the House be not satisfy'd with such explanation, then he is to withdraw: But neither is this to interrupt the present business of the House, as in the Cases before-mentioned; or if it be omitted that day, hath it been recalled afterwards to avoid mistakes, and out of a willingness rather to pass by, then take occasion of Offence.

13. *May, 12 Jacobi.* Upon Report of the Amendment to the Bill for the due Observation of the Sabbath Day, complaint was made the same Indignity was offered to Sir *R. Owen*, when he was in the Chair at the Committee, by Sir *W. H.* that told him he was partial; and Sir *R. K.* who took him by the hand, and told him he would pull him out of his Chair, that he should put no more tricks upon the House.

Sir *W. H.* being present, made acknowledgement of his Error, which upon Question was taken for a good satisfaction.

Sir *R. K.* was ordered by the House to acknowledge his Error at the Bar.

19. *Jacobi.* Some Speeches passing in the House privately between two of the Members, and some Offence taken, which seems was not intended to be given; one of them going down the Parliament stairs

stairs struck the other; who thereupon caught at a Sword then in his Man's hand to strike with it. Upon complaint made of it to the House, they were both of them ordered to attend the House. Being come, he who gave the blow was called in, and standing (not at the Bar, but) by the Bar, was examined by Mr. *Speaker*; confessed the giving the blow, insisted on the provocation, and withdrew. The other was also called in, to relate the truth. After he had made the relation, and was likewise withdrawn, and testimony given by a Member of the House who heard the words, the House proceeded to Sentence against Mr. C. who struck the blow: he being brought to the Bar, there on his knees he received Judgment, which was pronounced by the Speaker, That he should be committed to the Tower, during the pleasure of the House.

C H A P. XI.

Calling the House.

THERE are two ends of calling the House.
 1. To discover whether any were in the House, who are not returned by the Clerk of the Crown in Chancery; it having been accounted a great Crime, and severely punished.

5. *Martii*. 1557. In the Parliament, held 4 and 5 *Phil. & Mariae*, I find this Entry.

For that *Christopher Perne* affirmed, that he is returned a Burgeſs for *Plimpton*, in *Devon*, and hath brought no Warrant thereof to the House, nor is returned hither by the Clerk of the Crown, or

Book or Warrant ; he is awarded to be in the custody of the Serjeant, till the House have farther considered.

It appears by that Book afterwards, that he was chosen a Burgess, and admitted.

2. *January, 1562.* In the second Parliament of Queen *Elizabeth*, For that it seemed to the House, being very full, that there were a greater number then was returned ; therefore the Names were immediately called over and as they were called, departed out of the House.

7. *Febr. 1588.* The House was called, and every one answered to his Name, and departed out of the House, as they were called.

2. But chiefly the calling the House, is to discover what Members are absent without leave of the House, or just cause ; in which case, fines have been imposed. And on this occasion, if the House be called, the manner hath been to call over the Names, and each Member to stand up at the mention of his Name, uncovering his head. Such as are present are marked, and the Defaulters called over again the same day, sometimes the day after, sometimes summoned, sometimes sent for by the Serjeant.

19. *June, 1607.* The House was called by the general Book of Names, in order as they were set down by the Clerk of the Crown at the beginning of the Parliament (so it is there entered) The Clerk called every one by his Name ; the Person called, if present, riseth up bare-headed and answereth ; if absent, he is either excused, and so entred,
viz.

either

either { *Licentiatur per speciale servitium.*
Excusatur ex gratia.
Ægrotat.

if none excuse him, he is entred, *Deficit.*

That no Person may sit in the House, until he be so returned as aforesaid, appears by several Instances of Persons who were not Members; and for coming into the House, were brought to the Bar, and some committed; and some sworn before they departed, to keep secret what they had heard there.

CHAP. XII.

Petitions in Parliament.

PETITIONS are usually presented by Members of the same County; if they be concerning private Persons, they are to be subscribed, and the Persons presenting them, called into the Bar to avow the substance of the Petition, especially if it be a Complaint against any.

