

THE  
HISTORY and PROCEEDINGS  
OF THE  
House of Commons  
FROM THE  
*RESTORATION*  
TO THE  
PRESENT TIME.

CONTAINING

The most remarkable MOTIONS, SPEECHES,  
RESOLVES, REPORTS and CONFERENCES  
to be met with in that Interval :

AS ALSO

The most exact ESTIMATES of the Charge of Government ;  
State of the PUBLIC REVENUE ; the Rise and Growth  
of the NATIONAL DEBT, Expence of the WAR, Proceed-  
ings on WAYS and MEANS, SPEECHES and MESSAGES  
from the Throne, ADDRESSES, and REMONSTRANCES,  
also the Numbers *Pro* and *Con* upon every Division, &c.

Many of which Curious Particulars were never before printed.

Collected from the best AUTHORITIES,

Compared with the JOURNALS of the HOUSE ;

And illustrated with a great Variety of HISTORICAL and  
EXPLANATORY NOTES.

Together with a large APPENDIX,

CONTAINING

Exact LISTS of every PARLIAMENT, the Names of the  
SPEAKERS, their several POSTS under the Govern-  
ment ; and other valuable, Supplemental Pieces.

---

V O L. III.

---

L O N D O N :

Printed for RICHARD CHANDLER, and sold at the *Ship*  
*without Temple-Bar*, and at *York and Scarborough*. 1742.



# THE CONTENTS of TOME III.

[The ASTERISKS signify the Omissions in  
TORBUCK's Edition, as before.]

## Third Parliament of King WILLIAM.

**K**ING's Speech, Page 1. Addresses of both Houses, 3. Bill for Regulating Trials in case of Treason, *ibid.* Arguments against Re-coining the Silver, 4. Arguments for it, 5. Debate on raising, or continuing the old Standard, 6. Resolutions about the Coin, *ibid.* \* An Address against the Scots African, and India Companies Bill for regulating the Coinage, *ibid.* Votes for Supplying Deficiencies thereon, *ibid.* \* Royal Assent given to several Bills, 8. Farther Proceedings on the Coinage, *ibid.* Proceedings on the Grants to the Earl of Portland, 9. The Case argued before the Lords of the Treasury, *ibid.* Mr. Price's Speech (*entire*) in the House of Commons, relating to the said Grant, 10. The Address thereon, 17. The King's Answer, 18. \* Proceedings occasioned by the Scots E. India Company, 18. \* Several Persons impeach'd on that Account, 19. \* A Council of Trade proposed, *ibid.* King's Speech on Discovery of the Assassination-Plot, *ibid.* Address of both Houses thereon, 20. King's Answer, 21. Several Resolutions with Regard to the said Plot, *ibid.* Form of the Association, *ibid.* \* 500,000*l.* for the Civil-List, and 15,000*l.* per Ann. settled on the French Protestants, *ibid.* A Bill for Security of his Majesty's Person. Association presented to his Majesty, *ibid.* King's Speech on the Occasion, *ibid.* Bill for Regulating Elections rejected, 24. \* Total of the Supply granted this Session, *ibid.* \* King's Speech.

## Second Session.

King's Speech, 25. Address thereon, and his Majesty's Answer, 27. Vote on the State of the Coin, *ibid.* \* Estimate of the Charge of the Navy and Army, 28. Pamphlets censured 29. \* Deficiencies in the Funds, *ibid.* Supplies for the Land and Sea-Service. Proceedings against Sir John Fenwick, *ibid.* \* Debates on the Form of the said Proceedings, 32. \* Debate on the Evidence, 33. \* Debate on the Proof that Lady Fenwick had tampered with the Witnesses, 40. \* Debate on the Record of Cook's Conviction, 44.

[A 2]

\* Debate

\* Debate upon Goodman's Evidence at Cook's Trial, 45  
 \* Debate upon the second Reading of the Bill to attain Fenwick, 47. \* Division on a Bill for the better Regulating Elections, 53. \* Report of the Committee appointed to inspect the State of Trade, *ibid.* \* Report of the Miscarriage of the Land-Bank, *ibid.* The Speech of Mr. Methuin, 54. And that of Sir Godfrey Copley, upon the Reading Sir John Fenwick's Bill the third Time, [Note these two Speeches are all that are to be found in Torbuck's *complete* Collection, relating to this remarkable Case.] Abstract of the Proceedings on Ways and Means, 60. \* Annual Produce of the Funds, clear of all Charges, 61. Royal Assent given to several Acts, 66. \* Copies of Grants from the Crown, *ibid.* \* Arrears due to the Navy, Army, &c. 68. \* Bank-Account, *ibid.* \* Account of Money coined at the several Mints, *ibid.* \* Remarkable Case of Conrade Griebel, 69. Address thereon, and King's Answer, *ibid.* \* Enquiry into the Conduct of the Fleet, adjourned upon a Motion for Candles, 70. \* A Clause to render Merchants worth 5000*l.* eligible for Members, *ibid.* \* Remarkable Report relating to the Abuses of Prisons, *ibid.* \* Royal Assent given to several Acts, 71. \* Orders for dispersing a Mob, *ibid.* \* Farther Proceedings on the Report concerning the Abuse of Prisons, *ibid.* \* Votes upon the Newfoundland Trade, 72. \* Minute, which was ordered not to be printed, *ibid.* A Printer ordered into Custody, *ibid.* A Motion to restrain the Liberty of the Press, rejected, *ibid.* King's Speech.

### Third Session.

King's Speech, 74. Commons Address, 75. King's Answer, 76. The Grievance of Standing-Forces. Royal Assent given to several Bills, 77. Proceedings on the Supply, *ibid.* Order for paying off all Arrears of Debt, 79. Enquiry into false Endorsements on Exchequer-Bills, 80. Duncomb, and Knight, two Members, expell'd and imprisoned for the same, *ibid.* A Bill of Resumption ordered, 81. State of Religion, *ibid.* Address thereon, *ibid.* King's Answer, 82. Royal Assent given to several Acts, 83. \* Several Merchants impeached of high Crimes, *ibid.* \* Royal Assent given to several Bills, *ibid.* \* Grievances of the Victuallers of the Tower-Hamlets, 84. Dispute between the two India-Companies, *ibid.* Resolutions thereon, 85. \* State of the Dividends, Debts, &c. of the Old-Company, *ibid.* \* Progress of the said Dispute and Decision in Favour of the New-Company, 87. \* 700,000*l.* Civil List, granted to the King for Life, *ibid.* \* Controversy between the two Houses on the Impeachment of the Merchants, 88. Molineux's Case of Ireland, complained of, *ibid.*  
 Address



Address thereon, 89. \* Address in Behalf of the City of London-Derry, &c. 90. \* Royal Assent given to several Bills, *ibid.* King's Speech.

#### Fourth Parliament.

King's Speech, 91. Vote to reduce the Army, 92. King's Speech on that Occasion, 93. Address of Thanks, *ibid.* The King's Answer, 94. \* Admiral Russel's Account of Receipts and Disbursements for the Service of the Navy, *ibid.* \* Estimate of the Half-Pay List, *ibid.* \* Account of Cash, in the Hands of the Treasurer of the Navy, 95. \* An Account of Grants, 96. King's Message concerning the Dutch Guards, 99. Commons Address thereon, 100. \* Divisions on that Occasion, *ibid.* King's Answer, *ibid.* Royal Assent given to several Bills, 101. \* A Negative on issuing more Bills of Credit from the Treasury, *ibid.* \* Representation to the King of Mismanagements in the Conduct of the Navy, *ibid.* \* Divisions thereon, *ibid.* His Majesty's Answer, 102. \* Transport-Accounts, 103. \* Navy-Debt, *ibid.* \* Certain remarkable Letters of one Mr. Chivers a Member, relating to the Debate on Disbanding the Army, complained of, *ibid.* \* Expence of General-Officers, 104. \* Amount of Pensions paid out of the Royal-Oak Lottery, *ibid.* \* Bill for a Supply of 1,484,015 l. passed, *ibid.* \* Resolutions on the Frauds of Daniel Gwynn, Agent for certain Packet-Boats. \* Royal Assent given to several Acts, 105. \* King's Speech, *ibid.* *Note*, All these last Particulars are omitted by Mr. Torbuck's Editor, as not *remarkable* enough to deserve his Notice.

#### Second Session.

King's Speech, 106. Commons Address, 107. King's Answer, 108. Motion with Regard to Lord Bellamont, *ibid.* Report of the Commissioners for taking an Account of the Irish Forfeited-Estates, 109. \* Solemn Examination of six of the said Commissioners, 110. Votes thereon, 122. Resolutions on the Supply, 123. The Resumption-Bill order'd, *ibid.* Votes thereon, laid before the King, *ibid.* His Majesty's Answer, 124. Warm Votes thereon, *ibid.* \* Ways and Means, *ibid.* \* Address relating to Capt. Kid, 129. Bill of Resumption passed, *ibid.* Proceedings of the Commons relating to the Irish-Forfeitures, order'd to be printed, *ibid.* Conferences between the two Houses, on certain Amendments made by the Lords to the Bill of Supply, 126. The said Amendment wav'd by the Lords, at the King's Request. Parliament prorogu'd by Commission, 127.

## Fifth Parliament.

King's Speech, 127. Resolution thereon, presented to his Majesty, and his Answer, 128. Two other Addresses, and his Majesty's Answer, 120. First Vote in Favour of the Hanover-Succession, *ibid.* Heads of the Bill relating thereto, 130. King's Message, 131. Address on the Partition-Treaty and his Majesty's Answer, *ibid.* Another Message from the King, 132. Humble Advice presented thereon, *ibid.* King's Answer, 133. Resolution to impeach the Earl of Portland, *ibid.* Paper deliver'd to the Lords at a Conference, *ibid.* Impeachment of Lord Somers, 134. And the Earl of Orford, 135. King's Letter to Lord Somers, and his Lordship's Answer, *ibid.* The Commons Address to the King, 137. King's Answer, 162. The Lords Address against the Proceedings of the Commons, 139. Another Message from the King to the Commons, and their Vote thereon, *ibid.* The Kentish Petition, 140. The Gentlemen who deliver'd it, committed, *ibid.* The Legion-Letter, 141. And Memorial, 142. Difference between the two Houses, on the Impeachments, 147. Articles against the Earl of Orford, and his Replies, 147. Those against Lord Somers, with his Replies, 150. Replication of the Commons, to Lord Orford, 154. Their Answer to the Lords, *ibid.* Lords by Message appoint a Day for the Trial of Lord Orford, 155. Commons Answer, *ibid.* Another Message from the Lords, 176. Conference between the two Houses, 157. Another Message from the Lords, *ibid.* The Commons Answer, 158. Another Conference, 159. A free Conference, 160. \* Royal Assent given to several Bills, King's Speech, *ibid.* Commons Address, and the King's Answer, 162. Farther Contests between the two Houses, *ibid.* Report of a Conference, 165. Part of a Speech of Lord Haversham's, which broke up the said Conference, *ibid.* Votes thereon, 166. Two Messages from the Lords, *ibid.* Votes thereon, 167. Articles against Lord Hallifax, and his Replies, *ibid.* Rules of Trial, 169. Reasons of the Commons, for not proceeding thereon, *ibid.* His Lordship acquitted, 173. The Remonstrance of the Commons, *ibid.* Answer of the Lords, 174. Answer of Lord Haversham to the Complaint of the Commons, *ibid.* Farther Contests between the two Houses, 180. Lord Orford acquitted, *ibid.* Order of the Lords with respect to Lord Haversham, 181. Difference between the two Houses, on the Bill for Stating the public Accounts, *ibid.* Reasons of the Commons, *ibid.* The Speaker's Speech to the King, 182. Royal Assent given to several Bills, *ibid.* King's Speech, 183.

Sixth

## Sixth Parliament.

King's last Speech, 183. Commons Address, and King's Answer, 186. Treaties laid before the House, 187. \* Vote of Supply, *ibid.* Farther Resolutions, with respect to the Protestant Succession, *ibid.* \* Votes for the Land and Sea-Service, *ibid.* \* King's Message for an Union with Scotland, 188. Censure passed on T. Colepepper Esq; 189. \* Acts passed by Commission, 190. Certain Speeches by Sir Charles Sedley, *viz.* \* On Disbanding the Army, *ibid.* \* On the Vote for Dissolving the Parliament by Bill, 191. \* Another on the same Subject, 193. \* On the Civil-List Bill, 194. \* On the Bill for Ways and Means, 195. \* On the Bill for Trials. \* Q. Anne's first Speech in Council, 197. Her first Speech in Parliament, 198. Commons Address, 199. Queen's Answer, 200. \* Royal Assent given to several Acts, *ibid.* \* Abstract of the Queen's Speech on that Occasion, *ibid.* \* Abstract of the Declaration of War against France, *ibid.* Commons Address thereon, and her Majesty's Answer, 201. \* An Address of both Houses, to stop all Intercourse between the Allies and France, and her Majesty's Answer, *ibid.* \* Royal Assent given to several Acts. Queen's Speech, 202.

## First Parliament of Queen ANNE.

Queen's Speech, 203. Commons Address, 204. \* Division thereon, 205. Sir J. Packington's Complaint against the Bishop of Worcester, 206. \* The Bishop's Letters, which gave Rise to it, 207. \* Resolutions thereon, 209. An Order of Convocation presented to the House, 210. Queen's Message relating to the Earl of Marlborough, and Commons Address thereon, *ibid.* Queen's Answer, 211. Controversy between the two Houses, relating to the Bill of Occasional-Conformity, 211. The Bill and Amendments, 212. First Conference thereon, 217. Free Conference, 221. \* Thanks of the House given to the D. of Ormond, Earl of Marlborough, and Sir G. Rooke, 243. \* The Speaker's Speech to the last, *ibid.* \* Sir George's Answer, 244. Mr. Colepepper's Petition, 245. \* A Motion for resuming Grants, and another for a Place-Bill over-ruled, *ibid.* \* A Message from the Queen, *ibid.* \* Address thereon, 246. \* Queen's Answer, 247. \* Proceedings against Lord Ranelagh, and Lord Hallifax, *ibid.* Report from the Journals of the Lords, 248. \* A Conference relating to the Conduct of the last, on certain Amendments to a Bill for appointing Commissioners to state the public Accounts, 250. \* Reports of two free Conferences, on the same Subject, 252. Representation of the  
Com-

Commons to the Queen thereon, 260. Her Majesty's Answer, 269. \* The Conference previous to this Dispute on the Case of Lord Hallifax, 270. \* Royal Assent given to twenty-three Public, and thirty-one private Acts, 275. Queen's Speech, 276.

### Second Session.

\* Queen's Speech, 278. \* Commons Address, and Queen's Answer, 280. Proceedings on the Occasional-Conformity Bill, *ibid.* Sir J. Packington's Speech thereon, 281. \* Supplies granted, 282. \* Vote occasioned by the great Storm, 284. Queen's Speech concerning the Scottish Conspiracy, *ibid.* Vote and Address thereon, 285. Her Majesty's Answer, 286. Commons Address to the Queen, relating to her Prerogative, supposed to be invaded by the Lords, 287. Her Majesty's Answer, 288. Representation of the Lords, occasion'd thereby, *ibid.* Her Majesty's Answer, 296. The Commons Address, to clear the House from the Misrepresentation of the Lords, 296. Queen's Answer, 301. Vote of the House requesting the Queen to re-assume the just Exercise of her Prerogative, presented to her Majesty, and her Majesty's Answer, 302. The Case of Charles Bathurst, 303. Resolutions thereon, 307. Counter Resolution of the Lords, *ibid.* \* Queen's Speech, desiring a quick Dispatch of the public Business, 308. The Case of Ashby and White, *ibid.* The Speaker's Speech thereon, *ibid.* The Speeches of Mr. Brewer, 310. Sir Tho. Powis, 317. Sir John Hawles, 330. Sir Edw. Seymour, 336. Marquis of Hartington, 337. Mr. Lowndes, 338. Sir Simon Harcourt, 346. Mr. Smith, 349. Sir Christ. Musgrave, *ibid.* Mr. Dormer, 350. Sir Joseph Jekyl, 353. Mr. Harley the Speaker, 360. Sir Tho. Meers, 362. Mr. Cowper, afterwards Lord-Chancellor, 363. Sir Humphry Mackworth, 369. Sir Gilbert Dolben, 374. Mr. King, afterwards Lord-Chancellor, 379. Sir Thomas Littleton, 381. Mr. Serjeant Hooper, 382. Sir William Strickland, *ibid.* Mr. Robert Walpole, 383. Marquis of Hartington, 384. Sir S. Harcourt, *ibid.* Sir Christ. Musgrave, *ibid.* Votes on the Question, 385. Debate on the Report, 386. The Speeches of the Marquis of Hartington, 386. Sir Will. Strickland, *ibid.* Mr. St. John, 387. Marquis of Hartington, *ibid.* Mr. Ward, *ibid.* Mr. Lowndes, *ibid.* \* Proceedings against the Author of the Observator, 388. \* Queen's Message about the poor Clergy, *ibid.* \* Commons Address thereon, *ibid.* Queen's Answer, 389. \* Order of Thanks to the Commons from the lower House of Convocation, *ibid.* \* Royal Assent given to several Acts, 390. Books censured, *ibid.* \* The Queen's Speech, 391.

Third

## Third Session.

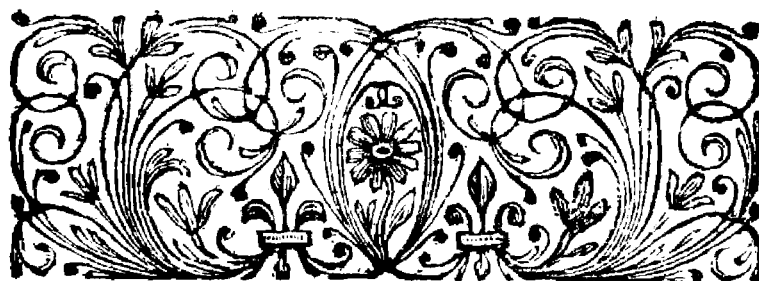
\* Queen's Speech, 392. \* Commons Address, 393.  
 \* Queen's Answer, 394. \* Address for the Encouragement  
 of Seamen, and Answer, *ibid.* \* Lord Hallifax's Case, *ibid.*  
 Farther Proceedings in the Case of Ashby and White, 395.  
 Conference between the two Houses thereon, 399. Reasons  
 to be offered at a second Conference, 402. Free Confe-  
 rence, 415. \* Queen's Speech, 435. \* Vote in Favour of  
 the D. of Marlborough presented to the Queen, and her  
 Majesty's Answer, 436. \* Votes in Relation to Scotland, *ibid.*  
 \* Thanks given to the D. of Marlborough, and his Grace's  
 Answer, 437. \* Royal Assent given to several Acts, *ibid.*  
 \* Queen's Message, relating to the Manor of Woodstock and  
 Hundred of Wootton, *ibid.* \* Address thereon, *ibid.* \* Pro-  
 ceedings on a Motion for a Place-Bill, 438. \* Two Ad-  
 dresses to oblige Lord Ranelagh and others to make up their  
 Accounts, with her Majesty's Answers, *ibid.* \* Address in  
 Praise of the K. of Prussia, and the Queen's Answer, 439.  
 \* Two other Addresses, *ibid.* \* Bill against Popery, *ibid.*  
 \* Royal Assent given to several Acts, 440. \* Queen's  
 Speech.

## Second Parliament of Queen ANNE.

Queen's Speech, 442. Commons Address, 445. Queen's  
 Answer, 446. A second Address, relating to the Hanover  
 Succession, and Union with Scotland, together with the  
 Queen's Answer, *ibid.* \* Proceedings on the Supply, *ibid.*  
 \* Queen's Speech relating to the War in Spain, 447. \* Ad-  
 dress thereon, *ibid.* \* Supplies for prosecuting the said War,  
 448. \* Address of both Houses relating to the Queen's  
 Allies, and her Majesty's Answer, *ibid.* Address of both  
 Houses, declaring the Church not to be in Danger. And  
 the Queen's Answer, 449. Charles Cæsar Esq; a Member,  
 committed, *ibid.* \* Royal Assent given to several Acts, 450.  
 \* Queen's Speech, *ibid.* \* Thanks given to the D. of Marl-  
 borough, *ibid.* \* His Grace's Answer, 451. \* Votes about  
 the Supply, *ibid.* \* Queen's Message relating to a Piece  
 called *The Memorial of the Church of England*, *ibid.* \* Address  
 thereon, and Queen's Answer, 452. \* Royal Assent given  
 to several Acts, *ibid.* \* Queen's Speech, 453. \* An Ac-  
 count of the Regency-Bill *ibid.* \* Debate about the Num-  
 ber of Civil and Military Officers to be admitted into the  
 House of Commons, *ibid.* \* Answer to an Address, relating  
 to Newfoundland, 454. \* The public Revenues voted to be  
 duly apply'd, *ibid.* \* A Complaint against the Papists in  
 Lancashire, 455. \* A Bill to prevent the Growth of Popery,  
*ibid.* Rejected, 456. \* Sir Rowland Gwynne's remarkable

Letter from Hanover, to the Earl of Stamford, relating to the Residence of a Prince of that House in England, complain'd of, *ibid.* \* The Letter itself, *ibid.* \* Censure pass'd upon it, 470. \* Address of both Houses thereon, and the Queen's Answer, *ibid.* \* Resolves concerning the Manning of the Fleet, 471. \* Royal Assent given to several Acts, 472. \* Queen's Speech, 473. \* Proceedings on the Union, 474. \* Lord-Keeper's Speech to the Scottish Commissioners, *ibid.* \* The Lord-Chancellor of Scotland's Answer, 475. \* Preliminary-Articles, 476. \* First Proposals by the English, *ibid.* Queen's Speech to the Commissioners, *ibid.* \* Another Speech of her Majesty's to the said Commissioners, 477. \* Lord-Keeper's Speech to the Queen, on presenting the Articles of the Union, *ibid.* \* Lord-Chancellor of Scotland's, on the same Occasion, 478. \* Queen's Speech in Answer to Both, 479.