So 18. November, 1640. One *Vivers* presented a Petition, in the name of the Major, Aldermen, Burgeffes and other Inhabitants of *Bambury*, was called in, and did acknowledge the hand to the Petition to be his; and that he did deliver it by order, and on behalf of the Town of *Bambury*, and thereupon it was committed.

The like, in the same Parliament, upon reading the Petition of one *Ward* of *Salop*: And likewise on reading the Petition of *Henry Hoogan*.

C H A P. XIII.

Privilege of Parliament.

IT is often mentioned in the Journals upon Debates, That Privilege was due *eundo, morando, redeundo*, for the Persons of Members, and their necessary Servants; and in some cases for their Goods and Estates also, during that time.

Some question hath been touching the time in which the Privilege is to be allowed, and the manner how it is to be obtained.

For the first, the Precedents are very numerous for allowing Privilege during the Session.

1. For their own persons, they have been privileged from Suits, Arrests, Imprisonments, attendants on Tryals, serving in Juries, and the like : yea, from being Summoned or called to attend upon any Suit in other Courts, by *Subpœna* served on them. To begin with the latter.

Subpœna.

In the Parliament 4 & 5. *Phil. & Mariæ*, 29. January, 1557. *Thomas Enny's* Burgefs for the Borough of *Tusk*, complained that a *Subpœna* was delivered him to appear in Chancery, and required the privilege of the House; whereupon Sir *Clement Higham*, and Mr. Recorder of *London*, were sent to the L. Chancellor to revoke the Process.

And albeit, an Entry is made in the Journal, 10 *Februarii*, 1584. 26. *Elizabeth*, that upon Motion made, touching the opinion of the House, for Privilege, in case of a *Subpœna*, served out of the
Chancery

Chancery upon Mr. *Richard Cook* a Member of the House: It was Ordered that the Recorder of *London*, and two other Members of the House, attended by the Serjeant, should repair presently in the name of the whole House into the body of the Court of Chancery, and there to signify to the Lord Chancellor and master of the Rolls, That by the Antient Liberties of this House, the Members of the same are privileged from being served with *Subpœna's*: and to require withal, not only the discharge of Mr. *Cook's* Appearance, but from thenceforth to grant Privilege for other Members, upon the request of the House, signified under the Speaker's hand: which Mr. Recorder and the rest did accordingly. But they return this Answer, That the Lord Chancellor told them, he knew no such Privilege touching *Subpœna's*, and would not allow it, unless the House did prove it had been allowed also in that Court of Chancery: whereupon Precedents were directed to be viewed; but within few days after the Parliament ended.

Yet the practice in succeeding times, declares the Privilege, as appears by the Instance following (which was the next Year after) and these that follow, with the multitude more which might be mentioned.

27 *Eliz.* One *Kirle* having caused a *Subpœna* out of the Star-Chamber to be served on a Member of the Commons House; and for want of appearance, taken out an Attachment, and enforced the payment of money to discharge the same; the said *Kirle* was Committed till he had paid cost to the

E

Person

Person served, and made a submission to the House on his knees at the Bar.

15. *Maii* 1604. A *Subpæna* out of the Chancery to appear, was served on the Person of Sir *Robert Needham*, Knight, a Member of Parliament: upon Complaint thereof, the Serjeant was sent to Attach the body of him, who served the *Subpæna*.

7. *Maii*. 1607. The Serjeant was sent for *Edward Throckmorton*, for serving a *Subpæna* on Sir *Oliver Cromwell*.

14. *Maii*, 19 *Jacobi*, Upon Complaint of the service of a *Subpæna* on a Member of this House, Sir *Edward Coke* vouched a Precedent; 10 *Edvardi* 3. That a *Subpæna* being served on the Clerk of this House, the party was Committed for breaking the Privilege of this House.

4. *Maii*. 1607. A *Subpæna* out of the Exchequer being served on Sir *R. Pawlet*, a Member of the House; the House thought fit to grant Privilege, and that the same course should be taken, as in other the like cases are usual, *viz.* The Serjeant by his Mace to Attach the Parties Delinquent, and to bring them to the Bar, to receive the Judgment of the House, and Mr. Speaker the next day wrote a Letter to the Lord Chief Baron, that no further process do issue against the said Sir *R. Pawlet*.

3 *Decemb.* 19 *Jacobi*, Upon occasion of a *Subpæna* served on Mr. *Breeriton*, it was agreed by the whole House, that the serving of a *Subpæna* upon a Member of this House, knowing him to be a Parliament Man, is a breach of Priviledge, and *Napper* who served the *Subpæna* was Committed.

Arrest.

Arrest.

33 *Eliz.* The Sheriffs of *London* were fined by the Commons, and sent to the Tower, for not delivering a Burgess arrested for Debt, sitting the Parliament.

6. *April*, 1593. The Serjeant at the Mace, who arrested Mr. *Neal*, a Member of this House, upon an Execution; as also *Weblin*, at whose suit he was arrested, contrary to the Privilege of this House, were this day brought to the Bar, and were both committed Prisoners to the Tower; and the Serjeant at Arms attending this House, was ordered to deliver them over to the Lieutenant of the Tower.

Utlary.

13. *May*, 1607. *Nicholas Allen* an Attorney, and *Palmer*, at whose suit Mr. *Martin*, a Member of this House, was outlawed, were ordered to be sent for by the Serjeant, and brought to the Bar to answer their Contempt.

Attachment.

In the same Parliament, there being complaint, that an Attachment was taken forth against Mr. *Belingham*, a Member of this House, out of the Court of Chancery, for a Contempt; the House ordered to have Privilege, and a Letter was ordered to be sent to Mr. *Evelin*, one of the six Clerks, to stay the Suit.

Issues.

A Writ of Petition being issued out, a Writ was directed to the Sheriff, to levy 20*l.* Issues upon Sir *Robert Oxenbridge*, for Non-appearance; the same was complained of, and the House granted Privilege, with this, That if the Issues were not dis-

charged before the next day at night, the parties Delinquent were the day after to be brought to the Bar by the Serjeant.

Tryals.

14. *May*, 1576. Sir *Edward Montague*, a Member of the House, was warned to attend a Tryal in *London*, which was to be had against him; and was by Order of the House, privileged; and the party that gave the warning, was summoned to appear at the Bar the next morning.

21. *Feb.* 1588. Upon Motion made by divers Members of the House, having Writs of *Nisi prius* brought against them, that Writs of *Supersedeas* might be awarded, in respect of the Privilege of this House, due to the Members: It was Ordered, That those Members of the House, who have occasion of such Privilege, should declare their Case to the Speaker, who shall thereupon direct the Warrant of this House to the Lord Chancellor for awarding such Writ of *Supersedeas*.

3 *Martii*. 18 *Jacobi*, Upon a Report from a Committee appointed to consider of a way of staying Tryals against Members of the House; That by several Precedents, the Custom appeared to be in such Cases, That on Motions and Orders in the House, Letters were written to the Justices of Assize, for staying of Tryals against Members of the House; which Letters were entered in the Journal Book, and that it belongeth to the Clerk to write the same. It was thereupon resolved, That the former course of writing Letters to the Justices of Assize, should be held according to former Precedents.

10 *Junii*,

10 *Junii*, 1607. Sir *Robert Johnson*, a Member of the House moved for a Letter to stay a Tryal against him in the Exchequer, which was granted, as appeareth by the Entry, on the 13th day, when a Petition of Sir *Robert Brett* was read against that Privilege. The Privilege formerly granted was affirmed, upon this Reason. That no Man should have any thing to withdraw him from his Service in the House. The like 14 *Feb.* 18 *Jacobi*.

And so much this Privilege hath been insisted on by the House, that it hath been a Question. Whether any Member of the House could consent that himself should be sued during the Session; because the Privilege is not the Persons so much as the Houses: And therefore, when any Person hath been brought to the Bar for any Offence of this Nature, the Speaker hath usually charged the Person in the Name of the whole House, as a breach of the Privilege of the House.