# SPEECHES, DEBATES, &c.

IN THE

## House of Commons,

FROM THE

## RESTORATION.

**T**HE Parliament having met according to the Writ of Summons, and the King being seated on the Throne, the Commons were sent for up, to whom my Lord Keeper signified his Majesty's Pleasure, that they should forthwith proceed to the Choice of a Speaker.

Anno 7 W. III.  
1695.

Third Parlia-  
ment.

After which the Commons returned to their House, and unanimously made choice of Paul Foley Esq; who being presented the next Day, his Majesty did graciously approve of him, and then made this Speech to both Houses.

Mr. Foley  
Speaker.

My Lords and Gentlemen,

**I**T is with great Satisfaction that I meet you here this Day, being assured of a good Disposition in my Parliament, when I have had such Proofs of the Affection of my People, by their Behaviour during my absence, and at my return.

King's Speech.

I was engaged in this present War by the Advice of my first Parliament; who thought it necessary for the Defence

TOME III.

A

of

Ann<sup>o</sup> 7 W. III.  
1695.

of our Religion, and the Preservation of the Liberties of Europe. The last Parliament with great chearfulness did assist me to carry it on; and I cannot doubt but that your concern for the common Safety, will oblige you to be unanimously zealous in the Prosecution of it: And I am glad that the Advantages which we have had this Year, give us a reasonable Ground of hoping for a further Success hereafter.

Upon this Occasion, I cannot but take Notice of the Courage and Bravery which the English Troops have shewn this last Summer; which I may say has answered their highest Character in any Age: And it will not be denied, that, without the Concurrence of the Valour and Power of England, it were impossible to put a stop to the Ambition and Greatness of France.

Gentlemen of the House of Commons,

I think it a great Misfortune that, from the beginning of my Reign, I have been forced to ask so many, and such large Aids of my People; and yet I am confident you will agree with me in Opinion, that there will be at least as great Supplies requisite for carrying on the War by Sea and Land this Year, as was granted in the last Session; the rather, because our Enemies are augmenting their Troops, and the necessity of increasing our Shipping does plainly appear.

The Funds which have been given, have proved very deficient.

The Condition of the Civil-List is such, that it will not be possible for me to subsist, unless that matter be taken into your care.

And Compassion obliges me to mention the miserable Circumstances of the French Protestants, who suffer for their Religion.

And therefore Gentlemen, I most earnestly recommend to you, to provide a Supply suitable to these several Occasions.

I must likewise take notice of a great Difficulty we lie under at this Time, by reason of the ill State of the Coin, the Redress of which may perhaps prove a further Charge to the Nation; but this is a Matter of such general Concern, and of so very great importance, that I have thought fit to leave it entirely to the Consideration of my Parliament.

I did recommend to the last Parliament, the forming some good Bill for the Encouragement and Increase of Seamen; I hope you will not let this Session pass without doing somewhat in it; and that you will consider of such Laws as may be proper for the Advancement of Trade; and will have a particular Regard to that of the East-Indies,



‘ left it should be lost to the Nation. And while the War Anno 7 W. III.  
1695.  
‘ makes it necessary to have an Army abroad, I could wish  
‘ some way might be thought of, to raise the necessary Re-  
‘ cruits, without giving Occasion of Complaint.

‘ My desire to meet my People in a new Parliament, has  
‘ made the opening of this Session very late; which I hope  
‘ you will have such Regard to, as to make all possible dis-  
‘ patch of the great Business before you; and will call to  
‘ mind, that by the long continuance of the last Session, we  
‘ did not only lose Advantages which we might have had  
‘ at the beginning of the Campaign, but gave the Enemy  
‘ such an Opportunity as might have proved very fatal to  
‘ us. And I am the more concerned to press this, because  
‘ of the great Preparations which the French make to be  
‘ early in the Field this Year.

‘ My Lords,

‘ I have had such Experience of your good Affections;  
‘ and I have such an entire Satisfaction in the Choice which  
‘ my People have made of you, Gentlemen of the House of  
‘ Commons, that I promise my self a happy Conclusion of  
‘ this Session, unless you suffer your selves to be misled into  
‘ Heats and Divisions; which being the only Hope our En-  
‘ emies have now left, I make no doubt but you will entirely  
‘ disappoint by your Prudence and Love to your Country.’

Both Houses, in their respective Addresses, with great  
Zeal and Unanimity, congratulated the glorious Success of  
his Majesty’s Arms abroad, and his safe Return home; and  
likewise returned his Majesty Thanks for the Trust and Con-  
fidence he reposed in their Affections; assuring him, that  
they would support his Majesty and his Government against  
all his Enemies foreign and domestic, and effectually assist  
him in the Prosecution of the present War, in which he was  
engaged for the Safety of England, and Liberty of Europe.  
The Commons Address being presented by the whole House,  
His Majesty gave them this Answer:

Addresses of  
both Houses.

‘ Gentlemen, I heartily thank you for the Marks you give  
‘ me of your Affection: Our Interests are inseparable, and  
‘ there is nothing I wish so much as the Happiness of this  
‘ Country, where God has plac’d me.’

The King’s  
Answer to that  
of the Com-  
mons.

The Bill for regulating Trials in Cases of Treason, and Mis-  
prision of Treason, which had been several times lost in the  
former Parliaments, was again brought into the House of  
Commons, Novemb. 26, and in a short time read three  
times there, and sent up to the Lords for their Concurrence,  
by which many Hardships upon the Liberty of the Subject  
were removed, or mitigated: For it was hereby enacted,  
‘ That all Persons indicted for High-Treason, or Misprision

Bill for regulat-  
ing Trials in  
Cases of Treas-  
on.

Anno 7 W. III.  
1695.

of it, shall have a Copy of the Indictment five Days before their Trial, and shall be admitted to make their Defence by Councils learned in the Law, not exceeding two. That no Person shall be indicted or attainted, but by the Oaths of two lawful Witnesses. That no Person shall be prosecuted, unless the Indictment be found within three Years after the Offence committed. That all Persons indicted shall have Copies of the Jury two days before their Trial; and shall have like Process to compel their Witnesses to appear before them, as is usually granted to Witnesses against them. To this Bill the Lords added the Clause they had always insisted upon; that upon the Trial of any Peer or Peers for Treason or Misprision, all the Peers who have a Right to sit and vote in Parliament, shall be duly summoned twenty days at least before such Trial, and shall not vote without first taking the Oaths appointed by the Act 1 William and Mary, and subscribing and repeating the Declaration mentioned in the Act made 30 Car. II. which Clause was agreed to by the Commons. [It is remarkable, that, whilst this Bill was depending in the House of Commons, the Lord Shaftesbury rose up in order to speak for it; and having begun his Speech, he seemed to be so surprized, that for a while he could not go on; but having recovered himself, he took Occasion from his very surprize, to enforce the necessity of allowing Council to Prisoners who were to appear before their Judges, since he who was not only innocent and unaccused, but one of their own Members, was so dash'd when he was to speak before that august Assembly. This Turn of Wit did great service in promoting that excellent Bill.]

Proceedings on  
the State of the  
Coin.

The Lords were considering that part of the King's Speech that related to the ill State of the Coin, and had drawn up an Address, to which, in a Conference, they desired the Concurrence of the Commons, who chose rather to proceed in their own way, by appointing a Committee, who should have Power to consider of a Fund to make good the Deficiency of the clipped Money. And here the great Question was, Whether it was necessary or expedient to recoin the Silver-Money? The Country-Party held the Negative; the Court-Party the Affirmative; and the Arguments were weighed on both sides. The Reasons against calling in, and recoinning the Money were, That this was no fit Juncture for it, while the Nation was engaged in a burthenome and doubtful War, by which the Kingdom had already greatly suffered, and of which it grew every day more sensible. That therefore the People, on whose good Affection the Government so much depended, should not be provoked by fresh Grievances, greater than any they had yet felt, as those would certainly be, that must arise from the calling

Arguments  
against recoin-  
ing the Silver.

calling in the Silver-Coin. That if this was done, however things might be managed and accommodated at home, it were impossible to maintain the Commerce or the War, abroad; for neither the Merchant could be paid his Bills of Exchange, nor the Soldier receive his Subsistence. That this was to lay the Ax to the Root, and to dig up the Foundation of the Government. That if this Design was prosecuted, Trade must stand still for want of mutual Payments; whence such Disorder and Confusion would certainly follow, as would discourage and dishearten the People in the highest measure, if not drive them to a perfect Despair, as Despair would to the most terrible Extremities. That therefore the recoinage the Money at this time was by no means to be attempted without hazarding all.'

Anno 7 W. III.

1695.

It was alledged by those of the contrary Opinion, at the Head of whom appeared Mr. Charles Montague, Chancellor of the Exchequer, that the Mischief would be fatal, if a present Remedy was not found out and applied. That by reason of the ill State of the Coin, the Change abroad was infinitely to the Nations Prejudice. That the Supplies that were raised to maintain the Army would never attain their end, being so much diminished and devoured by the unequal Change, and exorbitant *Premiums* before they reached the Camp. That this was the unhappy Cause that the Guineas advanced to thirty Shillings, and foreign Gold in proportion: That therefore to the Nation's great Loss, not only the Dutch, but indeed all Europe sent that Commodity to this Market, and would continue to do so, till the Nation should be impoverished and undone by plenty of Gold. That we must exchange for their Gold our Goods, or our Silver, till at last we should have only Guineas to trade withal; which no body could think our Neighbours would be so kind to receive back, at the value they were at here. That therefore this Disease would every day take deeper root, infect the very Virals of the Nation; and, if not remedied, would soon become incurable. That our Enemies must be mightily intimidated by so great an Action, and would sooner be induced to agree to honourable Terms of Peace, in case they saw us able to surmount this Difficulty, by the retrieving the ill State of the Coin, on which their hopes of the Nation's speedy Ruin so much depended; and that it would justly create a mighty Esteem abroad, of the Greatness and Wisdom of the Parliament of England, which was able to conquer such an obstinate and almost insuperable Evil, in such a Juncture of Affairs.'

Arguments  
for recoinage  
the Silver-  
Money.

These Matters being fully debated, the Parliament resolved to call in and recoin the Silver-Money, chusing rather to run the hazard of some great Inconveniencies, than by a  
longer

Ann 7 W. III. longer neglect to expose the Kingdom to apparent Ruin.  
1695.

Debate about  
raising or con-  
tinuing the Old-  
Standard.

The next Step was to consider, Whether the several Denominations of the new Money should have the same Weight and Fineness as the old; or, whether the established Standard should be raised? This Question produced many Debates: Those who were for raising the Standard, did argue, that the Price of an Ounce of Silver-Bullion was advanced to six Shillings and three Pence, and therefore the Standard ought to be raised to an Equality. That the raising the Standard would prevent the Exportation of our Coin, and the melting of it down, which of late Years has been much practised, to the great Prejudice of this Kingdom; and that it would encourage People to bring in their Plate and Bullion into the Mint. The Court-Party, who were for preserving the old Standard, urged, That as to the Price of Bullion, now raised to six Shillings and three Pence, it was impossible the Price of Silver could rise and fall in respect of itself, but the Alteration of the Value of Bullion was merely in relation to Diminished Money; for it was still Matter of Fact, that with five Shillings and two Pence of New-milled Money, they could buy an Ounce of Bullion; whilst those who bought it with Clipp'd-Pieces, paid six Shillings three Pence.

As to the Agreement of preventing the Exportation of Money by raising the Standard, it was answered, There was no Way possible to keep our Money at home, but by out-trading our Neighbours; that is, by sending them more Commodities, or of greater Value, than those we received from them, &c.

Resolutions  
about the Coin

After these Debates, the Commons *Resolv'd*, on December 10. That all Clipp'd Money be Re-coined according to the established Standard of the Mint, both as to the Weight and Fineness. That the Loss of such Clipp'd-Money shall be borne by the Public. That a Day be appointed, after which no Crowns or Half-Crowns be allowed in any Payment. That another Day be appointed for all Persons to bring in their Clipp'd-Money to be re-coined into Milled-Money; And that a Fund be settled for supplying the Deficiencies. After this, Mr. Chancellor of the Exchequer reported the Form of an Address, to desire his Majesty to regulate the Currency of Clipp'd-Money, according to the foregoing Resolutions; which Address being presented to the King, he caused his royal Proclamation to be issued out for that purpose. And the Lords had already address'd his Majesty to the same Effect.

Some time before, the Commons, having considered, that the maintaining an Army abroad occasioned the Exportation of the Coin, which could not be prevented, but by sup-

supplying the said Army with Necessaries out of this Kingdom; on December 13. ordered an Address to be presented to his Majesty, That he would please to procure, that all Commodities and Provisions, that should be transported from England, for the Use of the Forces in his Majesty's Pay abroad, might be exempted from any Duty or Excise throughout the Spanish and United Netherlands.

Anno 7 W. III.  
1695.

To which the King answered, ' That what was desired by the Commons, had been done in a great measure for several Years; and that he would see what could be further done in it.'

The Scots Parliament having this Year pass'd an Act, for erecting a Company to trade to Africa and the East-Indies; the Parliament of England took the Alarm, as if it had been a Project to destroy that Trade in this Kingdom. Both Lords and Commons presented an Address to the King against it, Dec. 17th. To which his Majesty was pleas'd to answer, ' I have been ill-serv'd in Scotland, but I hope some Remedies may be found to prevent the Inconveniences, which may arise from this Act.

An Address  
against the Scots  
African and  
India Company.

The Commons having considered the Bill for regulating the Coinage of the Silver-Money, which the Chancellor of the Exchequer had prepared, and presented to the House on December 17. ordered on December 23d, a Clause of Loan to be inserted in it, in favour of such as would advance Money on Credit of the Exchequer in general, transferrable to such Funds as should be settled by Parliament, towards making good the Deficiencies of the Clipped-Money; and likewise ordered the same Committee to take care, that Persons who should bring in Clipped-Money (above what was for Taxes) should have a Recompence for the same. This Bill was amended accordingly, and four days after passed, and sent up to the Lords for their Concurrence.

Bill for regu-  
lating the  
Coinage.

On the 31st of December, the Commons *resolved* to raise the 1,200,000l. for supplying the Deficiency of the Clipped-Money, by a Duty laid upon all Dwelling-Houses, except Cottages; to wit, two Shillings yearly upon each House; four Shillings upon every House having ten Windows; and eight Shillings upon such Houses as have twenty Windows, over and above the said two Shillings: which Duty was to be paid by the Inhabitants of the said Houses, and to be continued for the space of seven Years, and no longer.

Ways and  
Means to sup-  
ply the Defici-  
ency of Clipp'd  
Money.

The Days appointed by the King's Proclamation for putting a Stop to the Currency of Clipped-Money, were so short, that an immediate Stop was thereby put to Trade: So as the House of Commons were obliged in a grand Committee to consider the State of the Nation, and how to prevent

vent

Anno 7 W. III.  
1695.

Resolutions for  
the present Re-  
lief of Com-  
merce.

vent the Stop of Commerce during the Re-coining of the Clipped-Moneys. After some Debates for several days, the Commons *resolved*, on January the 9th,

First, That the Recompence for supplying the Deficiency of Clipped-Money, should extend to all Clipped-Money which was Silver, although of a coarser Alloy than the Standard.

Secondly, That the Collectors and Receivers of his Majesty's Aids and Revenues, be enjoined to receive all such Moneys.

Thirdly, That a Reward of five Pounds *per Cent.* be given to all Persons, who should bring in either Milled or broad Unclipped Money, to be applied in exchange of the Clipped-Money throughout the Kingdom.

Fourthly, That a Reward also of Three-Pence *per Ounce*, be given to all Persons, who should bring in Wrought-Plate to the Mint to be re-coined.

Fifthly, That for the sooner bringing in the Clipped-Money to be re-coined, any Persons might pay in their whole next Year's Tax of four Shillings in the Pound, in the said Clipped-Money, at one convenient time appointed for that Purpose.

Lastly, That Commissioners be appointed in every County to pay and distribute the Milled and broad Unclipped-Money and the New-coined Money, and to receive the Clipped-Money. And at the same time appointed a Committee, to prepare and bring in a Bill upon the said Resolutions.

Royal Assent  
given to several  
Bills.

His Majesty came to the House of Peers, Jan. 11. and gave the Royal Assent to an *Act for enlarging the Times to purchase certain Annuities, and continuing the Duties on low Wines, &c. An Act for regulating Trials in Cases of High-Treason.*

Farther Pro-  
ceedings on the  
Coinage.

Jan 21, The Bill relating to the Coinage was read a second time, and committed to a Committee of the whole House; who *resolved*, That a further Encouragement be given for bringing in Plate to be coined, and Broad-Money in order to be exchanged for Clipped-Money: And that a Clause be inserted in the said Bill, to prevent the Melting-down and Exportation of Coin, or any Bullion; and another Clause to prohibit the Use of Plate in Public-Houses; which, at last, proved the best Expedient to supply the Mints with Bullion.

The Lords having made several Amendments to the Bill for regulating the Coinage of the Silver-Money of this Kingdom; most of them, after several Debates and Conferences, were disagreed to by the Commons: Whereupon Mr. Chancellor of the Exchequer, according to Order, presented to the House another Bill for remedying the ill State of the Coin of this Kingdom; which was received, and after some Amend-  
ments

ments, ordered to be engrossed, and sent up to the Lords, *Anno 8 W. III. 1696.* who gave their Concurrence to it.

There was another Affair depending in this Session, which very sensibly concerned his Majesty. The Earl of Portland had begged of his Majesty the Lordships of Denbigh, Bromfield, and Yale, and other Lands in the Principality of Wales; which his Majesty, before he went last to Holland, had readily granted to him and his Heirs for ever: The Warrant coming to the Lords of the Treasury, the Gentlemen of the County, upon short Notice, were heard on May the 10th, before their Lordships.

Grants to the Earl of Portland.

Sir William Williams then alledged, ' That these Lordships were the ancient Demesnes of the Prince of Wales: That the Welsh were never subject to any but God and the King. That in the Statute for granting Fee-farm Rents, there was an Exception of the Rents belonging to the Principality of Wales; which imported, that the Parliaments took those Revenues to be unalienable. That upon Creation of a Prince of Wales, there were many Acknowledgments payable out of those Lordships; and though there were at present no Prince of Wales, yet he hoped to see one of the King's own Body, &c.' *Canvass'd before the Lords of the Treasury.*

Sir Roger Puleston alledged, ' That the Revenues of these Lordships did support the Government of Wales, by paying the Judges and other Officers their stated Salaries; and if given away, there would be a Failure of Justice.'

And Mr. Price, a Gentleman of great Parts (since one of the Barons of the Exchequer) did boldly urge, ' That the Grant was of a large Extent, being five Parts in six of a whole County, which was too great a Power for any foreign Subject to have; and that the People of the Country were too great, to be subject to any Foreigner: Let it be considered, (says he) can it be for his Majesty's Honour or Interest, (when the People hear this and understand it) that he daily gives away the Revenues of his Crown; and what is more, the Perpetuity of them to his foreign Subjects? Good Kings, after a long and chargeable War, were wont to tell the People, that they were sorry for the Hardships the Nation underwent by long Wars and heavy Taxes; and that now they would live upon their own Revenues: But it is to be feared, if Grants are made so large and so frequent, there would be nothing for the King or his Successors to call their own to live upon.' He concluded thus: ' It is to be hoped your Lordships will consider, that we had but one Day's Notice of this Attendance, and must come therefore very much unprovided: Yet we doubt not, but that these Hints and broken Thoughts we have offered to your Lordships, you will, by your great Judgments, improve; whereby the ill Consequences

Anno 8 W. III. 1696. quences of this Grant may truly be represented to his Majesty

The Lord Godolphin, the first Commissioner of the Treasury, asked for Satisfaction, Whether the Earl of Leicester had not those Lordships in grant to him in Queen Elizabeth's time? Sir Robert Cotton answered, he believed he could give the best Account in that Case; that the Earl of Leicester had but one of those Lordships, and that was Denbigh: That he was so oppressive to the Gentry of the Country, that he occasioned them to take up Arms, and to oppose him; for which, three or four of his (Sir Robert Cotton's) Relations were hanged; but that it ended not there, for the Quarrel was kept still on foot, and the Earl glad to be in Peace, and to grant it back to the Queen: Since which Time it had ever been in the Crown. Whereupon the Lord Godolphin said, They had offered many weighty Reasons, which they should represent to his Majesty.