And when, 3 *June*, 1607, Sir *Thomas Holcroft* a Member of the House, had occasion to sue at Law, and was sued, with which he was content, and desired the leave of the House; there was a Question, whether the House should give leave for a breach of Privilege, and it was resolved the House might give leave.

Juries.

7 *Maii*, 1607. Sir *Thomas Bigg* and Sir *Thomas Love*, being returned upon an Attaint in the King's Bench; it being moved, that in this Case they ought to have Privilege: it was so ordered, and the Serjeant sent with his Mace, to deliver the plea-

sure of the House to the Secondary, the Court sitting.

22 Novemb. 1597. Sir *John Tracy*, a Member of this House, being at the Common-Pleas Bar, to be put upon a Jury; the Serjeant at Arms was presently sent with his Mace to fetch him thence, to attend his Service in the House.

Commitment.

April 12 *Jacobi*. Sir *William Bampffield* was committed by the Lord Chancellor for a Contempt, after the Writ of Summons, but before the Election. Ordered upon the Question, That he shall have his Privilege by Writ of Habeas Corpus.

Sheriff.

1 *Jacobi*. 2 *Seff*. Sir *John Peyton*, Knight for *Cambridge*, being returned the last Session, and since chosen Sheriff. Mr. Speaker moved to know the pleasure of the House, whether he should attend his Service here: And it was resolved upon the Question in the House, he should attend his Service here.

Privilege to Servants.

Privilege was also granted to the Servants of Members during the sitting of Parliament.

16 Febr. 5 *Eliz*. Robert *Parker*, Servant to Sir *William Woodhouse*, Knight for *Norfolk*, being attached in *London*, at the suit of one *Baker*, in a Trespass; had a Warrant of Privilege, notwithstanding Judgment given against him for four Marks.

20 Feb. 18 *Eliz*. 1575. Upon the Question, and also upon Division of the House, *Edward Smaley*, Servant unto *Arthur Hall*, Esq; one of the Burgesses for

for *Grantham*, being arrested upon an Execution, had privilege.

16 Decemb. 44 *Eliz.* *Anthony Curwen*, servant to *William Huddleston*, Esq; one of the Knights of *Cumberland*, being arrested upon a *Capias ad satisfaciendum*, out of the Common-Pleas, for six pounds Debt, and forty shillings Damages, and detained in Execution; a *supersedeas* was awarded, and he was delivered.

11 *Maii*, 19 *Jacobi*, The Under-sheriff of *Middlesex*, was called to the Bar, for causing *Alexander Melling*, Servant to the Chancellor of the Dutchy to be arrested; he denied he knew him to be his servant: Mr. Speaker let him know, the House had ordered him to have privilege; and therefore ordered the Under-sheriff to discharge him.

2. Session of the Parliament, 1 *Jacobi*, Sir *Edward Sandys* moveth a breach of privilege by Sir *Robert Leigh*, a justice of Peace, for committing his Coachman to *Newgate*: Sir *Robert Leigh* was sent for by the Serjeant, and an *Habeas Corpus* for the prisoner. Sir *Robert Leigh* being brought to the Bar, acknowledged his fault, and was discharged, and so was the prisoner.

3 *Maii*, 1606. *Valentine Syre*, servant and Bagbearer to the Clerk of the Commons House, being arrested upon an Execution, was by Order and Judgment of the House enlarged.

7 Sept. 1601. *Woodal*, servant to *William Cooke*, Esq; a Member of the House, being arrested, and in prison, in *Newgate*; the Serjeant at Arms was presently sent to *Newgate*, to bring him to the House,

sedente Curia; and being brought to the Bar with his Keeper, was discharged by Order of the House from his said Keeper, and from his Imprisonment.

1 July, 1607, *John Pasmore*, the Marshal's Man, being sent for and brought to the Bar, for arresting *John Jessop*, Waterman, Servant to Sir *Henry Nevil*, a Member of the House; he denied that he knew he was Sir *Henry's* Servant until afterwards; notwithstanding he took an *Assumpsit* for him to answer the Action: The House thought fit to commit him to the Serjeant, till the House's Pleasure were further known, and till he had discharged the *Assumpsit*, and paid the Fees.