From the Treasury, the Gentlemen of Wales attended the Grant, to the Privy-Seal, where their Reasons and Complaints against it, were heard and received with all Candour and Goodness. Yet notwithstanding all this, the said Grant being only superseded, but not recalled, Sir Thomas Grosvenor, Sir Richard Middleton, Sir John Conway, Sir Robert Cotton, Sir William Williams, Sir Roger Puleston, Edward Vaughan, Edward Brereton, and Robert Price Esqs; addressed themselves by Petition to the Commons.

Upon this Occasion the same Mr. Price, a Member of that House, made the following memorable Speech; wherein he said,

Mr. Price's  
Speech against  
the Grants.

' Mr. Speaker, The Petition now presented unto you, in Behalf of ourselves and Country-men, tho' subscribed by few Hands, yet has the Sense and Approbation of thousands; who are not influenc'd by their own Interest, but by the Honour they have for the Crown, and the Welfare of the British Nation.

' If I could conceive that the Glory and Grandeur of England was, or could be upheld by a poor, Landlefs Crown, and a miserable, necessitous People, I could then be easily persuaded to believe, that his Majesty was well-advis'd to grant away all the Revenues of the Crown, and that his Government thereby could be well-secured, and his People best protected when they had nothing left them. I am sure this is not English, but Foreign Policy, advis'd by those who may revere the King, but hate us.

' The Kings of England always reigned best when they had the Affections of their Subjects; and of that they were secure, when the People were sensible, that the King was intirely



inirely in their Interest, and loved the English Soil, as well as the People's Money. When Kings had a landed Interest coupled with their Power, then it was most stable and durable; as is manifest by the ancient Demefine-Lands, and other large and Royal Revenues; the many and great Tenures the People then held their Estates under, which created then such an indissoluble Union and Dependence, that they supported each other; and it is observable, that the Separation of the Revenues from the Crown, has been in all Ages the occasion of rendring the English Government precarious: And that it might not be so, your Petitioners, with a dutiful Deference to his Majesty, do represent to you (the great Council of the Nation) This, Theirs, and the People's Case, for Redress and Remedy according to your Wisdoms.

Anno 8 W. III.

1696.

‘ Give me Patience and Pardon, and I will set before you the true State of the Fact upon the Petition, the Manner of the Grant, and what is granted.

‘ The three great Lordships, or Hundreds of Denbigh, Bromfield and Yale, in the County of Denbigh, for some Centuries, have been the Revenues of the Kings of England and Princes of Wales, to which Lordships your Petitioners, and above fifteen hundred Freeholders more are Tenants, pay Rents, Suits of Court, and other Royal Services. These Lordships are four Parts in five of the whole County, being the best and most plentiful Part of the Country, and thirty Miles in extent.

‘ The present Rents to the Crown, are but 1700*l. per Ann.* besides Heriots, Reliefs, Mises, Wafts, Estreats, Perquisites of Courts, and other contingent Profits. There are also great Wastes and profitable, of several thousands of Acres, rich and valuable Mines, besides other Advantages, a mighty Favourite and great Courtier might make out of this Country.

‘ Your Petitioners being casually informed last Summer, that a Grant to the Earl of Portland, of the Lordships of Denbigh, Bromfield and Yale, was at the Treasury, in order to be passed, your Petitioners did oppose the said Grant; and, upon considering the Grant, they found not only the three Lordships, but also near 3000*l. per Ann.* of your Petitioners and their Countrymens ancient Inheritances expressly granted. So that, if all that was comprized in the Grant had passed, it had been a very noble, nay Royal Gift, worth at least 100,000*l.* Nor was this Grant made for any short time to this noble Lord, being to him and his Heirs forever; and yet not much to the Advantage of the Crown, having only a Reservation of Six Shillings and Eight-pence a Year to the King and his Successors.

Anno 8. W. III.  
1696.

‘ These Facts were laid before the Lords of the Treasury, by your Petitioners, who cannot say, but they were well heard, well understood, and hope, truly represented; only with this Remark, that the Docket sign’d by the Lords of the Treasury for the Grant, was dated and carried to the Privy-Seal, a Month before the Lords of the Treasury had ordered your Petitioners to be heard at the Treasury against the Grant. The next Stage we had was to attend that noble Grant from the Treasury to the Privy Seal, where, I must confess, our Reasons and Complaints were heard with all Candour and Goodness, by that noble Lord who had the Custody of the Seal; and I believe sincerely, has truly represented the whole Affair: And that is the reason, at present, that this Grant halts, I suppose, till the Parliament rises, and then I doubt not but it will find Legs and take its Journey.

‘ Having made our Applications in the proper Place, to stop the said Grant, and that without Success, it becomes a Grievance, and we hope this Honourable House will redress it.

‘ These Lordships, for many Ages, have been the Revenues of the Kings of England, the Support of several Princes of Wales, have been settled upon them and their Heirs, by sundry Patents of the Kings, and confirmed by several Acts of Parliament.

‘ This Royal Dominion, in most Reigns, has been attacked by great and powerful Favourites, but with little Success; for, in the fourth of Queen Elizabeth, some Parts of this Revenue were granted to some of her Creatures, but attended with so many Law-Suits and general Disturbances, that the Queen interposed, and the Freeholders gave large Compositions for their Peace, and the Queen, by her Charter, confirmed their Estates.

‘ In the fourth Year of King James the first, these Lordships were settled upon Prince Charles and his Heirs, Kings of England; but his Servants were (as most Courtiers are) willing to make use of their Opportunities, and had gotten some Grants of great Part of these Revenues, and proved so vexatious and troublesome to the Country, that the Freeholders came to another Composition, and gave 10,000*l.* for their Peace, and for the settling of their Estates, Tenure and Commons, which were confirmed by Parliament, in the third Year of the Reign of King Charles I.

‘ In the late Reigns, however calumniated, there were many and great Applications made for Grants of some Members and Parts of these Lordships, which were always rejected, as too powerful a Trust for a Subject. If the Parts were so, what shall the Grant of the whole be?

‘ History

' History and Records tell us, that the Grants of these Lordships have been very fatal to either Prince or Paten-tees; the one either lost his Crown, or the other his Head. It is therefore dangerous meddling with such ominous Bounties.

Anno 3 W. 1H.

1696.

' I must likewise observe to you, that the long Parliament in King Charles the Second's Reign, when they passed an Act for the Fee-Farm Rents, excepted those within the Principality of Wales; which is a plain Intimation, that the Parliament thought them not alienable, or fitting to be aliened, but rather to be preserved for the Support of the Prince of Wales.

' There is a great Duty lies upon the Freeholders of these Lordships, upon the Creation of a Prince of Wales: They pay the Prince 800l. for Mises, which is such a Duty, Service, or Tenure, that it is not to be sever'd from the Prince of Wales; and how this Tenure can be made reconcilable to this noble Lord's Grant, will be a great difficulty.

' If we are to pay these Mises to this noble Lord, upon this Grant, then he is, or is *quasi* a Prince of Wales; for this Duty was never paid to any other: But if it is to be paid to the Prince of Wales, and likewise to this noble Lord, then we are doubly charged. But if it be to be paid to the Prince of Wales, when he has no Royalty left in that Dominion, and not to be paid to this noble Lord, who by this Grant is to have the whole Lordships, it creates a Repugnancy in the Tenure of our Estates.

' But I suppose this Grant of the Principality is a Fore-runner of the Honour too, and then I shall fancy we are returning to our Original Contract; for, as Story tells us, we were first brought to entertain a Prince of Wales, by recommending him to us as one that did not understand the English Tongue, and our Forefathers thence inferred, that he must be our Countryman, and no Foreigner, and one that understood the British Language; how we were deceived therein, is palpable.

' I suppose this Lord doth not understand our Language, nor is it to be suppos'd, that he will come amongst us to learn it, nor shall we be fond of learning his.

' But since I have minded you of our Welsh Original Contract, which is of so long a standing, I would not have you forget another Contract made not above seven or eight Years since, which is the Foundation of our present Government; I mean the Bill of Rights and Liberties, and settling the Succession of the Crown, which is so much forgotten in Discourse or Practice, that I have not heard it named in Parliament, but once the last Parliament: And I find it as much forgotten in the Administration. I would gladly

Anno 8 W. III.  
1696.

gladly know from those who are better vers'd in prerogative Learning than my self, Whether his Majesty can by the Bill of Rights, without the Consent of Parliament, aliene or give away the Inheritance, or an absolute Fee of the Crown Lands? If he can, I would likewise know to what purpose the Crown was settled for Life, with a Remainder in Succession, if a Tenant for Life of the Crown can grant away the Revenue of the Crown, and which is incident to the Crown? Or can the King have a larger Estate in the Revenue than he has in the Crown to which it belongs? Far be it from me to speak any thing in derogation of his Majesty's Honour and Care of us!

It cannot be pretended, that he shall know our Laws, (who is a Stranger to us and we to him) no more than we know his Counsellors, which I wish we did; I mean, those new Advisers. However, those of his Counsellors or Ministers, whom we do know, and those thro' whose hands the Grant did pass, by advising the King to grant what by Law he could not, are guilty of the highest Violation of the Laws and Liberties of England, strike at the Foundation of the Succession, and tear up the Bill of Rights and Liberties by the roots: It was their Province and Duty to have acquainted the King with his Power and Interest, that the ancient Revenue of the Crown is sacred and unalienable in time of War and the People's Necessities.

By the old Law, it was part of the Coronation-Oath of the Kings of England, not to aliene the ancient Patrimony of the Crown, without the Consent of Parliament: But as to those Oaths of Office, most Kings have Court-Casuits about them, to inform that they have Prerogative enough to dispense with them.

It has been the peculiar Care of Parliaments, in all Ages, to keep an even Balance betwixt King and People; and therefore, when the Crown was too liberal in their Bounties, the Parliament usually resum'd those Grants, which was very frequent; for, from the Reign of Henry the Third of England, to the Sixth Year of Henry the Eighth, there was one or more Bills of Resumption in every one of those Kings Reigns, save one of them. In the time of Henry the Fifth, there was an Act of Resumption of all that was granted from the Prince of Wales in all that Principality; and yet those Acts were not look'd upon by those Kings (of whom some of them both good and great) any Lessening or Diminution to their Prerogatives, it being consider'd, that Kings have their Failings as well as other Men, being cloathed with frail Nature, and are apt to yield to the Importunities of their Flatterers and Favourites: Therefore it becomes necessary, that the great Council of the Nation should interpose for the Interest of the King and People.

The

' The Commons of England always entertained an honourable Jealousy of their Princes, when they perceived their Expences at Home or Abroad, their Gifts and Boons to their Favourites to be too large and exorbitant; and have therefore, by their Petitions and dutiful Applications to the Crown, advis'd the Kings of England to retrench their Expences, and not to aliene or give away the Revenues of the Crown, lest they should become burthenfome to the People, and chargeable to the Commonwealth, and that they would live upon their own Revenue, & *Talligiis Populi*. These were their just and frequent Ways, in elder Time, to repair the languishing Estate of the Crown.

Anno 8 W. III:  
1696.

' And as we are an Island, and subject to Invasion, so the Parliaments of England were very watchful, that other Countries should not outdo them in Trade and naval Strength; that Foreigners should have no more Footing, or Strength, or Settlement in England, than was conducing to carry on the Trade and Commerce of the Nation; and whenever Princes entertain'd Foreigners as their Counsellors, or chief Advisers, the People of England were restless and uneasy, till they were removed out of the King's Councils, nay, out of the Kingdom. And Instances are many in History and Parliament-Rolls, of what Great Men and Foreigners (being Favourites) were banish'd the Land for procuring to themselves too large a Proportion of the Royal Revenue, especially in Time of War, and the People's Necessities.

' As for Instance, in King Stephen's Time, who usurped the Crown of England from Maud the Empress, and her Son, King Henry the Second; William de Ipres, a Netherlander, was brought over, with great Numbers of his Countrymen; to which William de Ipres that King *de facto* gave an Earldom, and made him so great a Confident, that he was in all his Councils, and obtain'd great Grants, not only for himself, but also for his Countrymen the Netherlanders, called then Flemings, who then swarmed so thick about that King's Court, that Englishmen were scarce known or regarded; at which the People were so enraged, that they importuned King Henry the Second, when he obtain'd the Right of his Crown, to seize on all which King Stephen had given the foreign Favourite and his Accomplices, and banished him, and his Friends the Netherlanders, from his Court and Kingdom.

' The like Compliment was made by the People to King Richard the First, for the removing and banishing of the Duke of Saxony, his own Nephew, and his Sister's Son, being a Foreigner, and all his German Friends.

' The same Address was made by the People to Henry  
the

Anno 8 W. III.  
1696.

the Third, to banish his Half-Brethren (being Foreigners) and all their Poictovian Friends.

‘ The same Address was made by the People to Edward the Second, to do so with the Lineage of Gaveston and all his Gascoigners; and did not Edward the Third do the same with his Bohemian Friends?

‘ Henry the Fourth, and other following Princes took the same Method, upon the humble and hearty Petition of the People, sometimes in Parliament, and sometimes out; and, in these Cases, the Kings seized and took to themselves all the Revenues of the Crown that they had given them; and always sent those Foreigners to their own Countries.

‘ For these Reasons given, in many of those Instances, the People of England disliked and opposed them, fearing both their Power and Councils, and that they would become heavy and burthensome to the State, and that England was able to foster none but her own Children.

‘ I must needs confess, that my thoughts are strangely troubled with the Apprehension of our deplorable State. We are in a Confederacy in War, and some of those Confederates our Enemies in Trade, tho’ planted amongst us, some in the King’s Council, some in the Army, and the common Traders have possess’d themselves of the Out-skirts of the City. We find some or other of them Naturaliz’d, and others made Denizens. Every Parliament, we find, endeavours for a general Naturalization, and that warmly solicited from Court. We see our good Coin all gone, and our Confederates openly coining base Money, of Dutch Alloy, for us. We see most Places of Power and Profit given to Foreigners: We see our Confederates in conjunction with the Scots to ruin our English Trade: We see the Revenues of the Crown daily given to one or other, who make Sale of them, and transmit their Estates elsewhere: We do not find any of them buy Lands or Estates amongst us; but what they can get from us they secure in their own Country.

‘ How can we hope for happy Days in England, when this great Man, and the other (tho’ naturalized) are in the English, and also in the Dutch Councils? If those Strangers, tho’ now Confederates, should be of different Interests, as most plainly they are in point of Trade; to which Interest is it to be supposed those great foreign Counsellors and Favourites would adhere? So that, I foresee, when we are reduc’d to extreme Poverty, as now we are very near it, we are to be supplanted by our Neighbours, and become a Colony to the Dutch.

‘ I shall make no Remarks on this great Man, for his Greatness makes us little, and will make the Crown both Poor and Precarious; and when God shall please to send us

a Prince of Wales, he may have such a Present of a Crown made him, as a Pope did to King John, who was surnamed Sanfterre, and by his Father Henry the Second made Lord of Ireland, which Grant was confirmed by the Pope, who sent him a Crown of Peacocks Feathers, in derision of his Power, and the Poverty of his Revenue.

Anno 8 W. III,  
1696.

‘ I would have us to consider, we are Englishmen, and must, like good Patriots, stand by our Country, and not suffer it to become tributary to Strangers: We have rejoic’d, that we have beat out of this Kingdom Popery and Slavery, and now do, with as great Joy, entertain Socinianism and Poverty; and yet we see our Properties daily given away, and our Liberties must soon follow.

‘ Thus I have represented unto you the Nature of this mighty Grant to this noble Lord, the ill Consequence that must attend the Public, and more particularly this County, by the passing of it: the Remedies that our Forefathers took to cure this mischievous Ill, were known.

‘ I desire more Redress than Punishment. Therefore I shall neither move for an Impeachment against this noble Lord, nor the Banishment of him; but I shall beg that he may have no Power over us, nor we any Dependence upon him: Therefore I shall conclude my Motion, that an Address be made to His Majesty, to stop the Grant that is passing to the Earl of Portland, of the Lordships of Denbigh, Bromfield, and Yale, and other Lands in the Principality of Wales; and that the same be not granted, but by Consent of Parliament.’

This stout and eloquent Speech made so great an Impression, that Mr. Price’s Motion was carried by an unanimous Consent, and on January the 22d this Address was presented to the King by the Speaker, attended by the whole House.

‘ May it please your most Excellent Majesty, We your Majesty’s most dutiful and loyal Subjects, the Knights, Citizens and Burgeses in Parliament assembled, humbly lay before your Majesty, That whereas there is a Grant passing to William Earl of Portland and his Heirs, of the Manors of Denbigh, Bromfield, and Yale, and divers other Lands in the Principality of Wales, together with several Estates of Inheritance, enjoyed by many of your Majesty’s Subjects, by virtue of ancient Grants from the Crown:

‘ That the said Manors, with the large and extensive Regalities, Powers and Jurisdictions to the same belonging, are of great concern to your Majesty and the Crown of this Realm: And that the same have been usually annex’d to the Principality of Wales, and settled on the Princes of Wales for their Support: And that a great Number of your Majesty’s Subjects in those Parts hold their Estates by royal

Tom. III.

C

Tenure

Anno 8 W. III.  
1696.

Tenure, under great and valuable Compositions, Rents, royal Payments, and Services to the Crown and Princes of Wales, and have by such Tenure great dependance on your Majesty and the Crown of England, and have enjoyed great Privileges and Advantages with their Estates under such Tenure.

‘ We therefore most humbly beseech your Majesty to put a stop to the passing this Grant to the Earl of Portland of the said Manors and Lands; and that the same may not be disposed from the Crown but by Consent of Parliament. For that such Grant is in diminution of the Honour and Interest of the Crown, by placing in a Subject such large and extensive Royalties, Powers and Jurisdictions, which ought only to be in the Crown, and will sever that Dependance, which so great a Number of your Majesty’s Subjects in those parts have on your Majesty and the Crown, by reason of their Tenure, and may be to their great Oppression in those Rights which they have purchased and hitherto enjoyed with their Estates, and also an Occasion of great vexation to many of your Majesty’s Subjects, who have long had the absolute Inheritance of several Lands (comprehended in the said Grant to the Earl of Portland) by ancient Grants from the Crown.

His Majesty in Answer was pleased thus to express himself.

King’s Answer. ‘ Gentlemen, I have a kindness for my Lord Portland, which he has deserved of me by long and faithful Services; but I should not have given him these Lands, if I had imagined the House of Commons could have been concerned; I will therefore \* recall the Grant, and find some other way of shewing my Favour to him.’

Proceedings occasion’d by the Scots India Company.

The Committee of Commons having made their Report to the House, and deliver’d a Copy of the Oath *de Fidei*, taken by the Directors of the Scots India Company, and of the Journal of their Proceedings, which, together with the

Perition

*\* Which accordingly was done; and the May after the following Grant was made in Recompence for the Revenues of the Principality of Wales.*

*A Grant to William, Earl of Portland, of the Manor of Grantbam in the County of Lincoln, Honour of Penreth in the County of Cumberland, Manor of Dracklow and Rudnetb in the County of Chester, Manor of Terrington in the County of Norfolk, Manors of Partington, Bristol-Garth, Homsey, Thawing, Burnisley, and Leven in the County of York, all Parcel of the ancient Revenue of the Crown of England, and of the Manor of Pavensey in the County of Sussex, Parcel of the Duchy of Lancaster, and of all the Lands, Tenements, and Hereditaments thereunto belonging, to have and to hold the same to the said Earl and his Heirs; as of his Majesty’s Manor of East-Greenwich in the County of Kent, under the Rent of 4 l. 13 s. 4 d. payable at Lady-Day Yearly. And such Clauses, Powers and Provisions are inserted, as were directed by Warrant under his Majesty’s royal Sign Manual. There is likewise granted to the said Earl of Portland, all the little Remainder of the Fee-Farm-Rents, worth to be sold, 24,000 l. Given of mere Bounty, 23,000 l. Which last Grant was afterwards vacat’d by the said Earl.*



Petition of the English East-India Company, having been maturely examin'd and consider'd; they resolv'd, January 26th, ' That the Directors of the Company of Scotland, trading to Africa and the Indies, administering and taking here in this Kingdom an Oath *de Fidei*; and under colour of a Scotch Act of Parliament, stiling themselves a Company, and acting as such, and raising Money in this Kingdom for carrying on the said Company, were Guilty of a High Crime and Misdemeanour; and that the

Anno 8 W. III.  
1696.

Lord Belhaven.

Thomas Courts.

William Paterfon.

Daniel Van Mildert.

David Nairne.

Robert Williamson.

James Smith.

Anthony Merry.

James Chieffly.

Paul Docminique.

William Shepherd.

Robert Douglas.

Robert Blackwood.

Thomas Skinner.

James Balfour.

James Bateman.

James Fowlis.

Walter Stewart, and

Hugh Frazier.