17. June, 1609. Upon a Report of the Committee for Privileges, That a menial Servant of Sir *Robert Worth* was arrested eight Days before this Session; the Serjeant was sent for the Prisoner, and the Serjeant that made the Arrest, one *King*, who followed it, and *Fisher*, at whose Suit he was arrested.

4 Junii, 19 Jacobi. *Johnson* a Servant to Sir *James Whitelock*, a Member of the Commons House, was arrested upon an Execution by *Moor* and *Lock*, who being one of the Prosecutors, said, He had known greater Mens Men than Sir *James Whitelock* taken from their Masters' heels in Parliament time. This appearing, *Lock* and *Moor* were called into the Bar, and by the Judgment of the House were sentenced.

1. That at the Bar they should ask Forgiveness of the House, and of Sir *James Whitelock* on their Knees.

2. That

2. That they should both ride upon one Horse, bare backed, back to back, from *Westminster* to the *Exchange*, with Papers on their Breasts, and this Inscription, 'For arresting a Servant of a Member of the Commons House of Parliament:' and this to be presently done, *sedente Curia*: which Judgment was pronounced by Mr. Speaker against them at the Bar upon their Knees.

28 *Aprilis*, 22 *Jacobi*. A Warrant was ordered to be issued by the Speaker for a Writ of Privilege, to bring up *Andrew Bates*, Servant to Mr. *Richard Godfrey* of the House, in Execution with the Sheriff of *Kent*, at the Suit of one *Hunt*.

Goods.

That the Members of this House have also Privilege for their Goods, is not without some Precedent.

12 *March*, 1606. Complaint was made by Mr. *James*, a Burgess of Parliament, That his Horse standing at his Inn was taken by the Post-master's Servant; both the Post-master and his Servant were sent for, and brought to the Bar: *Moreton* the Post-master appearing to be ignorant of what his Servant had done, and disavowing it, was, by Order of the House, discharged: But upon the Testimony of a Witness at the Bar, that he told the Servant when he took the Horse, that a Member of Parliament was Owner of it, the Servant was committed.

In Adjournment.

During the Adjournment, like Privilege was granted and affirmed.

1 *Decemb.*

In Decemb. 1606. *Thomas Finch*, a Servant to *Sir Nicholas Sandys*, Knight, one of the Burgeffes of *Queensborough*, was arrested during the Adjournment; which being conceived to be a great Contempt to the Privilege of the House, an *Habeas Corpus* was awarded to bring him to the House, and he was accordingly brought, and also one Knight, who procured the Arrest, and *Harrison*, the Yeoman.

The Excuse was, *Finch* was an Attorney at Law, yet it being avowed by *Sir Nicholas Sandys*, that *Finch* lay in his House, solicited his Causes, and received Wages from him; and it being insisted on that all menial and necessary Servants are to be privileged, and Instance given of a Precedent of the Baron of *Walton's* Solicitor, in the Time of *Queen Elizabeth*: Upon the Question, *Finch* was privileged, and delivered according to the said Precedents.

During that Adjournment, a Suit was prosecuted in the Court of Wards against *Nicholas Potts*, Esq; and *Francis Wethered*, Gent. Committees of a Ward which concerned Mr. *Nicholas Davyes*, Servant to the then Speaker, as Assignee of the Ward. The Speaker, by Virtue of a former general Order of the House, wrote a Letter to *Sir Cuthbert Pepper*, Surveyor of the Court of Wards and Liveries, to make known to the Court, That the said *Davyes* was one of his Clerks and nearest Servants, and the Privilege now as warrantable as in Time of sitting; and therefore prayed him and the Court to take Notice of it.

During

During another Adjournment in *March* following, the Speaker, warranted by the like general Order, at the Desire of *Edmund Ludlow*, who was summoned to attend the Execution of a Commission out of the Chancery, wrote a Letter to the Commissioners to excuse his Attendance, and that he should not be prejudiced by his Absence.

‘ Privilege, as well before as after the Parliament.