Joseph Cohen d'Azavedo,

Abraham Wilmer.

be impeach'd of the said High Crimes and Misdemeanours, upon the Evidence of Roderick Mackenzie; who while the Impeachment was preparing, prevaricated in it, and was order'd into Custody: but he made his Escape, and cou'd not be apprehended, notwithstanding the King, at the Request of the Commons, issu'd a Proclamation for that purpose

Several Persons  
impeach'd  
thereon.

Soon after this the Commons took into Consideration the Trade of this Kingdom, and resolv'd to erect a Council, for the better regulating and improving it with sufficient Powers; but it being debated whether the Members of that Council, which were to be named by the House, but not of Members, shou'd take an Oath acknowledging King William to be rightful and lawful King of England, and renouncing the Title of the late King James; it was rejected.

A Council of  
Trade propos'd.

On February the 2<sup>th</sup>, the King came to the House of Peers, and made the following Speech to both Houses.

' My Lords and Gentlemen,

' I AM come hither this Day upon an extraordinary Oc-  
' cation, which might have proved fatal, if it had not  
' been disappointed by the singular Mercy and Goodness of  
' God; and may now, by the Continuance of the same Pro-  
' vidence, and our own prudent Endeavours, be so improved,  
' as to become a sufficient warning to us, to provide for our  
' Security against the pernicious Practices and Attempts of  
' our Enemies.

King's Speech  
on discovery of  
the Assassina-  
tion-Plot.

' I have received several concurring Informations of a  
' Design to assassinate me; and that our Enemies at the same

Anno 8 W. III.  
1696.

‘ time are very forward, in their Preparations for a sudden Invasion of this Kingdom; and have therefore thought it necessary, to lose no time in acquainting my Parliament with those things, in which the Safety of the Kingdom, and the Public Welfare are so nearly concerned, that I assure myself nothing will be omitted on your part, which may be thought proper for our future Security.

‘ I have not been wanting to give the necessary Orders for the Fleet, and I hope we have such a Strength of Ships, and in such readiness, as will be sufficient to disappoint the Intentions of our Enemies.

‘ I have also dispatched Orders, for bringing home such a Number of our Troops, as may secure us from any Attempt.

‘ Some of the Conspirators against my Person are already in Custody, and care is taken to apprehend so many of the rest as are discovered; and such other Orders are given, as the present Exigency of Affairs does absolutely require at this time for the Public Safety.

‘ My Lords and Gentlemen,

‘ Having now acquainted you with the danger which hath threatened us, I cannot doubt of your Readiness and Zeal, to do every thing which you shall judge proper for our common Safety: And I persuade myself, we must be all sensible how necessary it is in our present Circumstances, that all possible dispatch should be given to the Business before you.’

Upon this, the two Houses immediately agreed to wait on the King that very Evening at Kensington with their humble Address.

Address of both  
Houses,

‘ We your Majesty’s most loyal and dutiful Subjects, the Lords Spiritual and Temporal, and Commons, having taken into our serious Consideration what your Majesty hath been pleased to communicate to us this Day, think it our Duty in the first place, to give your Majesty most humble Thanks for having acquainted your Parliament with the great danger your sacred Person hath been so nearly exposed to, and the Design of an Invasion from our Enemies abroad: We heartily congratulate your Majesty’s happy Preservation, and thankfully acknowledge the signal Providence of God in it; and at the same time declare our detestation and abhorrence of so villainous and barbarous a Design: And since the Safety and Welfare of your Majesty’s Dominions do so entirely depend upon your Life, we most humbly beseech your Majesty to take more than ordinary care of your royal Person. And we take this Occasion to assure your Majesty of our utmost assistance to defend your Person, and support your Government, against the late King James, and all other your Enemies both at home and abroad;  
hereby

hereby declaring to all the World, that in case your Majesty shall come to any violent Death, (which God forbid) we will revenge the same upon all your Enemies, and their Adherents: And as an Instance of our Zeal for your Majesty's Service, we will give all possible dispatch to the Public Business: And we make it our desire to your Majesty, to seize and secure all Persons, Houses and Arms, that your Majesty may think fit to apprehend upon this Occasion.

Anno 8 W. III.  
1696.

His Majesty gave the two Houses this agreeable Answer:

' My Lords and Gentlemen, I thank you heartily for this Address; on my part you may be assured, that I will do all that is within my power, for the Conservation of this Kingdom, to which I have so many Obligations. I will readily adventure my Life for the Preservation of it, and recommend myself to the Continuance of your Loyalty and good Affections.'

King's Answer.

The House of Commons dropt the Sense of all former Animositities, and generously fell into the immediate Measures of Respect and Loyalty to the King; giving a new Proof of this Observation, That Plots when discovered strengthen the Government they were designed to ruin. On the same day with the Speech and Address, they Ordered, That leave be given to bring in a Bill to empower his Majesty to secure and detain such Persons, as his Majesty shall suspect are conspiring against his Person or Government. They gave several Instructions for the more effectual raising the Militia. They Resolved, That leave be given to bring in a Bill, that whenever it shall please God to afflict these Realms by the Death of his present Majesty, the Parliament then in being, shall not be dissolved thereby, but shall continue until the next Heir to the Crown in Succession, according to the late Act of Settlement, shall dissolve the same. And that an humble Address be presented to his Majesty, that he will please to issue his royal Proclamation, to banish all Papists from the Cities of London and Westminster, and ten Miles from the same: And give Instructions to the Judges going the Circuits, to put the Laws in execution against Papists and Nonjurors. And as the greatest Test of Loyalty, they drew up this Form of Association, to be subscribed by all the Members.

Several Resolutions occasioned by the Plot.

' Whereas there has been a horrid and detestable Conspiracy formed and carried on by Papists, and other wicked and traitorous Persons, for assassinating his Majesty's royal Person, in order to encourage an Invasion from France, to subvert our Religion, Laws and Liberty; we whose Names are hereunto subscribed, do heartily, sincerely and solemnly profess, testify and declare, that his present Majesty

Form of Association.

Anno 8 W. III.  
1696.



Majesty King William is rightful and lawful King of these Realms: And we do mutually promise, to engage to stand by and assist each other to the utmost of our Power, in the support and defence of his Majesty's most sacred Person and Government, against the late King James and all his Adherents. And in case his Majesty come to any violent or untimely Death (which God forbid) we do hereby further, freely and unanimously, oblige ourselves, to unite, associate, and stand by each other, in revenging the same upon his Enemies, and their Adherents; and in supporting and defending the Succession of the Crown, according to an Act made in the first Year of the Reign of King William and Queen Mary, entitled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown.*

Signed by all  
the Members.

This Association was on the three following Days signed by all the Members that came to the House; and because some others had absented themselves upon Pretence of Health or Business, but in Reality to avoid setting their Hands to an Acknowledgment of King William being rightful and lawful King; it was therefore ordered on Feb. 27. 'That such Members of the House who had not already signed the Association, should do it by Monday Fortnight, or declare their Refusal, notwithstanding their Leave to be absent.'

On the appointed Day, March 16th, the Names of such Members were called over, as were absent upon the last Call of the House; and several of them being still absent, in the Country, or ill in Town, signifying their Intentions to sign the Association, were excused their Attendance: And the Speaker was ordered to write to such Members as are in the Country, and have not signed the Association, or declared their Refusal so to do, to know what they will do, and to return their Answer by the first Opportunity. And at the same time the Clerk of the House was to attend such Members as were ill in town, with the said Association, in order to their signing the same, or receiving their Answer of Refusal. The absent Members seeing themselves so pressed, and the Nation at this Time in so great a Ferment against the Disaffected, thought it Prudence to yield to the Times, and either to subscribe the Association, or to promise to do it on their first coming up to Town, though it was against the Inclination of some, and perhaps against the Principles of others.

500,000 l. for  
the Civil-List,  
and 15,000 l. a  
Year settled on  
the French  
Protestants,

The House of Commons taking into Consideration that Part of his Majesty's Speech, at the Opening of this Parliament, which related to the Civil-List, and to the distressed Protestants driven from their Country, by the Persecution in France under Lewis XIV. it was *Resolved* March 17, that a Fund be settled for raising 500,000 Pounds for the  
Civil-

Civil-List, and 15,000 Pounds a Year for the French Protestants. Anno 3 W. III. 1696.

On April the 2d, upon a Report of the Examination and Confession of Sir William Perkins and Sir John Friend, it was *Resolved*, that a Bill be brought in *for the better Security of his Majesty's Person and Government*: and that, the Heads of the Bill should be,

A Bill for Security of his Majesty's Person.

1. That such as shall refuse to take the Oaths to his Majesty, shall be subject to the Forfeitures and Penalties of Popish Recusants Convict.

2. To inflict a Penalty on such as shall by Writing, or otherwise, declare, that King William is not lawful and rightful King of these Realms; Or that the late King James, or the pretended Prince of Wales, or any other Person, than according to the Act of Settlement of the Crown, hath any Right to the Crown of these Realms.

3. To ratify and confirm the Association entered into by all his Majesty's good Subjects, for the Preservation of his Majesty's Person and Government.

4. That no Person shall be capable of any Office of Profit or Trust, Civil or Military, that shall not sign the said Association.

5. That the same Penalties be inflicted on such as come out of France, as upon those that go thither.

The House of Commons, on Friday April the third, presented to his Majesty in a Body, the Association, with their Subscriptions to it, and at the same time requested his Majesty, that he would be pleased to order, that the said Association, and all other Associations by the Commons of England, might be lodged among the Records of the Tower. Upon which Occasion his Majesty was pleased to say,

Association presented to his Majesty.

' Gentlemen,

' I Take this as a most convincing and most acceptable Evidence of your Affection: And as you have freely associated yourselves for our common Safety, I do heartily enter into the same Association, and will be always ready with you and the rest of my good Subjects, to venture my Life, against all who shall endeavour to subvert the Religion, Laws, and Liberties of England. And I will take care, that this and all other Associations presented to me be lodged among the Records of the Tower.'

The King's Speech on that Occasion.

Upon Report of this gracious Acceptance, the next day the House *Resolved*, ' That whoever shall by Word or Writing affirm, that the Association entered into by any Member of this House, or any other Person, is illegal, such Person shall be deemed a Promoter of the Designs of the late King James,

Anno 8 W. III, James, and an Enemy to the Laws and Liberties of this  
1696. Kingdom.

Soon after, the House of Lords agreed in the same Association, and presented it to the King; and the Example of both Houses of Parliament was followed by all the Corporations of the three Kingdoms.

Bill for regulating Elections, rejected.

The Act to regulate Elections of Members to serve in Parliament, pass'd both Houses, but had not the Royal Assent; when his Majesty gave it to several other Bills, most of them private ones, April 10. Upon this the House of Commons shew'd some Resentment against those that advis'd the King not to pass that Bill. The Question was put April 24, That whosoever advis'd his Majesty not to give his Royal Assent to the Bill for further regulating Elections for Members to serve in Parliament, which pass'd both Houses, is an Enemy to the King and Kingdom. But the Majority finding by the Warmth with which the Party above-mention'd espous'd the Affirmative, that it was intended to make a Difference between the King and Parliament, did not only put a Negative upon the Question by near 150 Voices, Noes 212, Yeas 70; but it was order'd, that the Speaker do with the Votes print the Question, together with the Numbers of the Affirmative, and Negative. It must be farther observ'd the Supply given to the Crown this \* Session, amounted to 5,024,853 l.

The 27th, The King gave the Royal Assent to *An Act for the better Security of his Majesty's Person and Government*, and other Bills, and clos'd this Session with the following Speech to both Houses.

King's Speech. ' My Lords and Gentlemen,  
' YOU have shewn so great Concern for my Person,  
' and Zeal for my Government, and have done so much  
' for the Preservation of the one, and for the strengthening  
' of the other, by the good Laws which have been made,  
' and by the Supplies you have provided for the several Oc-  
' casions of this Year, that the late Designs of our Enemies  
' are, by the Blessing of God, like to have no other Effect,  
' than

\* The Bill for establishing a Land-Bank, likewise pass'd this Session, which Mr. Oldmixon calls a Chimæra of Dr. Chamberlain's Invention, under the Patronage of Mr. Robert Harley. He adds, The Project was to raise 2,564,000 Pounds upon the Security of a Land-Company, who were to lend Money upon nothing but Land-Security, or to the Government. The Bank petitioned against it, but that did not hinder its passing; and the great House in Queen-Street, late the Lord Conway's, was taken for the Office, where proper Officers attend'd, to carry on so notable a Work; which, like the Bubble of the Brook, swell'd with the Wind, and burst again with it in an Instant; to the great Mortification of the said Mr. Robert Harley, who had been at no small pains to carry it so far as into an Act of Parliament.

‘ than to let them see how strictly we are united; and to  
 ‘ give me this Occasion to acknowledge your Kindness, and  
 ‘ to assure you of all the Returns which a Prince can make  
 ‘ to his People.

Anno 8 W. III,  
 1696.

‘ My Lords and Gentlemen,  
 ‘ The Necessity of Affairs require my Absence out of the  
 ‘ Kingdom for some time; I do earnestly recommend to you,  
 ‘ that in your several Stations, you will be assisting those  
 ‘ whom I shall leave to administer the Government; and  
 ‘ that you will be careful in preserving the Public Peace  
 ‘ of the Kingdom.’

Then the Lord-Keeper, by his Majesty's Command, pro-  
 rogued the Parliament till Tuesday the 16th of June.

Parliament  
 prorogued.

To have done with this Session, we must mention some  
 Bills which were brought in, but did not pass the House;  
 as 1. The Bill for regulating Printing and Printing Presses.  
 2. A Bill for reversing a Judgment against Sir William Williams  
 in 2 Jac. II. for what he did as Speaker of the House of Commons.  
 3. A Bill for settling and regulating the East-India Trade. 4.  
 Another to regulate the Trade to Africa. 5. A Bill to confirm  
 the Earl of Torrington's Grant. 6, 7. Two Bills to vest in the  
 Crown all forfeited Estates in England and Ireland, and to vacate  
 all Grants made thereof. 8. A Bill to prevent Stock-jobbing.  
 9. A Bill for preventing Papists from Disinheriting their Pro-  
 testant Heirs.

Bills dropped.

On Tuesday, October 20, the Parliament met at West-  
 minster, and the King being seated on the Throne, with the  
 usual Solemnity, made this Speech to both Houses.

Second Session  
 of the Third  
 Parliament.

‘ My Lords, and Gentlemen,  
 ‘ I Have called you together as soon as was possible, and I  
 ‘ think it a great Happiness that this Year has passed  
 ‘ without any Disadvantage abroad, or Disorder at home,  
 ‘ considering our great Disappointment in the Funds given  
 ‘ at your last Meeting, and the Difficulties which have arisen  
 ‘ upon the Re-coining of the Money.

King's Speech.

‘ This is so convincing a Proof of the good Disposition of  
 ‘ my Army, and of the steady Affections of my People, that  
 ‘ I cannot but take notice of it with great Satisfaction.

‘ Our Enemies have not been without hopes that such a  
 ‘ Conjunction might have proved fatal to us: But as they  
 ‘ have failed in those Expectations, so I am fully persuaded  
 ‘ that your unanimous Proceedings, in this Session, will make  
 ‘ them for ever despair of an Advantage from any Dis-  
 ‘ agreement among ourselves.

‘ It must be confessed, that the Business which you have  
 ‘ before you will be very great, because of the Necessity of  
 ‘ supply-

Anno 8 W.III.  
1696.

supplying former Deficiencies, as well as making Provision for the next Year's Service.

And upon this Occasion it is fit for me to acquaint you, that some Overtures have been made in order to the entering upon a Negotiation for a general Peace: But I am sure we shall agree in Opinion, that the only way of treating with France, is with our Swords in our Hands: and that we can have no reason to expect a safe and honourable Peace, but by shewing ourselves prepared to make a vigorous and effectual War: In order to which, I do very earnestly recommend to you, Gentlemen of the House of Commons, that you would consider of raising the necessary Supplies, as well for maintaining the Honour of Parliaments in making good the Funds already granted, as for carrying on the War the next Year; which I think ought not to be less than what was intended to be raised for that Purpose the last Session.

I must also put you in mind of the Civil-List, which cannot be supported without your Help; and the miserable Condition of the French Protestants does oblige me to mention them to you again,

My Lords and Gentlemen,

It may deserve your Consideration, whether there do not still remain some Inconveniencies relating to the Coin, which ought to be remedied: And I hope you will find out the best Expedients for the Recovery of Credit, which is absolutely necessary, not only with respect to the War, but for carrying on of Trade.

I am of Opinion, that there is not one good Englishman who is not entirely convinced, how much does depend upon this Session; and therefore I cannot but hope for your Unanimity and Dispatch in your Resolutions, which at this time are more necessary than ever, for the Safety and Honour of England.

Proceedings of  
the Commons.

The Commons having appointed their grand Committees, for Religion, for Grievances, for Trade, for Courts of Justice, and for Privileges and Elections, *resolved, nemine contradicente*, That they would support his Majesty and his Government against all his Enemies both at home and abroad, and that they would effectually assist him in the prosecution and carrying on the War against France: And that an humble Address should be prepared to be presented to his Majesty pursuant to the said Resolution. Which Address was drawn up by Mr. Montague, Chancellor of the Exchequer, and presented to his Majesty on October the 23d, by the whole House, in these Words:

May



‘ May it please your most excellent Majesty, This is the eighth Year in which your Majesty’s most dutiful and loyal Subjects, the Commons in Parliament assembled, have assisted your Majesty with large Supplies for carrying on a just and necessary War, in Defence of our Religion, Preservation of our Laws, and Vindication of the Rights and Liberties of the People of England ; which we have hitherto preserved ; and, by the Blessing of God, upon your Majesty’s Conduct and good Government, will stedfastly maintain and entail on our Posterity.

Anno 8 W. III.  
1696.

Their Address,]

‘ This has cost the Nation much Blood and Treasure, but the Hopes of accomplishing so great and glorious a Work, have made your Subjects chearfully support the Charge. And to shew to your Majesty, and to all Christendom, that the Commons of England will not be amused, or diverted from their firm Resolutions of obtaining by War a safe and honourable Peace, we do, in the Name of all those we represent, renew our Assurances to your Majesty, that this House will support your Majesty, and your Government, against all your Enemies both at home and abroad : and that they will effectually assist you in the Prosecution and carrying on the present War against France.’

His Majesty in answer was pleased to express himself thus:

‘ Gentlemen, The Continuance of your Zeal and Affection is the Thing of the world I value most, and I will answer it by all the Ways I can think of ; and I will make your Good, and the Safety of the Nation, the principal Care of my Life.’

His Majesty’s  
Answer.

These Assurances of Affection on the one side, of Loyalty on the other, and of mutual Confidence on both, being happily given, the Commons entered with great Alacrity upon the three great Affairs that had been recommended to them from the Throne, to wit, *The further remedying the ill State of the Coin : The providing a Supply for the next Year’s Service : And the Restoring of public Credit.* All which had a near Dependence the one upon the other, and made the Difficulties more intricate and hard to compose.

In order to remove the first and the last, the Commons resolved on their very first Day of Meeting, *That they would not alter the Standard of the Gold and Silver, in Fineness, Weight or Denomination ; and that they will make good all Parliamentary Funds since his Majesty’s Accession to the Crown, that have been made Credits for Loan from the Subject.* And because the Circulation of Guineas was obstructed by reason of the Want of other Coin, and by reason of the Act made the last Session, to take off the Obligation of Coining Gold, a Bill was

Vote on the  
State of the  
Coin.

Anno 8 W. III.  
1696.  
Estimates of  
the Charge of  
the Navy, and  
Army.

Ordered to be brought in October the 22d, For the giving  
Leave to import Guineas, and to coin Gold at the Mint.  
The 28th, the Commissioners of the Admiralty presented  
to the House, an Estimate of the Charge of the Navy for the  
Year 1697; which for 40,000 Sea-men, Wear, Tear, Ord-  
nance, the Officers of two Regiments of Marines, the Re-  
gistry-Office, and the Ordinary of the Navy, was computed  
at 2,523,954 l.

The same Day, likewise, the Earl of Ranelagh presented a List of the Land-Forces, and  
the Sums necessary for their Support: An Abstract of which, as follows:

| Total of Horse,                              |                |                 |              |           |               |                   |     |
|--|----------------|-----------------|--------------|-----------|---------------|-------------------|-----|
| Troops and Companies.                        | Com. Officers. | Non-Com. Offic. | Private-Men. | Together. | Pay, per Ann. | Servants allow'd. |     |
| 162  | 955            | 902             | 9996         | 11,855    | l. 608,637    | 16 s. 1 d.        | 811 |
| Total of Dragoons,                           |                |                 |              |           |               |                   |     |
| 82   | 387            | 738             | 5120         | 6254      | l. 217,205    | 8 s. 4 d.         | 686 |
| Total of Foot,                               |                |                 |              |           |               |                   |     |
| 875  | 3200           | 7589            | 58,553       | 69,342    | l. 1,182,038  | 15 s. 6 d.        |     |
| Total Charge,                                |                |                 |              |           |               |                   |     |
|  |                |                 |              |           | l. 2,007,881  | 19 s. 11 d.       |     |
| Over and above which, Wanting                |                |                 |              |           |               |                   |     |
| For General-Officers                         |                |                 |              |           | l. 31,058     | 8 s. 6 d.         |     |
| For the Train                                |                |                 |              |           | l. 210,773    | 4 s. 5 d.         |     |
| For Transports, Hospitals, and Contingencies |                |                 |              |           | l. 460,000    | 0 0               |     |
| In all                                       |                |                 |              |           | l. 2,709,713  | 12 s. 10 d.       |     |

The

The same day Complaint having been made of a printed Pamphlet, entitled, *An Account of the Proceedings in the House of Commons, in relation to the re-coining the clipped Money, and falling the Price of Guineas*: They voted it to be false, scandalous and seditious, and destructive of the Freedom and Liberties of Parliament: And ordered the said Pamphlet to be burned by the common Hangman, and addressed his Majesty to issue his Proclamation, promising a Reward of 500 l. for the Discovery of the Author of that Libel. And two Days after, the House being inform'd of a printed Paper, entitled, *A summary Account of the Proceedings upon the happy Discovery of the Jacobite Conspiracy*; they resolved, that the printing the Names of the Members of their House, and reflecting on them for their Proceedings in Parliament, was a Breach of the Privileges of that House, and destructive of the Freedom and Liberties of Parliament.

Anno 8<sup>th</sup> W. III.  
1696.

Pamphlets cen-  
sur'd.

November 3, Mr. Harley from the Commissioners for Deficiencies in  
stating the public Accounts presented an Account of the the Funds.  
Deficiencies of the several Funds, according to Order, viz.

|   | l.     | s. | d. |
|---|--------|----|----|
| On the double 9d <i>per</i> Barrel Excise —————   | 103000 | 0  | 0  |
| Additional Imports —————  | 430000 | 0  | 0  |
| First 4s. Aid —————   | 59000  | 0  | 0  |
| Second Quarterly Poll —————   | 80000  | 0  | 0  |
| On the Act to enlarge Time for the purchasing }<br>Annuities, beside the growing Interest — }   | 366000 | 0  | 0  |
| On the Duty of Paper and Parchment, granted<br>for 4 Years as a Fund for 330,000 l. at 8<br><i>per Cent.</i> Expected by what it has already<br>produc'd to be considerably deficient at the<br>end of that Term. |        |    |    |

The Loans on the 3d 4s. Aid are suppos'd to be very near satisfy'd by that Fund; but the Certainty not yet known.

The Duties for 3 Years on Coffee, Tea, Chocolate and Spices, have not amounted to above one fourth of what they were designed for.

Births, Burials, and Marriages, with a borrowing Clause for 650,000 l. at 8 *per Cent.* have hitherto, except very lately, produc'd but 2000 l.

The Fund of Salt, Glass, and Tobacco Pipes, not having rais'd the 2,564,000 l. principal Money design'd, remains to be dispos'd of by Parliament.

The Account of Duties upon Houses granted for 7 Years not yet come in,

What

Anno 8W. III. What the last 4s. Aid will fall short, cannot  
1696. as yet be judg'd.

Nor the Deficiency of every other Fund on account of the Re-coinage.

To this was added an Account of the clipp'd and new Money delivered out and paid in at the several public Offices: The Total of which was as follows:

|                             |                          |
|-----------------------------|--------------------------|
| Clipp'd Money deliver'd out | New Money paid in        |
| 4,721,600 l. 14 s. 9½ d.    | 1,815,527 l. 19 s. 3½ d. |

Order'd, That the Commissioners of the Treasury do account to this House, how the 2,564,000 l. to be rais'd by the Duties on Salt, Glass and Tobacco-Pipes came to fail.

And a Motion being made, That the Returns made by the Commissioners for stating the public Accounts, be referred to the Committee of the whole House; it pass'd in the Negative, Yeas 54, Noes 271.

Supplies voted  
for the Land  
and Sea-Service.

The 4th, the House having considered the State of the War for the Year 1697, both in relation to the Navy and Land-Forces, which at their desire, his Majesty ordered to be laid before them, they granted the Sum of Two Millions Three Hundred Seventy-two Thousand One Hundred Ninety-seven Pounds, for the Maintenance of Forty Thousand Seamen, and of the two Marine Regiments and for the Ordinary of the Navy, and the Charge of the Registry of Seamen; and the Sum of Two Millions Five Hundred Seven Thousand Eight Hundred and Eighty-two Pounds, both for the maintaining Eighty-seven Thousand Four Hundred and Forty Men, which according to the List of the Land-Forces delivered into the House, they voted necessary to be employed in England, and beyond the Seas; and for the extraordinary Service of the Office of Ordnance, the Pay of the General Officers, and the Charge of the Transports, Hospitals, and other Contingencies of the War. Besides which, they afterwards, on December the 23d, voted a Supply of One Hundred Twenty-five Thousand Pounds, for making good the Deficiency in recoinage hammer'd Money, and the Recompence to be given for bringing Plate into the Mints to be coined.

Proceedings against  
Sir John Fenwick.

The 6th, Admiral Russel acquainted the House, that his Majesty had been pleas'd to lay the Proceedings against Sir John Fenwick before his Council, together with Copies of his Information, in which were several Persons of Quality, and among others himself. That he spoke this by his Majesty's Leave, who had likewise directed Mr. Secretary Trumbal to lay the Papers, in which the said Information was contained, before the House.

The said Papers were then delivered and read; after which it was order'd that Sir John Fenwick should be immediately sent for from Newgate; and that no Persons should be allow'd to speak, or deliver any Paper to him, or receive any from him by the way.

Anno 3 W. III.  
1696.

Accordingly, being brought to the Bar of the House, the Speaker Paul Foley Esq; inform'd him, the House expected a full Discovery of all he knew; which was of the more consequence, because in some of the said Papers he had asserted, King James thought himself sure of the Army by means of the Lord Marlborough; and of the Fleet by means of Killebrew and Delaval. But not having the face to charge Sir Cloudesly Shovel with Disaffection, he own'd Delaval and Killebrew said, Shovel was not to be spoke to, but they would secure him and let the French Fleet sail by. He added, the Lord Brudenel is out 6000l. That he did not write to King James in Person, but his Wife did. As to his own Correspondence with the abdicated King, he confess'd he had two Letters from him, and no more; he said further, That being coming in his Coach from Hyde-Park, he met General Talmash in his, in St. James's Street, that the latter beckon'd to him to go into St. James's Court; that they came out of their Coaches and took a turn or two there, at which time Talmash whisper'd him, We shall serve both on the same side. He added farther, Brigadier Mayne promis'd to come over to King James's Interest in Ireland; and he said, Indeed I wonder he did not. He confess'd, Lieutenant-General Kirk had given King James the same Assurances. That Sheerness was to be secured by the Deputy-Governor; that the Lord Montgomery was in the Plot, and had been with him about it several times. That several great Lords, as the Duke of Shrewsbury, the Earl of Marlborough, the Lord Godolphin, Admiral Russel, &c. had accepted of Pardons from King James. After which being prest by the Speaker to make a sincere Confession, he complain'd, he had been very hardly dealt with, for whatever he had said, the Answer was still, 'tis not satisfactory. The House then resolv'd, that the Reflections contain'd in the said Papers on several noble Peers, Members, &c. were false, scandalous, and a contrivance to undermine the Government, and create Jealousies between the King and his People, in order to stifle the real Conspiracy. A Motion was then made for Leave to bring in a Bill to attaint Sir John Fenwick of High-Treason; and after a Debate the House divided, Yeas 179, Noes 61. Sir Thomas Trevor, then Attorney-General, was order'd to prepare and bring in the Bill.

Order'd to be attainted of High-Treason.

The 9th, the said Bill was read for the first time, and the Question put for a second Reading; upon which the House divided:

**Anno 8 W. III.** divided; Yeas 196, Noes 102; and Friday was appointed for the second Reading: And that Sir John should have a Copy of the Bill, and of the Order, and be allow'd Pen, Ink, and Paper; and that Mr Attorney and Mr. Solicitor should be ready to produce the Evidence against him that day.

In the course of this Debate, Mr. Manley a Member, having dropt the following Words, *viz.* *It would not be the first time that People have repented their making their Court to the Government, at the Hazard of the Liberties of the People:* Exceptions were taken to the same, and tho' he endeavour'd to palliate and excuse them, a Resolution pass'd, That for the said Offence he should be committed to the Tower; where he was detain'd till he petition'd the House to be enlarg'd.

Mr. Manley, a Member, committed to the Tower.

The 11th, *Resolv'd*, That during the Continuance of the Bank of England, no other Bank shall be established by Act of Parliament.

A Debate about the Form of Proceeding in the Case of Sir John Fenwick.

The 13th, a Debate arose, whether the Mace ought to lie upon the Table, while Sir John Fenwick was examined, or whether the Serjeant ought to stand by him with it at the Bar? For there was not a Member in the House that had been present at the hearing a Prisoner against a Bill of Attainder.

Some Gentlemen held, That Sir John Fenwick being a Prisoner, the Mace ought to be at the Bar, and then no Member could speak: Others said it ought to lie upon the Table, and then every Member was at liberty to speak, and ask Questions: A third was of Opinion, the Sheriffs of London could not have him in Custody here; but he must be delivered to their Serjeant: To which it was replied, he might be in Custody of the Serjeant without his Mace. And another said, the Mace ought to lie upon the Table: For never any Bill was read, but when the Mace was on the Table.

Others observed, that when the Lord Torrington was brought Prisoner from the Tower; and the House, upon account of his Quality, did not order him to the Bar; the Mace was upon the Table, while he was in the House; and he gave an Account of his Conduct, and every Member was at liberty to ask him what Question he pleas'd: And another Member said, if the Mace was not upon the Table, their Mouths were muzzled: They were not in the Nature of Judges; and should they pass a Vote, that the Judges should ask no Questions? Would they act in their highest Capacity without being a House? adding, that when the Duke of Leeds appeared there, the Mace was upon the Table.

To this it was answered, That though when the Mace was carried from the Table, no Member had the liberty to speak

Speak; yet any Member had the liberty to desire, that the Counsel and the Prisoner withdraw; and then the Mace might be brought to the Table.

Anno 3 W. III.  
1696.

At length, the Question being put, it passed, that the Mace should stand by Sir John Fenwick at the Bar.

It was resolved also, that the Bill should be read to Sir John in the House, though the Mace was off the Table: But then that it should be read again after Sir John was withdrawn, when the Mace was upon the Table before the Question was put.

Then Sir John Fenwick was brought in, and the Serjeant took him to the Bar; where he stood by him with his Mace: And Sir Thomas Powis and Sir Bartholomew Shower, were admitted as Counsel for Sir John; and Mr. Serjeant Gould, and Mr. Recorder Lovel, appeared as Counsel for the Bill.

The Counsel  
on both Sides.

Mr. Speaker then acquainted Sir John, that the House had ordered a Bill to be brought in, to attain him of High-Treason; which had been once read; and to which they permitted him to make his Defence by his Counsel, before it was read a second Time: But they must not permit his Counsel to dispute the Power of Parliaments to pass Bills of Attainder, whenever they saw fit. After which the Bill was read, being of the following Tenor:

That whereas Sir John Fenwick, Bart. had been indicted for High-Treason, on the Oaths of George Porter and Cardel Goodman, for compassing the King's Death, and adhering to his Enemies: And whereas the said Sir John had procured his Trial to be put off from time to time, on Pretence of making a full Discovery of the Conspiracy against his Majesty; and, instead thereof, had contrived several false and scandalous Accusations; reflecting on some Peers and Members of the Commons, with an Intent to undermine the Government, and create Jealousies between the King and his Subjects: And whereas the said Cardel Goodman, one of the Witnesses against the said Sir John, was in the mean time withdrawn, so that his Evidence could not now be had: It was therefore enacted, that the said Sir John Fenwick should be convicted and attainted of High-Treason.

The Bill read to  
Sir John.

After the reading the Bill, Mr. Serjeant Gould opened the Charge and the Evidence; but for the Pleadings on each side, we must refer the Reader to the State-Trials.

Mr. Serjeant  
Gould opens  
the Charge and  
the Evidence.

Sir John and the Counsel on both sides, being withdrawn, a Debate arose, whether Sir John should be allowed further time to produce his Witnesses? which was thus opened by Sir Thomas Littleton.

Mr. Speaker, the Counsel could not think that the Bill should set forth, that Sir John Fenwick was indicted, but that the House would know by what Means. And that

A Debate there-  
upon.

TOME III.

E

Sir Thomas  
Littleton.

Anno 8 W. III.  
1696.

Goodman was gone away, and we should not enquire by what Means. What are the Objections made by the Counsel to the Bill? Say they, we are ready to give Reasons against the Bill: They do not say downright against your Jurisdiction; but that they are ready to shew you, it is not reasonable in this Case, as Circumstances stand, to pass this Bill: Sir John's Petition was to be heard downright against the Bill. If that was your Intention, to hear him to that only, I conceive you would not have worded your Answer as you did: You ordered him Counsel to make his Defence; and, at the same Time, ordered the King's Counsel to produce the Evidence: How could they understand it, but to make a Defence to the Evidence? it may be they have a mind to another Fee: Whether you will think fit in the Circumstances you stand, to give them further time, I do not know; but the Circumstances of the Kingdom, and the King's Life, must be considered as well as Sir John Fenwick? What is the Meaning that they are not prepared? I suppose it is to have a Pretence for further time: But I think your Order is so plainly worded, that they could not mistake it.

Mr. Cowper, 'The Counsel for Sir John Fenwick say, we come prepared to make a Defence to every thing charged in the Preamble of the Bill; but what is not charged, we do not come prepared to make a Defence to. Now they conceive the Fact of High-Treason is not charged upon him by the Bill; and, if that be true, it is of great Weight; but as it is, 'tis none: For first, it is plain, the Preamble recites, that he was indicted for High-Treason by the Grand Jury, that is a Charge of High-Treason within the Bill: For it says, he was charged by the Oaths of his Country, upon the Oaths of two Witnesses; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, can any one think, that sits here as a private Judge, that the High-Treason thus recited, as found by the Grand Jury, is no Part of the Charge? the very Nature of the Bill speaks: For could any one think, you would ground a Bill of Attainder upon a Suggestion, that he, being indicted of High-Treason, had spirited away one of the Witnesses, or given a false Information? So that this is trifling with the House, with Submission.'

Sir Richard Temple, 'Can any body say any thing of the Intention of the House, when it is reduced into a Bill? Is it not the Bill he is to make his Defence to? And the Gentleman who spoke last, says, That no body could think otherwise: Why Sir, no body is to think otherwise than as the Bill states it.

Now the Thing before you is, Whether upon the Suggestions in this Bill, it is fit for you to pass it? The Case  
of



of Mortimer was, That he had made his Escape, being under an Indictment of High-Treason, and it came before the House, Whether upon the Statute of 25 Edw. III. it was High-Treason? but they did not debate the Fact. Now you have brought a Bill here; and all the ground is, That he was indicted for High-Treason; had thus and thus prevaricated and delayed his Trial upon Promises of Confession; and in conclusion, one of the Witnesses is withdrawn. Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any thing but what is suggested in the Bill. If you had put the Issue upon the Guilt of Sir John Fenwick, he must have had a fair Trial in some Place, and that he cannot have here upon Oath; for upon all Bills of Attainder hitherto, they have had a fair Trial above, (in the House of Peers.)

Anno 8 W. III.  
1696.

Mr. Hooper, 'The Question is, whether or no there be a sufficient Guilt laid to this Man's Charge? For in all Courts of Judicature, this is a certain Rule, you must proceed *secundum allegata & probata*; and you shall not go about to prove a thing unless it be alledged. Now the Question is, whether this thing be alledged in the whole Bill, that Sir John Fenwick is guilty of High-Treason? and if not, you will not go about to prove what is not alledged. 'Tis true, it is alledged that a Bill hath been found; but several have been indicted who have been acquitted. It is possible the Prisoner at the Bar may be guilty; but I think we must observe that Method here, that is observed every where else; and that is, not to go about to prove any thing that is not alledged.

Mr. Sloane, 'I will allow the Bill might have been drawn better, and that a bare Indictment is not a sufficient Ground of itself for a final Decision of this Matter: But when, at the time of finding the Indictment, there were two Witnesses, and one of them is withdrawn, and, as is supposed, by his Means; if the Bill seems imperfect for any thing before you now, you will not stay all Proceedings upon it; but if you see it imperfect, and it may be amended, you will amend it at the Committee. I think, the Favour you have given is abused, and that it is perfect trifling from the Bar: In one Breath they say, they could not get ready, for they had no Notice till last Night; and in the next they say, they will go on to every thing, but his being guilty; and I believe they never will be prepared for that.'

Mr. Attorney-General, 'Sir, I am very unwilling to speak any thing in this Matter; because, Sir, by the Place I have the Honour to serve his Majesty in, as one of his Counsel, if it was in the Courts below, I must prosecute on the Behalf of the King: But, I am very sensible, while I am in

Ann 2. W. III.

1696.



this House, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in relation to the Matter that hath been objected, that the Bill does not expressly affirm, that Sir John Fenwick was guilty of High-Treason, but only that he was indicted for it: Truly, I thought, and do still, with humble Submission to the House, That that Matter of affirming him to be guilty of High-Treason, was not to be inserted in the Bill; for that will be the Consequence of your Judgment and Opinion upon hearing of the Evidence. That worthy Member that spake last, said, the Bill might be better drawn: I am sorry we had not his Assistance in it; but, with Submission to his Understanding, I think that had been too much Presumption, till you are satisfied whether he was guilty or no: We could only go so far as to set forth the Faults that we know; as, that he was indicted, that we can verify, and cannot take this to be like the Case of an Indictment; for there you must affirm such and such things that cannot be altered afterwards; but a Bill in Parliament hath many Steps, you read it several times, and commit it; so that you alter the Suggestions of the Bill as the Case appears to you to be verified; and if you be of Opinion that he is not guilty, you will not condemn him because he is indicted: However, that is not immaterial, but proper to be set forth for a Ground of your Proceedings, that there was a Probability of his being guilty from that Accusation: Therefore, Sir, I confess, I cannot think that those Gentlemen, that are of Counsel for Sir John Fenwick, could think that you did intend to proceed otherwise than to hear Counsel as to the Fact; they could not think that, upon Proof of his being indicted, that would be Ground enough for you to proceed to pass the Bill; for how could any body think, but you would come to examine the Fact? I cannot see how they should come to mistake, unless it was wilfully.

Colonel Granville: Sir, the Counsel (by what I observed from them) have started two Difficulties, and really (to me) both seem very material: The First is, whether the King's Counsel shall be at liberty to prove any thing that is not suggested in the Bill; the other is, whether Sir John Fenwick had due Notice to make his Defence.

The first is a Matter of very great Moment: You are proceeding upon a Bill, where not only the Life of Sir John Fenwick, but the Life of every Man in England, is in some measure concerned: When a Precedent is made in this Case, no body knows who may be affected or hurt by it; and therefore I desire you will settle that Matter, and have the Judgment of the House, whether they will admit the Counsel to prove

prove any thing that is not suggested in the Bill: If you will, I do not see how any Man that stands at the Bar of your House can be prepared to make his Defence; for there shall be one Crime alledged in the Bill, and when he comes to the Bar, the Counsel that are to prosecute, shall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he stares and looks round him, and you had as good allow him no Counsel or Copy of the Bill. This you thought so necessary for every Man, that was to come upon his Trial for his Life, for Treason, that you altered that Trial, and declared, no Man should have any Treason proved against him, that is not alledged against him in the Indictment.

Anno 8 W. HA.

1696.

‘ We have had great Complaints of Westminster-Hall, and if the Parliament should proceed in this manner, may have the same again: If they are too rash in their Proceedings, they will be countenanced mightily in them, if you should proceed against a Man, and condemn him for one thing when he is accused of another. I desire to know how we can proceed in a Bill, upon which Sir John Fenwick is to be proved guilty, and he hath no opportunity to answer it? I take it, as this Bill is drawn, Sir John Fenwick’s Guilt is no way concerned in it: For, whereas the worthy Gentlemen tell you, the Treason is specified, there is no Treason specified, otherwise than he is indicted for it.’

Mr. Whitaker, ‘ As to the Exceptions made to the Insufficiency of the Bill, by which they pretend Sir John Fenwick was led into an Error, so that he had no due notice; I must needs say, if they had been in Westminster-Hall, they would have been in the right: But this House is not bound to those Forms; for, I believe, the enacting Clause would do the business of Sir John Fenwick well enough, if all the rest were laid aside; and I will consider it, with as much Tenderness and Conscience for the Prisoner at the Bar, as any that bring Arguments from Westminster-Hall: I would consider, whether such a Defence as they have made, that from the Bill (as to what is laid in it) he had not notice enough to prepare to make his Answer. They say, a Recital is no direct Affirmation: In Civil Matters, it is an Affirmation; for to say, Whereas such a one is bound, is good in a Declaration upon a Bond; now, I would know, Whether it be not enough to say, That he is indicted, without an Allegation that he is guilty? Had the Bill no Recital at all, it might have been necessary for them to have desired the opinion of the House, to what they should have answered; but here the Treason is specified in the Preamble of the Bill; and I agree, that the King’s

Counsel

Anno 8 W. III. Counsel ought not to give Evidence of any Treason that is not so specified.  
1696.