The great Question is, within what Time this Privilege may be claimed before and after the sitting of the Parliament. It is clear, it hath been claimed and allowed for some Time before, and after the sitting. One Precedent may serve, because it is famous, and, for the Proceedings in it, *instar omnium*.

1 *Jacobi*. The first Day of sitting, Complaint was made, That Sir *Thomas Shirley*, chosen a Member of the House, was arrested four Days before the sitting of this Parliament; a Warrant issued to the Clerk of the Crown for a *Habeas Corpus*, to bring him to the House, being then Prisoner in the Fleet; and the Serjeant and his Yeoman were sent for in Custody, who being brought to the Bar, and confessing their Fault, were remitted for that Time: The Writ being not executed, the House fell again into Debate touching the Privilege, and how the Debt to the Party might be satisfied, because the Debt was gone, if the Party were delivered; and thereupon came to three Questions;

1. Whether

1. Whether Sir *Thomas Shirley* shall have Privilege.

2. Whether presently, or to be deferred till further Order.

3. Whether the House should be Petitioners to the King, according to former Precedents, for some Course, for securing the Debt to the Party, and saving harmless the Warden of the *Fleet*. All which Questions were resolved in the Affirmative, and a Bill drawn to secure *Simpson's* Debt, &c. which also produced a Bill for Relief of Plaintiffs in Writs of Execution, where the Defendants in Writs are arrested, and set at Liberty by Privilege of Parliament.

17 *April*. Upon hearing Council in the House at the Bar, for Sir *Thomas Shirley* and the Warden of the *Fleet*; and upon shewing divers Precedents, 39 *Hen. 6.* one Clerk taken in Execution before the Parliament begun, was privileged 30 *Hen. 6. Ferrer's* Case in *Hollingshead's* Chronicle; the Case of *Huddleston's* Servant before remembered; this being added, that his Body was freed, but his Lands and Goods left subject. It was ordered, That *Simpson*, at whose Suit, and the Serjeant, by whom the Arrest was made, should be committed to the Tower.

4 *May* following, an *Habeas Corpus* was awarded to the Warden, to bring Sir *Thomas Shirley* to the House; the Warden denied to execute it, for which, 7 *May* following, he was sent for by the Serjeant, and brought to the Bar, who denying to bring his Prisoner, a new Writ of *Habeas Corpus* was awarded, and the Warden was committed to
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the Serjeant, with this, That if that Writ were not executed, then he should be delivered over to the Lieutenant of the Tower, as the House's Prisoner.

8 May. The Serjeant was sent with his Mace to the *Fleet*, the House sitting, to require the Body of Sir *Thomas Shirley*, being directed by the House to the Precedent of *Ferrers*, recorded in *Hollingshead's Chronicle*, and the Book of Jurisdiction of Courts by *Crompton*; but the Serjeant being denied, a Warrant was made to the Serjeant, to deliver the Warden of the *Fleet* to the Lieutenant of the Tower, to be kept close Prisoner.

11 May, The Warden was again sent for, and brought to the Bar, and refusing to deliver up his Prisoner, he was committed to the Place called the Dungeon, or Little-Ease, in the Tower.

12 May, A new Warrant was ordered for a new Writ of *Habeas Corpus*, and that the Serjeant should go with the Writ; that the Warden should be brought to the Door of the *Fleet* by the Lieutenant himself; and there the Writ to be delivered to him, and the Commandment of the House to be made known to him by the Serjeant, for the executing of it. That in the mean Time, the Warden to be presently committed to the Dungeon and after to be returned thither again.

18 May, He attending at the Door, was brought in to the Bar, where, upon his Knees, confessing his Error and Presumption, and professing he was unfeignedly sorry he had so offended this honourable House: Upon that Submission, by Direction of the House, the Speaker pronounced his Pardon and Discharge,

Discharge, paying ordinary Fees to the Clerk and the Serjeant.

That this Privilege doth take Place by Force of Election, and that before the Return be made, appears by the Proceeding in the Case following.

19 November, 1601. Upon Information to the House, that one *Roger Baston*, Servant unto ——— *Leaſton*, Baron of *Walton*, who, upon credible Report of divers Members of the House, was affirmed to be chosen a Burgeſſ for the Borough of *Newton* in *Lancaſhire*, but not yet returned by the Clerk of the Crown, had been, during that Session of Parliament, arrested in *London*, at the Suit of one *Muscle*; the ſaid *Muscle*, together with the Officer that made the Arrest, were ſent for by the Serjeant, and brought to the Bar; and there charged by Mr. Speaker in the Name of the whole House, with their Offence therein: and having been heard, *Baston* was ordered to have Privilege, and to be diſcharged of his Arrest and Imprisonment, and the Offenders for three Days committed to the Serjeant, and ordered to pay ſuch Charges to *Baston*, as the Speaker ſhould ſet down, and their Fees.

For how long Time before and after the Parliament.

By theſe Inſtances, as alſo by *Clark's* Caſe, 39 Hen. 6. and the Caſe of Sir *Robert Wroth's* Servant before recited, it appeareth, That Privilege doth take Place before the Parliament begin, but for what Time is the Queſtion: what appears by the Journal Book tending to clear it, is thus.

6 March,

6 March, 1586. This Day *William White* brought to the Bar, for arresting Mr. *Martin*, a Member of the House, That the Arrest was fourteen Days before the Beginning of the Parliament: The House thereupon appointed a Committee to search the Precedents.

Upon Report made, that Mr. *Martin* was arrested above twenty Days of the Beginning of the Parliament, held by Prorogation; and upon Debate, the House being divided in Opinion about the Privilege, for the ending of the Business, three Questions were propounded by the Speaker.

1. Whether the House would limit a Time certain, or a reasonable Time, to any Member of the House for his Privilege?

The House answered, *A convenient Time.*

2. Whether Mr. *Martin* was arrested within this convenient Time?

The House answered, *Yea.*

3. If *White* should be punished for arresting Mr. *Martin*?

The House answered, *No.* And the Reason is given, Because the Arrest was twenty Days before the Beginning of the Parliament, and the Creditors did not know what should be taken for a reasonable Time.

24 April, 1640. It was this Day said in the House, and not contradicted, that every Member of the House hath Privilege for sixteen Days *exclusive*, and fifteen Days *inclusive*, before and after every Parliament.

The like Mention is made in several Parliaments, by Members in Debate.

How obtained.

For the Manner of obtaining this Privilege, 22 *March* 18 *Jacobi*. It was resolved, that no Protection under any Man's Hand of this House is good.

22 *Feb.* 6 *Edw.* 6. It is ordered, that if any Burgefs required Privilege for himself or his Servant, upon Declaration thereof to the Speaker, he should have a Warrant signed by Mr. *Speaker* to obtain the Writ.

22 *Feb.* 18 *Eliz.* Aug. 1575. A Report was made by the Attorney of the Dutchy from a Committee for Delivery of *Smaley*, a Servant to *Arthur Hall*, before mentioned, that they found no Precedent, for setting at large by the Mace any Person in Arrest, but only by Writ. And that by divers Precedents of Record perused by them, it appears, that every Knight, Citizen, or Burgefs of this House, which doth require Privilege, hath used in that Case to take a corporal Oath before the Lord Chancellor or Lord Keeper. That the Party for whom such Writ is prayed, came up with him, and was his Servant, at the Time of the Arrest made. But on the 27th *Feb.* after fundry Reasons, Arguments and Disputations in the House, it was resolved, That the said *Smaley* should be brought the next Day to the Bar by the Serjeant, and so set at Liberty by Warrant of the Mace, and not by Writ.

According to which Resolution, the next Day *Smaley* was brought to the Bar in the House by the Serjeant, accompanied with two Serjeants of *London*, and was presently delivered from his Imprisonment and Execution, according to the former Judgment

Judgment of this House, and the said Serjeants discharged of their said Prisoner.

2 March, 1592. Upon a Report from the Committee of Privileges and Elections, that one Mr. *Fitzberbert* was returned a Burgess, and excepted against, because he was alledged to be outlawed, and detained upon such Outlawry; the House ordered, That Mr. Speaker should move the Lord Keeper for an *Habeas corpus cum causa*, to bring up the Body and Cause of Mr. *Fitzberbert*.