Sir Edward Seymour, addressing himself to speak on the other side, and observing a great many Lords in the Gallery, said, ' My Lords, and you Mr. Speaker, what hath been said by that worthy Person that spoke last, no doubt, is true ; That if there had been no more than the enacting Clause, it would have done Sir John Fenwick's Business with a Witness, or, rather without a Witness. But that is not the Question we are disputing here ; the Question is, Whether you will give Sir John Fenwick longer time to make his Defence to that Part he insists on, which is not contained in the Bill ? You are well satisfied, you cannot go through with the Suggestions to-night, and the Debates, and what relates to them ; and I find no Person against putting it off, but because it would be a Delay ; and, if it be no delay, that Reason is out of doors. They tell you the Counsel could not but take notice of the Matters suggested in the Indictment ; I cannot think that it is reasonably argued, because they do know the Practice and Method is such, that they can take notice of nothing but what is specified and contained in the Bill : and therefore, there being no Guilt charged on Sir John Fenwick in the Bill, it is reasonable they should come and accuse themselves here, or make a Defence to what is not charged ? No : But, say they, it is implied. This is an untrodden Path, and you ought to walk as securely in it as you can. 'Tis extraordinary that you bring Sir John Fenwick here to answer for Treason, when it is allowed, in the Suggestions of the Bill, you have but one Witness to that Treason ; and, when you take these extraordinary Steps, you should comply with him as much as you can in Forms : For if Treason be not Treason, unless it be proved by two Witnesses, and you will give him liberty to make his Defence, I think it no loss of time (for you cannot go through the Bill to-night) to see whether Sir John Fenwick be guilty of what is contained in the Indictment : And I will give you one reason, why he could not be prepared to make his Defence in so short a time, namely, because he could not produce his Evidence, if he had any ; and, if you give him longer time, I suppose you will think fit that Sir John Fenwick should give an account of what Witnesses he shall make use of for his Defence, and give him an Order for those Witnesses to attend\*.

Mr.

\* According to some Accounts, Sir Edward clos'd this Speech to this purpose : ' I am of the same opinion with the Roman, who, in the Case of Catiline, declar'd, he had rather ten guilty Persons should escape, than one innocent should suffer.'

Mr. Harley said, ' I find all Gentlemen that speak of this Subject, do say, that this Matter is of an extraordinary Nature, and you have entered into it by very extraordinary Methods : But I must observe, that this being the first Bill of this kind, that hath been brought into the House before any Proof, Gentlemen must be excused if they are cautious what steps they take; and when the Wisdom of the House hath thought fit to take quite different Methods as to the Preliminaries, it is not to be wondered at, if they meet with Difficulties in their Proceedings. Anno 8 W. III.  
1696.

' Some Gentlemen press for more time to be given Sir John Fenwick, to be prepared; and others urge, that you should declare whether the Counsel should be heard to any thing, but what is suggested in the Bill: And, I think, you must give a determination to the last Question, though the House agree to give him longer time; for if you give him longer time, it will afterwards come to the same Debate, Whether they shall be heard to any thing but what is suggested in the Bill? If you should think fit to add any thing, then it will be reasonable that he should be also heard to that; for in the Case of the Death of a Man, let him deserve never so much, yet he does not deserve to die unjustly by our hands. It seems a very plain Proposition, that when a Man is accused, he should not answer to what he is not charged with; and to charge it with Innuendo's and Implications is so uncertain, that I have always seen it denied in this House; so I hope, I shall not see so great an Assembly give countenance to it. They did tell you, they were prepared to speak to the Reasonableness of the Bill; but this matter not being suggested, they are not prepared to speak to it.'

This Debate continued till it was very late, and at length two Questions were, by the Direction of the House, put by Mr. Speaker.

1. That Sir John Fenwick be allowed further time to produce Witnesses in his Defence, against the Charge of High-Treason; and that he name his Witnesses.

2. That the Counsel, that manage the Evidence against Sir John Fenwick, be allowed to produce Witnesses, touching the Allegations in the Bill, and the Treasons whereof he stands indicted.

Both which being resolved in the Affirmative, Sir John Fenwick was called in again; and Mr. Speaker acquainted him, that the House was willing to give him till Monday next to make his Defence; and that if he gave in a List of

Resolved to give Sir John further time; but that Evidence might be given of the Treason in the Indictment.

*To which Lieutenant-General Mordant is said to have reply'd as follows: 'The worthy Member who spoke last seems to have forgot, that the Roman who made that Declaration was suspected of being a Conspirator himself.'*

his

Anno B W. III. his Witnesses, he might have his Warrant for their appearing at that time.

1696.

Sir John brought to the Bar again.

Porter's Evidence.

Debate on admitting Evidence that Lady Fenwick had tamper'd with the Witnesses.

The 15th, Sir John being brought to the Bar again, Mr. Serjeant Gould opened the Charge and the Evidence again, as before: After which (tho' objected to by the Prisoner's Council, and stiffly debated in the House) Captain Porter was called as a Witness for the King, and gave the same Evidence he had done at the Trials of the other Conspirators, of their meeting at the King's-head in Leadenhall-street, and at Mrs. Mountjoy's, at St. James's; at both which Places he affirmed Sir John was present, and agreed to send over Charnock to France, to invite over French Troops: and that Sir John and all the Company agreed, to raise two thousand Horse here, and join them on their Landing.

Then Mr. Serjeant Gould proceeding to ask Porter concerning the Lady Fenwick's and Clancy's tampering with him, which Sir John's Counsel opposed, as contrary to Law and the Practice of Courts; there being besides but one Precedent, on record of a Wife's being admitted an Evidence in her Husband's Case, viz. Lady Audley's; which had been looked upon as illegal ever since.

The Prisoner and the Counsel were ordered to withdraw, and the House entered upon the Debate, whether Evidence should be admitted of the Lady Fenwick's tampering with the Witnesses? and those who were for hearing this Evidence, observed, That if they were tied up by the Forms and Methods of inferior Courts, it was to no purpose to bring the Prisoner before the House; if he could have been convicted in the Courts below, there was no occasion for this Bill: That in the Courts of Common Law all Facts were tried by Juries, but here the whole House sat as Judges: A common Jury might be influenced by illegal or incompetent Evidence, which might not be fit, therefore, for them to hear; but in the Court of Chancery such Evidence was admitted every day; and the Reason was, that a Cause was dispatched sooner by hearing it than not: That here they ought to inform themselves by the best Lights they could get; and if it should appear Sir John employed his Lady to tamper with the Witnesses, it would have some weight with them.

On the other hand it was observed, That if the House was not governed by the Rules of inferior Courts, they ought to be guided, however, by that which was the ground of their Practice, namely, Reason and good Sense, and the common Rules of Equity: The House would not punish one Person for the Act of another. The Counsel for the Bill had not so much as opened, that Sir John was instrumental in the withdrawing of Goodman: and if the Lady Fenwick

Fenwick was concerned in it, this could only affect Sir John by way of Inference. But the Question being put, That Porter be examined to the Attempt of taking off his Testimony, it was resolved in the Affirmative.

Anno 8 W. III.  
1696.]

The House resolve to admit it.

Accordingly Porter was then examined, and declared, he had been offered 300 Guineas, &c. to go into France. One Mr. Roe likewise signify'd, that he had been offer'd 100*l.* a Year, to discredit Goodman's Testimony.

The Counsel for the Bill then mov'd for reading Goodman's Examination, taken before Mr. Secretary Vernon, Goodman himself not being in the Kingdom; but this was warmly oppos'd by the Council for the Prisoner, as what was not allowable in a Suit of five Shillings.

The Counsel and the Prisoner were then again order'd to withdraw, and a new Debate arose; on which Mr. Manley said, 'Every one that had look'd into the A B C of the Law, knew that Examinations before Justices were never read.' To which Mr. Sloan replied, 'I believe I may save a great deal of trouble in this matter; for those Gentlemen at the Bar that made the Objection, speak without Book, but I speak by Book, having my Lord Chief-Justice Hales's Pleas of the Crown in my hand: I think he was past his A B C of the Law; I know not how far this Gentleman is advanced in his Pleas of the Crown in that part, where he shews what is Evidence to the Petit-Jury; he says, first, By the Statute 1 & 2 Philip and Mary, c. 13. The Justice hath power to examine the Offender and Informer; and so he goes on in several Particulars, and then he says, These Examinations, if the Party be dead or absent, may be taken in Evidence.'

Debate on the  
reading Good-  
man's Exami-  
nation.

Another Member replied, 'That such Depositions were never given in Evidence in the worst of times; even at the Trial of the Lord Mordant, when Juries were refused, it would not be admitted; and they were tried by the Rules of Law, or they were tried by nothing.'

Another said, 'He should not look upon himself to be so tied up by the Rules of Law, but that he might hear all the Evidence that could be offered: If they could not have the two Witnesses, on whose Testimony the Bill was found, they would take such Evidence as they could get.' And one said, he had seen a Justice of Peace examined concerning the Depositions he had taken, and he took it to be ordinarily done.

On the other side, Mr. Harcourt observed, 'That if they were to collect all the Absurdities out of the Trials of the late Reigns, they would not find more than had been advanced by the Counsel for the Bill; and if those Depositions were Evidence, where the Witness was absent, there had

Anno 8 W. III. 1696. been no need of this extraordinary way of proceeding in Parliament. This Gentleman was seconded by Mr. Harley, who observed, 'That Bills of Attainder, and Judgments of Attainder, had been reversed, for no other reason, but because the Parliament had not proceeded by the Rules of Law; and if they were not bound by the Rules of Inferior Courts, yet they must by the Laws and Practice of Parliaments: and it was never known that this House ever admitted Affidavits as Evidence; for if they did, they must make this, which was a Superior Court, lame and defective, and to want the Assistance of an Inferior Court.'

'Here it is that the Boundaries are establish'd for the Laws and Liberties of Mankind, and this is an Observation that is found in History, that those that have broke their Bounds down, it hath return'd upon them to their Prejudice: Let us not out of Hatred or Zeal against a guilty Man, lose our own Innocence.'

It was replied by a Gentleman for the Bill, 'That though this might be Evidence in Felony, in a Court of Law, yet it could not be deemed Evidence there in Treason, because the Law required two living Witnesses in Treason; there was a Necessity therefore of resorting to the Parliament: But in Cases of Felony, where two Witnesses were not required, such Evidence was admitted frequently: The Lord Chief-Justice Hales's Opinion, also, was so, and that was grounded on an Act of Parliament.'

A Gentleman, who was against the Bill, thereupon observed, 'That if an Act of Parliament could be produced for it, the Debate was at an end; but if there was an Act positively against such Evidence, then he hoped they would reject it: That the Case in the Lord Chief-Justice Hales related only to Felony; He says, that Informations may be taken of the Person himself, (though not by the Common Law) by particular Acts of Parliament; and the Depositions of Witnesses might be admitted, but then the Party ought to be present; and if they would produce a Statute for an Authority, they must offer a Statute that was in Point: He thought it was of the last Consequence to admit Affidavits in that House.'

To this a Member for the Bill answered, 'There had been a Statute lately made, indeed, which required two living Witnesses in Treason; but in that very Statute it was provided, that Proceedings in Parliament should not be affected by it; and he was not for refusing any Evidence in this case, though never so small.' And a Gentleman observing on the other side, that an Affidavit was never read in case of an Impeachment, which very much resembled this:



A Member for the Bill took notice, ' That all the Cases which had been cited, were brought from inferior Courts, except the last, which related to the Usage in less considerable Cases: But a Bill of Attainder was an extraordinary thing, and never used but upon extraordinary Occasions: The Question here was only as to the Forms of their Proceedings; and the Law had entrusted the Parliament with a greater Power than they were now about to execute: They might declare that to be a Crime, which was deemed no Crime before it was committed; and surely they might determine what they would admit as Evidence of a Crime.' Another added, ' There was lodged in the Legislature, a Power to judge those Crimes that were sheltered from the Law; and he thought never any Attainder was brought in upon a juster Occasion than this: The Prisoner was not only in a Plot to bring in a foreign Power; but had given in a false and scandalous Information, to create a Distrust and Jealousy between the King and his People; and had trifled with the Government, and gained so much Time, that he had found an Opportunity to corrupt one of the Witnesses; and it would be hard if the Legislative Power could not reach him.'

Anno 8 W. III.  
1696.

It was replied by the other side, ' That though this House was not bound by the Rules of inferior Courts, they ought to give such Rules, and make such Precedents, as were fit for other Courts to imitate: That this might be a dangerous Precedent for future Parliaments to act by; For suppose the Information Sir John Fenwick had given in, should hereafter be produced as Evidence against any of those honourable Persons he had accused; and some Rascal in a future Reign should come in also against them, would it not be thought a great Hardship, and a Piece of Injustice, to make such a Paper to supply the Place of a second Witness; and pass a Bill to attainr them of High-Treason on such Evidence? Of what Consequence would this be?

But the Question being put, That the Information of Cordell Goodman, taken upon Oath, the 24th of April, 1695, should be read: It was carried in the Affirmative; Yeas 218, Noes 145.

Resolved that Goodman's Examination should be read.

Then the Prisoner and the Council were called in again; and the Information of Goodman, made before Mr. Secretary Vernon, was read; wherein he deposed, That there had been a Conspiracy to seize the Person of King William, and raise a Rebellion, for two Years then last past: In which he charged Sir John Fenwick with being a Principal, and brought several Circumstances to prove it.

The Tenor of it.

In support of this, two of the Grand-Jury declared to the House, that Goodman gave the like Evidence before them, which had induced them to find the Bill.

Annals of W. III.  
1696.

Debate on the  
Record of  
Cook's Con-  
viction,

A Motion being made to adjourn, it pass'd in the Negative, Yeas 141, Noes 163.

The Record at the Conviction of one Cook, another of the Plotters, was then offered, by the Council for the Bill: Goodman's Evidence, said they, in that Case, affecting Sir John Fenwick as much as Cook himself.

This gave rise to another Debate, and the House being clear'd in order thereto; a Gentleman, who was against the Bill, observed, 'That such Evidence had never been admitted in a Court of Law, or in that House; namely the Evidence that was given at the Trial of another, which Evidence was to be us'd against a Person who was not present, and had no Opportunity of defending himself against it.' Another Member demanded, 'If they were to read all the Trials for the Plot.' Whereupon it was demanded, by a Gentleman who was for the Bill, 'Why they admitted the Evidence Goodman had given to the Grand-Jury to be repeated? This was but the Evidence of what he had said to the Petit-Jury: If nothing but strict Proof was to be offered, this Bill had never been brought in; but they were to accept of such Proof as the Nature of the Thing would bear.'

To which the other side answered, 'If they had determin'd at first, that they would not expect legal Proof, they might have shortned their Debates pretty much.' Another said, 'They were put upon passing a Bill of Attainder against a Man, and were not allowed to talk of Proofs: If they had no Evidence for it, he was sure there was Evidence against it: For at Cook's Trial, two or three Witnesses had sworn, that Goodman was not at the Meeting at the King's-Head, where he swore he was.' Another Gentleman put them in mind, 'That a great many Judgments in the late Reign had been reversed, because they received such Evidence at those Trials, as was not legal Evidence; and that this Grievance was taken notice of in their Bill of Rights.'

To which it was replied, by a Gentleman for the Bill, 'That had Goodman sworn at that Trial, that Sir John Fenwick was not at the King's-Head, Sir John might have produced a Witness, to prove what he had sworn; and why might not the Evidence which made against him be proved?' Whereupon a Member, who was against the Bill, replied, 'It was one thing to produce a Record to convict or attain a Person, and another, when it was produced, to prove a Man perjured, or to invalidate his Testimony: For when Evidence was brought against a Prisoner, he had no way to lessen it, but by what was collateral: And where the Witness had given contrary Evidence at another Trial, or the Prisoner had been acquitted, Then the Record might be made

made use of against that Witness; but could never be made use of to convict or attain any Person. Anno 8 W. III.  
1696.

The other side said, 'They did agree, that neither the Conviction of Cook, nor any Evidence upon his Conviction, could be Evidence against Sir John Fenwick: But it was one of the Allegations in the Bill, That several Gentlemen were present at the Meeting at the King's Head, where Sir John Fenwick was charged to be; and they produced it to make good that Allegation.' And the Question being put, That the Record of the Conviction of Peter Cook be read, it passed in the Affirmative; Ayes 181, Noes 110; and accordingly that Record was read. Resolved to  
read the Re-  
cord of Cook's  
Conviction.

The next Thing the Council for the Bill proposed, was, to examine some of the Jury-men who served at Cook's Trial, and some other Witnesses, to prove what Goodman had sworn at that Trial; which the Council for the Prisoner opposing, they were all ordered to withdraw again. The Evidence  
of what Good-  
man swore at  
Cook's Trial  
offered.

Then a Member, who was against the Bill, said, 'He thought it had been admitted by the other side, in the former Debate, That no such Evidence ought to be admitted: But, if they were not to be guided by the Rules of Westminster-Hall, he was sure they ought not to seek a Way to the King's Favour, by attainting a Man of High-Treason, upon incompetent Evidence.' A Debate  
thereupon.

It was said on the other side, 'That it was every Day's Practice in Civil Cases, to hear what a Witness had said at another Trial between the same Parties, where a Witness was dead.' To which it was answered 'That in those Courts a Witness must swear true at his Peril; for if he did not, he might be punished for it: But here, if he takes away a Man's Life by what he says, what Remedy was there against him?'

Others said, 'If there was not another Place where the Witnesses would be sworn, they could not give their Consent to the passing this Bill, for the Witnesses for the Prisoner were not sworn: So that they could only give an Opinion upon the Probability of the Matter.'

Another Member against the Bill, said, 'He could not but take notice of what had been said by the other side, That they had done as much as this comes to already: This made him still more apprehensive, and to take care what he did now; since what the House did, had so quick an Operation, and they were already citing Precedents of that very Day, and still making one thing a Handle to draw on another.'

However, it was *Resolved* upon the Question, That the Council for the Bill should be allowed to examine Witnesses of what Goodman swore at the Trial of Cook; Ayes 180, Resolved to ex-  
amine the Wit-  
nesses of what  
Goodman swore  
at Cook's Trial.

Ann 8 W. III.  
1696.



Sir John's  
Letter to his  
Lady offered as  
Evidence; but  
rejected.

The Gentlemen  
charged by Sir  
John, move, he  
might prove the  
Charge.

180, Noes 102: And thereupon the Prisoner and the Council being called in again, two or three of the Jury-men at Cook's Trial were examined, as to what Goodman said at that Trial; and answered, That Goodman deposed, he was introduced into the Company of the Conspirators at the King's-Head, by Mr. Porter; and there Sir John Fenwick and the rest agreed to send Charnock to France, to procure Forces from thence; and another Person, who was present at Cook's Trial, testify'd the same: And it being demanded of the Witness, If any Exception was taken then to Goodman's Credit? he answered, It was objected that Goodman had been guilty of several Crimes; to which it was said, he had his Pardon, and was then a good Witness.

Then the Council for the Bill desired to read the Letter above mentioned to be written from Sir John Fenwick to his Lady from Romney, after he was apprehended: But Sir John's Council insisted, that this Case came short even of Colonel Sidney's; this Piece of Evidence was therefore void. And it being now very late, Sir John's Council were ordered to make their Observations on the Evidence for the Prisoner the next Morning: But were told, If they had any Witnesses to examine, they must produce them that Evening; for they could not hear Witnesses afterwards. To which Sir John's Council answering, They should call no Witnesses; but when they came to speak, they should give the House Satisfaction why they did not think it necessary to produce any; the Prisoner and his Council withdrew, and the House soon after broke up.

The 17th, Sir John Fenwick and the Council on both sides were called in again; and the Speaker directing the Council for Sir John to make their Observations on the Evidence that had been given; they did so; and were reply'd to by the Council for the Bill. After which, both Parties being withdrawn, Admiral Russel moved, that Sir John might be called in again, and asked, What Proof he had, that he (the Admiral) sent Captain Lloyd to France, and was guilty of the other Facts mentioned in the Paper he sent to the King?

Then Colonel Crawford for himself, Colonel Godfrey for the Lord Marlborough, Mr Bridges for the Duke of Shrewsbury, Mr Boscawen for the Lord Godolphin, and Colonel Granvill for the Lord Bath; desired Sir John might be asked, What Proof he could make of the Facts, he had charged them with respectively in the said Paper?

Another Member moved, That he should be asked in general, what Proof he had of the Particulars in that Paper? But at length it was agreed, that the Paper should not be produced; and that they should only ask him upon every

every Name in that Paper, in the Order they were mentioned there, What he knew of that Gentleman? And accordingly, Sir John and his Council were called in again, and Mr. Speaker demanded of him, What he knew of the Lord Godolphin? (being the first Person mentioned in the Paper.) To which Sir John answering, He hoped they would not put him upon answering any thing that might hurt himself, he was ordered to withdraw.

Anno 8 W. III.  
1696.

Sir John refuses to answer on that Head.