But the next Day Sir *Henry Knivet* entering into a discourse, touching the Privileges of the House of ancient Times, used and accustomed for the conventing of any Persons in this Court, declared his Opinion, That Mr. *Fitzberbert* was rather to be called to appear in this House by the Serjeant's Mace of this House, than any Writ of the Chancery, and quoted a Case of *George Ferrers*; but was put in Remembrance by Mr. Speaker, That the Manner for the bringing Mr. *Fitzberbert* had received the Order of the House Yesterday, and was therefore now neither to be recalled, nor further treated of by this House, till the Appearance of the said Mr. *Fitzberbert* be first made in this House, according to the said former Order for the same.

On the 7th of the same Month, the House being acquainted by Sir *Edward Hobby*, That the Lord Keeper having been moved for a Writ of *Habeas corpus cum causa*, for Mr. *Fitzberbert*, his Lordship thought it best, in Regard to the ancient Liberties and Privileges of this House, That the Serjeant at

Arms be sent, by Order of this House, for the said Mr. *Fitzherbert*, at his own Charge; by Reason whereof he may be brought hither to the House, without Peril of further being arrested by the Way: which was also approved of.

Injuries offered to the Members and their Servants, during the Session, have been usually punished by the House, upon Complaint.

29 Feb. 1575. One *Williams*, for assaulting a Burgess of this House, was, upon Complaint, sent for by the Serjeant, and brought to the Bar, and committed to the Serjeant's Ward.

23 Ap. 1 Mariae. One *Monington*, for striking *William Johnson*, a Burgess, was sent for, and confessing it, was committed to the Tower.

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

12 Feb. 18 Jacobi. Mr. *Lovell*, a Member of the House, informed, That one *Daryell* threatened his Person, that for a Speech spoken by him in the House, he should be sent to the Tower during the Parliament, or presently after: *Daryell* was sent for by the Serjeant to answer it to the House, and upon Testimony of it he was committed to the Serjeant till *Thursday* following, and then to acknowledge his Fault, or to be committed to the Tower.

16 June,

16 June, 1604. Complaint being made of one *Tho. Rogers*, a Currier dwelling in *Coleman-street*, for abusing *Sir John Savill* in slanderous and unseemly Terms, upon his Proceedings at a Committee in the Bill touching Tanners, &c. he was sent for by the Serjeant at Arms to the Bar, to answer his Offence.

C H A P. XIV.

Amendment of Returns.

18^o *JACOBI*, The Sheriff of *Leicestershire* having returned *Sir Thomas Beaumont*; upon Report from the Committee for Elections, That *Sir George Hastings* was duly chosen, the Sheriff was ordered to return *Sir George Hastings* to the Clerk of the Crown, and he to accept it, and file it.

21 *Jacobi*, Upon Report from the Committee of Privileges, That in the Election of *Mr. John Maynard* for *Chippingham*, *Mr. John Maynard* was chosen, but by a Mistake, *Charles* was afterwards written instead of *John*; it was resolved, The Return should be amended without a new Writ: And the Question being, Who should amend it? Resolved, The Bailiff should do it, and not the Clerk of the Crown; and that it should be sent down to the Bailiff in the Country, and he to return *John Maynard*, Esq; the first Burgeſſes.

1 Feb. 1640. It being resolved, That the Election of *Mr. Erle* for one of the Burgeſſes of *Ware-*
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ham is a good Election; it was ordered, That the Officer, that was the Officer when the Return was made, or his Deputy, or the Electors, should amend the Return. But the next Day it was ordered, That *Edward Harbin*, the late Mayor of *Wareham's* Deputy, should come to the Bar of the House, and amend the Return.

20 Feb. 1640. The Bailiff of *Midhurst* in *Sussex* came to the Bar, (being sent for by Order of the House) and amended one of the Indentures of Return of Burgeses for that Town, and the other was taken off the File.

F I N I S.