Then it was moved, That Mr. Vernon might give an Account of Sir John's Practices, to get his Trial put off from time to time, on pretence of making a Confession; this being one of the Allegations in the Bill, of which no Proof had been made: And it being agreed, that this ought to be done in the Presence of Sir John and the Council, they were called in again: And Mr. Vernon related, that the Lady Mary Fenwick had applied to him to get Sir John's Trial put off, on pretence of his making Discoveries; and that several of the Ministry had attended Sir John, on his Promises of making a full Confession: but that he had only amused them from time to time, till Goodman was gone.

Mr. Vernon relates the Endeavours used by Sir John to put off his Trial.

After which Mr. Speaker demanded of Sir John's Council, If they had any thing to observe upon that Head?

Sir Thomas Powis answered, He did not find there was any Degree of Treason in this Part of the Charge; and what Crime they would construe it, he could not tell: That it was usual for Persons, under an accusation, to endeavour to put off their Trial, on Account of the Absence of their Winesses, or for other Reasons: But this was no Crime; at least, not of the Nature the Bill charged.

The Observations of his Council upon it.

Sir Bartholomew Shower added, If Sir John had prevaricated, as they called it, he hoped that was far from making him guilty of High-Treason; and that if this was an Offence, it was so at Common-Law, and he might be punished for it by common Methods: And if it was no Offence, he hoped they would not make it an Offence by a new Law, so as to inflict the greatest Punishment for such an Artifice.

The Prisoner and Council being withdrawn, the Bill was read a second time, after which there was a profound Silence: Whereupon Mr. Speaker demanding, if he should put the Question of Commitment? a Debate arose, which was begun by Sir Thomas Dyke, who said, He hoped he would not put the Question of Commitment, till some Exception was made to the Bill; for he was sure it was as liable to Exceptions, as any Bill that had been brought in a great while.

A Debate on the second reading of the Bill.

To this it was replied, 'That the Parliament would never take a Cause from the ordinary Courts of Justice, or attain a Person of High Treason, unless in extraordinary Cases: But here, it appeared, they had been deprived of the Evidence

Arguments for the Bill.

Anno 8 W. III.  
1696.



dence that was necessary in Inferiour Courts; and, in such a Case, it was usual for the Parliament to interpose: For the Parliament were not bound down by what was called legal Evidence; but might make use of any Information that could give them any Light into the Matter: They were Judges of their own Methods, and could pass a Judgment on Sir John Fenwick's Guilt, from the Circumstances before them; and were not tied down by the Rules of Westminster-Hall: That this Power indeed had been seldom exerted, but where the Party was withdrawn from Justice, and could not be come at in the ordinary Course: But this was a parallel Case; they could not come at Justice in the ordinary Course, their Witness having been tampered with and withdrawn; and therefore, from what was admitted on the other Side, the Parliament ought to exert their Power, when the Offender could not be come at otherwise. This Case was proper to be brought before the Parliament, which was vested with a discretionary Power, to do whatever they apprehended for the Good of the Kingdom; and this they looked upon as a fit Occasion to exert that Authority: That, indeed, this Power was like Thunder in the hands of Providence, not to be used but upon extraordinary Occasions; and then it never ought to fail of doing Execution: For Men would trifle and contemn that Power which was not able effectually to exert itself. Some Gentlemen were afraid of making an ill Precedent; but it was for that very Reason others were for passing the Bill: For as the Law stood, he was but a bungling Politician, that could not ruin the Government, and yet not come within the Bill of Treason to be hanged for it: And therefore, for the keeping Ministers of State in awe, and that the Parliament might have it in their power to punish such Offenders as they saw fit, as well as the Prisoner, they were for the Bill.

It had been objected indeed, that Sir John Fenwick's Life was not of that Consequence as some pretended: He was not so considerable, that his Escape could bring any Danger to the Public. But it was a very just Observation, that if a Plot was discovered, and not thoroughly prosecuted, it would strengthen and grow upon the Administration; and it was ten to one, but the Government was subverted by the Conspirators in the end. That no one could imagine, that Sir William Perkins, Sir John Friend, and the rest that had been discovered, were the only Persons concerned in this Conspiracy; there must be much greater Men concerned in it: And when they saw such a Struggle to get People out of Jail, and send them out of the Way, they must suppose there was something extraordinary still to be done: And they would not have Men think to secure themselves by bribing  
and

and tempering with the Witnesses. It was notorious that Parties were forming for King James; Persons were plotting in every Part of the Kingdom, and an open Invasion threatened: And, if this was not a time to exert their extraordinary Power, when would it be a proper time?—Others observed, that if the Laws of God and Nature required, that no Man should be put to death without two Witnesses, it was strange that all Christian Nations were not governed by such Laws: But in Fact, no two Nations agreed in their Manner of Proof; and we differed from all other Nations, in bringing the Witnesses and the Prisoner Face to Face; and requiring two Witnesses in Cases of Treason: Nor did we ourselves, require the same Proof in some Cases as we did in others; for one Witness was sufficient in Felony: And before the Statute of Edward VI. any Evidence was sufficient, even in Treason, which was sufficient to incline the Jury to give a Verdict: And for the Treason of Coining, such Evidence was still sufficient. That if this Precedent had been made in the Case of an innocent Person, or even where the Fact was doubtful, by a prevailing Party, it had been an ill Precedent: But it being made for a Man that was notoriously guilty, and one who deserved this extraordinary Resentment of the Nation; and who would have been brought to Justice in the ordinary Manner, if he had not eluded it, and made it impracticable; they thought, if it should appear, that the Nation would not be put off so, but make an Example of him, Posterity would applaud and thank them for it. They did not however condemn him, because he had protracted his Trial; but because he had been guilty of High-Treason, the worst of Treasons; which would have been proved against him in the ordinary Way of Proceedings, if he had not pretended to make Discoveries, and by that Means put off his Trial till a Witness was gone; and when he found himself out of the ordinary Reach of Justice, set the Justice of his Country in defiance: And if these were not sufficient Reasons to put him to death, yet they were sufficient to justify their Proceedings against him in this Manner. And notwithstanding Sir John was represented as too inconsiderable to endanger the Government; it appeared he was to have been a General, and was acquainted with a great many Officers: That he had not made an Atonement to his injured Country, as he ought to have done, by an ingenuous Confession; and unless they proceeded steadily against him, they should have none of the Discoveries they expected. Not that they would hang a Man because he would not confess; but, because he had been guilty of the deepest Treason, and aggravated his Offence in that Manner, he deserved to die; unless he would merit his Life by a Discovery of what he knew.

Anno 8 W. III.  
1696.

Anno 8. W. III.  
1696.

Arguments  
against the Bill.

On the other hand, the Gentlemen who argued against the Bill, insisted, ' That the Person they intended to condemn by this Bill was forthcoming: He had been indicted, had pleaded, and was ready to undergo his Trial in the ordinary Courts of Justice: That the meanest Subject was entitled to a Trial by Jury: Even the Regicides who actually murdered the King, and did not fly, were admitted to a Trial in the ordinary Courts of Justice, though a Bill of Attainder passed against the rest: And it must be thought strange, that the same Parliament, which passed an Act requiring two Witnesses in Treason, should pass an Act to put a Man to death without one legal Witness, and without allowing him any Trial at all. If Mr. St. John's Position in Lord Strafford's Case was admitted, (*viz.*) That a subsequent Law might be made, to take away a Man's Life, without any Evidence, other than the private Opinion or Conscience of every particular Law-maker; then no Man was safe. In the Lord Strafford's Case, the Proceedings were first by Impeachment: The Witnesses had been examined upon Oath in the House of Peers: and the Bill of Attainder recited, that the Facts had been fully proved. But for a Bill to begin originally in the House of Commons; and Judgment to be given there to deprive a Man of his Life, and all that was valuable, without the Sanction of an Oath, was extremely hard.—— That Bishop Burnet, in his History of the Reformation, had observed, that such Bills could not be enough condemned; for that they were a Breach of the most sacred and unalterable Rules of Justice. Had the Government been in danger from the Prisoner, indeed ordinary Rules might have been dispensed with: But this being for an Offence committed a Year before, the Persons executed who were concerned in it, and all the Danger over, there could be no manner of Reason for resorting to their Legislative Power to punish this Man: The most that could be thought reasonable in this Case, would be, to enact, that Goodman's Evidence, the Witness who was fled, should be read at his Trial: They could not condemn the Prisoner, and thereby put him in a worse Condition than if Goodman was here; for then he would have had a Trial by a Jury, the Benefit of his Challenges, the Witnesses sworn, and might have made his Exceptions to their Testimony; all which he was deprived of here: That the Parliament had Power to make such a Law, was admitted; but they thought it ought not to be used but upon extraordinary Occasions, when the Offenders were so big, that they could not otherwise be brought to Justice; or where the Crimes did not fall under the Denomination of the Common Law, which was not the present Case: That there was not one Precedent for attainting a Person who was in Custody and forthcoming; but what had been universally branded: They



They were rather Reproaches to the ill Reigns they were made in, and to be marked out as Rocks to be avoided, than Patterns to be imitated: That though it was true they were not tied up by the Rules of Westminster-Hall, yet what was Reason and Justice in Westminster-Hall was so every where else; and so far as those Rules were founded on Reason and Justice, they ought to be imitated: That they had indeed made a Law to prevent People's being executed by an Arbitrary Power, and in an unlawful Manner in Westminster-Hall; but if they made this Example, the Subject might be perpetually executed here, and would be never the safer for the Bill of Treasons: That after this Precedent, every Man would be in danger of being proceeded against in like manner; and we might see Parties hang one another by Turns, with great Violence. Some Gentlemen indeed had said, they did not aim at the Prisoner's Blood, but at his Confession; and so he was to be racked to Death from one reading of the Bill to another, and possibly might come to be hanged at last, not for High-Treason, but for not confessing it. As to the Safety of the Government, which was pretended they did not see how the Safety of the Government depended, upon his Life; or that it would be a Penny the worse if the Bill did not pass: The Preamble to the Bill for attainting the Duke of Monmouth gave a substantial Reason for it, that he was in Arms and could not be brought to Justice, which implied that if he could have been brought to Justice, they would not have attainted him: They did admit indeed, where the Government was at stake, and nothing could preserve the Kingdom but breaking through the settled Forms, there the Government might, and in all such Cases would, break through them, whatsoever Rules were prescribed; but they did not think Sir John Fenwick's living or dying of that Consequence as the passing this Bill of Attainder was. As to the Allegation of his having protracted his Trial, it was natural, and what every body in such Circumstances attempted, and could not be a sufficient Ground to attaint him: And as to his being instrumental in withdrawing the Evidence, this was neither proved, or so much as suggested in the Bill; and if it had, did not demand so severe a Punishment, any more than his having aspersed some great Men, as the Bill charged: That it was true, he had charged some Gentlemen, and it was very hard they should sit as Judges on the Person who accused them, and endeavoured to baffle his Evidence, by cramming a Bill of Attainder down his Throat: And there were other Gentlemen in the House, who were the King's Counsel and Prosecutors; and it was hardly agreeable to Justice, that these should sit in Judgment on the Prisoner: That High-Treason indeed was

Anno 8 W. III.  
1696.

a great Crime, but what was there in this Case to make it differ so much from other Treasons, that they must proceed in this extraordinary manner? He had aspersed great Men, he had prevaricated with the Government, and protracted his Trial till a Witness was withdrawn: But if these Reasons were sufficient to induce them to have recourse to a Bill of Attainder, then whenever there should be but one Witness for the future, by virtue of this Precedent, the Legislature must interpose, and a Bill of Attainder be brought in. True it was, this might sufficiently convince Men that they could never be safe, how artful soever they were in practising against the Government: But then, what Security to the Subject were all the Laws made for regulating Trials in Cases of Treason? If when there was but one Witness, and perhaps not one, the Person accused might be taken out of the ordinary Courts of Justice and condemned to die, because common Fame had declared him guilty: And if Goodman's Paper, who was withdrawn, was to be admitted as an Evidence before the House, the Consequence of that would be, that, if a Minister of State could hereafter get an Examination sworn before a Justice of Peace, and then send the Witness away, a Bill of Attainder might be clapped on the Back of the Party accused, and this should be deemed sufficient Evidence to destroy him: If after this Precedent, forty Men should be taken up for a Plot, and there should be two Witnesses against twenty of them, and one against the other twenty, then a Bill of Attainder must be brought in to condemn the latter without legal Evidence: And if this was to be the Method of proceeding for the future, Men would be more unsafe than they were before the Acts of Treason were made, inasmuch as Parliaments were as liable to be influenced as Juries, and their Power as irresistible.

‘ That most of the Attainders which had been produced as Precedents had been reversed; because the Persons condemned had not had the Benefit of the Law, and if that was a good Reason for reversing such Attainders, it was a good Reason also why they should not proceed by Attainder: And to tell them the Government was in Danger, and that the Fate of England and Europe depended on this Bill, was certainly offered, rather to amuse than convince them; it was impossible the Government could be in Danger from one they had in their power, and might restrain him of his Liberty for Life, and whose Estate and Interest were so inconsiderable. It was strange, the Government could not support itself without taking away the Life of such a one, contrary to the Rules of Law.

These Debates having continued till Eleven at night, the Question was put, That the Bill be committed, which passed  
in

The Bill pass'd  
on the second  
reading, with  
an Amendment,

in the Affirmative, Ayes 182, Noes 128 : But the Committee made an Amendment, by adding the following Words to the Bill, *viz.* of which Treason Sir John Fenwick is guilty.

Anno 8 W. III.  
1696.

The 23d, the Question was put for the second reading of a Bill for farther regulating Elections of Members. (Against which, the principal Cities had petition'd, as calculated to incapacitate several Persons for want of Estates in Land from being elected.) It pass'd in the Affirmative, Yeas 50. Noes 43.

Divisions on a  
Bill for further  
regulating  
Elections.

The Question being put, that the Bill be committed, it pass'd in the Affirmative, Yeas 79. Noes 64.

The same Day Mr. Norris, from the Committee of the whole House, reported the Amendments made to the Bill to attain Sir John Fenwick, which were agreed to; and the Question being put, that the said Bill and Amendments be ingrossed; it passed in the Affirmative, Yeas 125. Noes 88.

The Bill to at-  
tain Sir John  
Fenwick order'd  
to be ingross'd.

The 24th, the Bill for remedying the ill State of the Coin was pass'd.

The Coin-Bill  
pass'd.

The same Day, Mr. Blathwaite presented the Report of the Committee appointed to inspect the Trade of this Kingdom; in which the Dearthness of Labour, the Exportation of Wool, (properly called the selling the Trade instead of the Commodities of the Kingdom,) the importing prohibited Goods, by Smugglers, the pernicious Art of Stock-jobbing, and the Neglect of our Fisheries, are made appear to be the principal Reasons, why the Commonwealth was not in so flourishing a State as might be both expected and attained.

Report of the  
Committee ap-  
pointed to in-  
spect the State  
of Trade.

In the said Report the Trade of the Plantations, in particular, Sugars, Tobacco, and Naval-Stores, were, in a particular manner, recommended to the Consideration of Parliament.

The same Day, likewise, Mr. Chancellor of the Exchequer, according to Order, presented to the House an Account how the 2,564,000l. designed to be raised by a Duty on Salt, Glass, and Tobacco-Pipes, came to fail; the Account of which was, that after all manner of Expedients had been proposed by the Commissioners (for taking Subscriptions to the National Land-Bank,) to render their Project palatable to the Public, the Books were open'd at Exeter-Change, June 5. when the Lords of the Treasury subscribed 5000l. on the King's behalf: That 2100l. more was all subscribed, between that and the Expiration of the Term limited by the Act for taking the said Subscriptions. And that the said Commissioners ascribed the Cause of their ill Success to be the large Interest allow'd upon all Securities both public and private, at the same time that they were limited to 5 *per Cent.*

Report of the  
Miscarriage of  
the Land-Bank.

The

Anno 8 W. III.  
1696.

Mr. Methuin.

The 25th, the Bill against Sir John Fenwick was read a third time, and \* several Speeches were made for and against it; the Substance of which is contain'd in the two following.

' Mr. Methuin, Mr. Speaker, I have not troubled you in any of those long Debates you have had on this Occasion, and do it unwillingly now; but I do think it every Man's Duty, in a Case of this great importance, freely to own his Opinion, and give his Reasons for it.

' The greatest Part of the Debate hath run upon two things: On the one side; the Inconveniency of Bills of Attainder, or at least the having them too frequent: On the other side, that it is necessary to have them sometimes, that no Persons might think they were out of reach, if they could evade the Laws that were made to punish ordinary Offenders.

' I think both these Points too general, and that this Bill (as every other) ought to have its fate upon the particular Circumstances of the Case before you; and whoever gives his Affirmative to this Bill, ought to be convinced that Sir John Fenwick is guilty of High-Treason; and also that there are extraordinary Reasons why the Nation does prosecute him in so extraordinary a Manner: And I do think neither of these is sufficient alone.

' If between the Indictment and Arraignment or Trial, Goodman should have died, and there had been no other reason for attainting Sir John Fenwick, but only the want of his Evidence; I should not have thought it a sufficient reason, though we should have an Opportunity of being informed of his particular Evidence, and believed him guilty: And if Sir John Fenwick does not appear guilty, I do not think any Reason of State can justify this Bill, though he hath prevaricated and behaved himself to the Dissatisfaction of every body; therefore I think, there must be both these.

' You have heard the Evidence, and I shall not repeat it, but rather come to those things that distinguish Sir John Fenwick's Case; only this, you have received the Evidence against Sir John Fenwick, and given him liberty to make his defence, and have fully heard him; which, I think, hath altered the reason of a great many Precedents, cited from my Lord Coke and other Authors.

' That which distinguishes this Case, is, the great danger the Nation was in from this Conspiracy, and the Sense the Nation hath had of it; and I find, by the general Opinion of all Persons, this danger is not thought yet at an end.

' There seems likewise to be an Opinion as general, that Sir John Fenwick could have contributed to your safety by a discovery.

' The

\* For the Speeches at large on this critical Case, see the State-Trials.

‘ The next Circumstance is, that Sir John Fenwick, knowing this and the expectations the Nation had from him, that he could have contributed to your safety, hath made use of that to put off his Trial; and, at last, has made such a Paper, as does shew an inclination to do you all the prejudice he can; by pretending to create new dangers; and by this means Sir John Fenwick, against whom there were two Witnesses when he was indicted, hath delayed his Trial, so that now there is but one; and there is a violent presumption that this Person is withdrawn by the practice of Sir John Fenwick’s friends.

Anno 8 W. III.  
1696.

‘ There remains yet with me as great a Consideration as any of these; the public Resentment of the Nation for such his behaviour, is the only Means his practice has left you to prevent the danger that yet remains; and it seems necessary for your safety, to take the next best way, to that he could have led you to by his discovery. Against the Evidence that hath been given, there have been great Doubts raised, not so much whether it be such Evidence as ought to incline us to believe him guilty: But whether it be such as you should hear in the capacity you are in; and after it is found such as it is, that is to say, not such as would convict him upon another Trial, whether you ought to credit it, and that it should influence you to give your Vote for this Bill of Attainder? This is a doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I desire leave to speak to that particular.

‘ ’Tis said, that you are trying Sir John Fenwick, that you are Judges, and that you are both Judges, and Jury, and that you are obliged to proceed according to the same Rules, though not the Methods of Westminster-Hall, *secundum allegata & probata*.

‘ But the State of the Matter, as it appears to me, is, that you are here in your Legislative Power, making a new Law for the Attainting of Sir John Fenwick, and for exempting his particular Case from being tried in those Courts of Judicature, and by those Rules which you have appointed for the Trial of other Causes, and trying of it yourselves (if you will use that Word, though improperly) in which Case the Methods differ from what the Laws made by yourselves require in other Cases; for this is never to be a Law for any other.

‘ Methinks this being the State of the Case, it quite puts us out of the Method of Trials, and all the Laws that are for limiting Rules for Evidence at Trials in Westminster-Hall, and other Judicatures; for it must be agreed, the same Rules of Evidence must be observed in another Place,

as

Anno 8 W. III. as well as Westminster-Hall, I mean in Impeachments; and  
1696. it has always been so taken.

‘ The Notion of two Witnesses being necessary, has so much gained upon some Gentlemen, that we have had it said, that this is required by the Law of Nature, the universal Law of Nations; nay, by the eternal Law of God, and I think, if it was so, there would be no doubt but it would oblige us.

‘ And therefore to go to the bottom of the Matter: That any Man deserves to be punished, is because he is criminal: That this or that Man deserves it, is because he is guilty of a Crime, let his Crime be made evident any way whatsoever: For whatsoever makes the Truth evident, is, and is accounted in all Laws to be Evidence.

‘ Now, the Rules for examining whether any Person is guilty, or not, and the Evidence that is allowed as sufficient, is different in all Nations: No two Nations agree in the same Evidence for the Trial of Criminals, nor in the Manner of giving the Evidence against them.

‘ Your Trials differ from all other Nations, not only that you are tried by a Jury, which is particular to you, but that the Witnesses are to be produced Face to Face before the Offender; and you have made Laws, that there shall be two Witnesses in case of High-Treason; and herein you are the Envy of all other Nations.

‘ Sir, the Evidence that is to be given against Criminals, differs in the same Nation, when the Offence differs; there is a Difference between the Evidence that will convict a Man of Felony, and the Evidence that is to convict a Man of Treason; and the Evidence to convict a Man for the same Crime, hath been different in the same Nation at different times. No doubt, by the Canon-Law of England, that Evidence was sufficient to convict a Man of any Crime, which was sufficient to make the Jury believe the Person guilty. Thus before the Statute of Edw. VI. a Man might be convicted of Treason by one Witness; though that Statute was made upon great reason, and appears to be for the Public Good, by the general Approbation it hath received; yet I don’t think in your Proceedings here you are bound by it.

‘ But Sir, it is said, shall we that are the supreme Authority, (as we are part of it) go upon less Evidence to satisfy ourselves of Sir John Fenwick’s Guilt, than other Courts? And shall we resort to this extraordinary way in this Case?

‘ Truly, if it shake the Manner of Trials below, I should be very unwilling to do it; but I do take it clearly, that it cannot make the least Alteration in the Proceedings of any Court; but on the contrary, I think there is no stronger Argument

guments for your resorting to this extraordinary Way, than that of the Care and Caution with which your Law hath provided for Defence of the Innocent. For if we consider all those Laws that have been made for that Purpose, 'tis plain it must have been in the View of our Ancestors, that many Criminals might by this means escape. Your Laws are made for your ordinary Trials, and for those things that happen usually; and there is no Government we know in the World, where there is not Resort to extraordinary Power, in Cases that require it. Your Government indeed hath this Advantage, that you can keep to Rules which others cannot: For in a very wise Government (as was observed by a Person that was in this House the last time this was debated) all the Ways of punishing Crimes of this nature, are extraordinary. Persons are condemned there, not only unheard, but they are condemned before they are accused, and that is thought necessary there, which will not be endured here: And yet that Government hath continued so many hundred Years, and no endeavours have been made to alter it, though so many noble Families have suffered by it; because they are convinced, as to their Constitution, 'tis necessary.

Anno 8 W. III.  
1696.

'The next Argument is from the Precedent you are about to make; and you have been told, whatever the other Precedents have been, what you do now will be a Precedent for you and your Posterity: And whilst the Argument is used only to make you cautious, and to make you consider well, whether it is according to your Duty to your Country to pass this Bill, (which no doubt is the only Question before you) 'tis a good Argument.

'Sir, if this Precedent shall appear to Posterity to be a Precedent of an innocent Man, or a Person whose Guilt was doubted of, or one whose Guilt did plainly not appear, and this Bill should be carried by a prevailing Party, I do agree it were a very ill Precedent: But if the Case be, that this Precedent will appear to Posterity upon the Truth of the thing, to be a Precedent made of a Man notoriously guilty, of a Man that had deserved this extraordinary Way of Proceeding, and this general Resentment of the Nation, and that nothing could have hinder'd this Man from the common Justice of the Nation, but his having endeavoured to elude it in this Matter; and if it appears that you would not be put off so, but that your Indignation made an Example of this Man, I shall not be sorry it should appear to Posterity; but I believe Posterity will (as I think they ought) thank you for it.

'Sir, I do say for my own Particular, while I am innocent, I should not think my Life in Danger to be judged by 400

Anno 8 W. III.  
1696.

English Gentlemen, and the Peerage of England, with the Royal Assent: And, when I reflect, I cannot be of Opinion, that the Government could have procured a Parliament, to have passed a Bill of Attainder against my Lord Russel, or Mr. Cornish, or Mr. Colledge: I do not think all the Power of the Government could have prevailed to have done that, although they could prevail to have them condemned by the Forms of Law. And here I see that a great many Gentlemen have opposed every Step of this Bill, for fear of making an ill Precedent: Yet these Gentlemen do believe in their own private Consciences, that he is guilty: And I cannot think that any innocent Person can be in danger by such a Bill, when Gentlemen oppose this Bill only upon the prudential Part, though they still confess him to be guilty.

‘The Conclusion I make for myself is, that I am convinced in my Conscience (which I think is sufficient, when I act in the Capacity I now do) that Sir John Fenwick is guilty of High-Treason, and that there are Reasons so extraordinary to support this Bill of Attainder, that I do not see how any Person that is so convinced, can refuse to give his Affirmative to this Bill.’

Sir Godfrey  
Copley's Speech  
against the Bill.

Sir Godfrey Copley: ‘Sir, I am very sensible a great deal hath been said upon this Subject, but I think there is something in Duty incumbent upon every Man, especially upon me, who cannot concur with the general Sense of the House, to give my Reasons for my Disagreement; and I will make use of no Arguments, but such as I cannot answer myself. A great deal hath been said upon this Debate by Gentlemen learned in the Law; and many of these, though they have said they would not speak against the Power of Parliaments, yet the greatest Part of their Arguments have touched upon your Method of Proceedings; and to shew you how they interfere with the Rules of Westminster-Hall: So great is the force of Custom and Education! But I acknowledge some have brought us Arguments quite of another Strain.

‘I take the Punishment of Offenders to be one of the necessary Supports of all Governments; and all Societies of Men have laid down to themselves some Rules, by which they judge whether Persons accused are innocent or guilty: Therefore, in a Matter of this extraordinary Importance, it is proper to consider what Rules we have to go by.

It is the Custom and Law of our Nation, to require two positive Witnesses to prove Treason; and though, I think, without the utmost necessity it is not prudent to deviate from that Rule, yet I will not argue from thence that we are tied up to it: No, it is most certain on the other hand, that the Legislative Authority, which hath Power, if they think  
good



good, to abrogate all Laws now in being, cannot be tied up to any Rules of human Prescription. But Sir, there are the eternal Rules of Equity, and Justice, and right Reason, and Conscience; and these I think are unalterable and never to be swerved from: And therefore I shall take the liberty to see how far agreeable our Proceedings are to these Rules.

Anno 8 W. III.  
1696.

'Sir, I look upon it as a fundamental Breach of those Rules, for an Accusation to be given in against any Man behind his Back, by he knows not whom, or by any with whom he is not confronted, and brought Face to Face.

'I am one of those that look upon Sir John Fenwick to be guilty, and there is a Proof of it by one Witness; and to this you have added an Indictment that is proved. Now I must needs own, that I think that to be so far from giving any Credit or Strength to the Evidence, that in my Opinion the Injustice which attends it, makes the Scales lighter than they were before; for if any Bill or Writing sworn behind a Man's Back, may be used as part of Evidence, I do by parallel Reason argue, that the like may make up the whole at one time or other; and then the Information of any two profligate Knaves before a Secretary of State, or a Justice of Peace, shall be sufficient, without any living Testimony, to make a Man run the Hazard of his Life.

'Then Sir, I am not at all convinced of the necessity of this Proceeding: I must confess, that those that brought this Matter before us, are much wiser than I, and therefore I will not examine what reason they had to do it; but it is so little agreeable to me, I wish it had not come here. But is it to be supposed that your Government is in hazard by any Man that is fast in Newgate? Can any Man think, that Sir John Fenwick can do any thing in his Condition, to hazard it? Can you expect that a Man that hath been six Months in Prison, and no body came at him, that he may make such a Discovery as may be worth your while? But suppose you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to save himself, may not he form such a Plot, as (should it gain Belief) might make the best Subject in England tremble?

'Tis not Sir John Fenwick's Life which I argue for; I do not think it of so great Value, to deserve so long and solemn a Debate in this House, nor the Consideration of so great an Assembly after this manner. But I do say, if this Method of Proceeding be warranted by an English Parliament, there is an end to the Defence of any Man living, be he never so innocent.

'Sir, I remember I heard it mentioned on the other side of the Way, by an honourable Person, who never lets any

Anno 8 W. III.  
1696.



Argument want its weight, that King James attainted a great Number of Persons in a Catalogue, in a lump. Sir, I am not afraid of what arbitrary Princes do, nor an Irish Parliament; but I am afraid of what shall be done here: I am concerned for the Honour of your Proceedings, that it may be a Precedent to a future Parliament, in an ill Reign, to do that which, I am satisfied, you would not do. I had some other Thoughts, which I cannot recollect, though these Reasons are sufficient to convince me.

Members for  
and against the  
Bill.

The other Members who spoke for the Bill, were Mr. Montague, my Lord Cutts, Sir William Strickland, Sir Herbert Crofts, Mr. Vernon, Mr. Smith, Mr. Boscawen, Mr. Cowper, Mr. Sloan, Col. Wharton: Those who spoke against the Bill, were Sir Charles Carteret, Mr. Manley, Mr. Dolben, Sir Edward Seymour, Sir Robert Cotton, Lord Norreys, Mr. Hammond, Mr. Bromley, Mr. Harcourt, Sir Richard Temple, Mr. Paget, Mr. Jefferies, Mr. Edward Harley. After the Arguments had been offered on both sides, the Question was put for passing the Bill; whereupon the House divided, and it was carried in the Affirmative by 189 Voices against 155, and sent up to the Lords by Mr. Norris.

The Bill carry'd.

The 27th, a Motion being made for a Time, when the House should *Resolve* itself into a Committee *on the Grievances of the Kingdom*, an Amendment was offer'd to it, by inserting the Words *State of the Nation*, instead of *Grievances*, and carry'd in the Affirmative, Yeas 137, Noes 113.

The same day, the House being principally taken up with the Article of *Ways and Means*, we shall here insert an Abstract of the principal Proceedings on that Head during this Session.

Proceedings on  
Ways and  
Means.

The Ways and Means of raising this Supply were, first, *a general Capitation or Poll-Tax*: Secondly, *a Tax of three Shillings in the Pound upon Land*: And thirdly, *a Duty upon all Paper, Paste board, Vellum and Parchment, imported or made in this Kingdom*.

But still the greatest Difficulty of all, was the Loss of Public Credit: For the Tallies struck, or Funds settled by Parliament, especially such as were remote, were exchanged for ready Money, at a mighty Loss: And the Government was obliged to make excessive Discounts and Allowances to bring Treasure into the Exchequer. This great Loss of Credit, which was like to prove fatal to our Affairs abroad the last Summer, arose chiefly from two things, First, the Deficiencies of Parliamentary Funds, particularly the unhappy Project of the Land-Bank, which proved wholly abortive, and did not produce one Penny of above two Millions and a Half with which it was charged: Secondly, the Re-

coining

coining of our Silver. The first created Trust, and the latter destroyed it, by making Money to be very scarce. 'Tis easy to imagine what perishing Circumstances the Nation was in, when the Notes of the Bank of England, which had been a mighty Help to the Public, were discounted at twenty, and Tallies at forty, fifty, or sixty *per Cent*. The Government had contracted a great Debt; some Funds were wholly taken away, and the rest proved deficient; great Numbers of Tallies were on Funds very remote, and many had no Funds at all. Hereby the Trust and good Opinion of the People were so far lost, that those few who had any Money to lend, shewed the greatest Backwardness imaginable to bring it into the Exchequer, when they could Stock-job it to so great Advantage upon the Royal-Exchange; and therefore all Loans to the Government were procured on exorbitant *Premiums*.

Anno 8 W. III.

1696.

All Men were amazed and confounded at this Obstruction to Trade and Credit, and hardly believed that the Wit of Man was able to find out an Expedient, that could be effectual to retrieve so great a Mischief. The Nation is the more obliged to the Wisdom, Sagacity, and Eloquence of Mr. Montague, Chancellor of the Exchequer, who animated the whole Design, and projected the most likely Methods to bring it to a happy Effect. The 25th, the Commons had *Resolved*, That a Supply be granted to his Majesty to make good the Deficiencies of Parliamentary Funds; and afterwards ordered an Estimate to be laid before them, of what Sums were, or would be wanting to satisfy and discharge all Principal and Interest due, or to become due on the several Aids, Duties, or Funds, over and above all Arrears, standing out upon them which were determined; and besides all Moneys to be raised by such as were then unexpired. And the \* Computation of all the particular Sums that were wanting to make good all the deficient Funds, being made, the Whole amounted to five Millions, one hundred and sixty thousand,

\* About this Time Mr. Chancellor of the Exchequer presented to the House, an Estimate of what the Funds to be continued, produce yearly, clear of all Charges, viz.

On a Medium of three Years.

|   | <i>l.</i>           | <i>s.</i> | <i>d.</i> |
|---|---------------------|-----------|-----------|
| The Subsidies of Tonnage and Poundage ————— | 375,967             | 0         | 0         |
| Imposition on Wine and Vinegar —————        | 139,621             | 0         | 0         |
| Ditto on Tobacco —————                      | 128,380             | 0         | 0         |
| On East-India Goods —————                   | 149,754             | 0         | 0         |
| Additional Imposts on Merchandizes —————    | 49,820              | 0         | 0         |
| Duties on Paper, and Parchment —————        | 50,000              | 0         | 0         |
| Marriages, Births, and Burials —————        | 50,000              | 0         | 0         |
| Windows —————                               | 100,000             | 0         | 0         |
|   | <i>l.</i> 1,043,542 | 0         | 0         |

Anno 8 W. III.  
1696.

thousand, four hundred Pounds. Having now got to the Bottom of the Disease, they *Resolved* on a thorough Cure. For being sensible, that had some Deficiencies been taken care of, and others neglected, Public Credit must have continued lame, and the Government have halted, if it had not fallen to the ground; they judged it of absolute necessity to make Provision for the whole; that so there should remain no Tally without a Fund, nor any Tally on a deficient Fund, but what in its Course of Payment should be satisfied and discharged. In order to this, they continued divers Duties arising not only by the Customs, but by continued and additional Impositions; Paper and Parchment, Births, Marriages, and Burials, Windows, the Subsidy of Tonnage and Poundage, after the Day on which they would otherwise have expired, to the first day of August, 1706. And appointed all the Moneys which should arise, and be brought into his Majesty's Exchequer from any of these Taxes or Duties, from the Day on which they were otherwise to expire, to the said first Day of August, 1706, to be the general Fund for making good all the deficient ones, by the Satisfaction and Payment of the Principal and Interest due, or become due thereupon. And that all Occasion of Complaint might be removed, and equal Provision made for all, the Parliament directed that all Moneys arising from the Duties, so as before continued and appropriated for the general Fund, should be distributed and applied to pay Principal and Interest upon every one of the deficient Funds, in proportion to the Sum of which they were deficient; and that all the Money which should be in such a due Proportion distributed, or placed to the Account of each deficient Tax or Fund, for the Discharge of Principal and Interest, should be paid out to all who were entitled to receive the same, in such Course and Order, as if the same were Moneys really arising by the respective deficient Funds, and that without being diverted, misapplied, or postponed; and made the Officers of his Majesty's Treasury liable to great Penalties, in case this Method were not observed. Moreover, to remove all Doubts about the Security intended to be given, in case on the first of August, 1706, or within three Months, then next ensuing, the whole Produce of the several Funds and Revenues appropriated for a general Fund, together with other Grants then in being, should not be sufficient to discharge the Sum of five Millions, one hundred and sixty thousand four hundred Pounds, intended to be discharged; that then what was deficient, should be made good out of such Aids or Revenues, as should be granted in the next Sessions of Parliament. Thus the Commons, by an admirable Stroke of Wisdom, as well as a noble Act of Public Justice, provided a sufficient

sufficient Security for this great Debt that lay heavy on the Nation; which was all that could be demanded or expected, at a time when Money was not in being, and therefore not to be had. And because all the Branches of Public Credit did plainly depend on, and mutually support one another, the Parliament took into Consideration, by what Means they might buoy up the Credit of the Bank of England, which was then ready to sink.

Act 8 W. III.  
1696.

In order to this, the Parliament on February 3d, agreed to augment the common capital Stock of the Bank of England, by admitting new Subscriptions; which new Subscriptions should be made good in Tallies and Bank Notes. The proportion was four fifths of the first, and one fifth of the last, and an Interest of eight *per cent.* was allowed, as well for such Tallies that should be brought in, to enlarge their Stock by Subscription, as for those Tallies which the Company was then possessed of; provided they did not exceed the value of those Bank-Notes, which should be paid in upon this engraftment on their Stock; and for securing the Payment of this Interest of eight *per cent.* The additional Duty on Salt was afterwards granted and appropriated. The time of the Continuance of the Bank of England, they thought fit to extend to the Year 1710, and resolved likewise, that before the day was fixed for the beginning new Subscriptions, the old Stock be made one hundred *per cent.* and that what should exceed that value, should be divided among the old Members: That all the Interest due on those Tallies which would be subscribed into the Bank-Stock, at the time appointed for Subscriptions, (to the end of the last preceding Quarter, on each Tally) be allowed as Principal. That Liberty be given by Parliament to enlarge the Number of Bank-Bills, to the value of the Sum which should be so subscribed, over and above the 1,200,000 l. provided they be obliged to answer such Bills at demand; and in default thereof, to be answered by the Exchequer out of the first Money due to them. That no other Bank be erected; permitted, or allowed by Act of Parliament, within this Kingdom, during the Continuance of the Bank of England. That on such new Settlement, the Bank of England be exempted from all manner of Parliamentary Taxes. That no Act of the Corporation should forfeit the particular Interest of any Person concerned therein. That Provision be made for the effectual preventing the Officers of the Exchequer, and all other Officers and Receivers of the Revenue, from diverting, delaying, or obstructing the Course of Payments to the Bank. That care be taken to prevent the abetting, counterfeiting, or forging any Bank-Bills or Notes; as likewise against the defacing, raising, or altering any Indorsement upon any such

Bill

Anno 3 W. III.  
1696.



**Bill or Note.** That the Estate and Interest of each Member in the Stock of the Corporation, he made a personal Estate. And lastly, that no Contract or Agreement made for any Bank-Stock to be bought or sold, be valid in Law or Equity, unless the said Contract be actually registred in the Books of the Bank within seven Days, and actually transferred within fourteen days next after the making such Contract. Upon which Encouragements, a Million was subscribed and paid in Tallies and Bank-Notes, as the Parliament had directed. This Expedient was the Result of Mr. Charles Montague's Skill and Prudence, and tho' many Persons who were interested in it, could not presently apprehend the Reasonableness of it, yet the Advantages they afterwards received, did fully convince them, that no other way could have been found to call back their sinking Credit: For the Value of two hundred thousand Pounds in Bank-Notes being sunk by the new Subscription, the rest, as it was reasonable to believe they would, began presently to rise in worth; and so likewise did the Tallies, after so many as amounted to eight hundred thousand Pounds were paid in to enlarge the Bank. Upon this the Credit of the Bank recovered apace, till in a short time their Notes, which bore no Interest, were equal with Money, and their Bills that bore Interest better than Money: And by this means the Face of Affairs was quickly much changed for the better; Credit began to revive, and Money to circulate on moderate terms; foreign Affairs were less to our disadvantage, and soon after came to an equality: And whatever hardships the People had undergone, by reason of a long and expensive War, and the recoinning the Silver-Money, which could not but occasion many Complaints, yet the greatest part attributed this to the Necessity of Affairs, and began to hope, both from the Prospect of a Peace, and the Wisdom of those at the Helm, that they should enjoy more favourable Times.

Want of Money in specie.

Another Evil of no less Difficulty or Importance than the loss of Credit, (and which, as was hinted before, was one of the Springs of the latter) remained still to be removed; and that was the great Scarcity of Money. The Parliament, to prevent disappointments, by settling Funds which might be deficient, came to a Resolution on November 20th, That the Supplies for the Service of the Year 1697, should be raised within the Year. But how could above five Millions be raised within the Year, while the Silver-Money was called in, and recoinning, and there was not current Coin enough in the Nation, to answer the Occasions of Trade, and scarcely the Conveniencies and Necessities of Life? This Vote of Parliament seemed impracticable; the Enemies of the Government made themselves merry with it, and instead

stead of raising their Spleen, 'twas the Entertainment of their pleasant Humour: And many, even of the best Friends of the Government, imagined that the Parliament by this, rather expressed their Zeal and Willingness, than their Ability to support the State, and maintain the present Settlement. But this Parliament, for whose Wisdom it was reserved to surmount Difficulties, that were looked on as invincible, made Money without Bullion, and distributed great quantities of Coin without the help of the Mint. This they did by authorizing the Lords of the Treasury, to issue out Bills from the Exchequer, to the value, first and last, of above two Millions; which Bills were first appointed to be brought in, and sunk upon the Capitation-Tax. But before the Session ended, the Parliament being convinced by the first Collection of that Duty, that it would prove very deficient; they appointed the Exchequer-Bills to be brought in, on any other of the King's Duties or Revenues, excepting the Land-Tax; and allowed an Interest of seven Pounds twelve Shillings *per annum*, upon the second issuing the said Bills out of the Exchequer, whereas at first they bore no Interest. By this the Parliament laid a good Foundation for Paper-Money to supply the Place of our Silver-Coin; for so many Payments were at this time to be made into the Exchequer, that when the People had assurance given them, that the Exchequer-Notes should be received back again in Payment of the King's Taxes, they were very well satisfied to take them, at first indeed at a small Discount, but not long after at an equality. A great Number of these Notes were only for five or ten Pounds, which answered the Necessity of Commerce among the meaner People, for the common Conveniencies of Life. And that those who had advanced Money on Loans on any Part of the King's Revenues, might not be obliged to receive it back in Notes that were under the Value of Money, to strengthen the Reputation of these Bills, the Parliament authorized the Lords of the Treasury, to contract with any Corporation, or Numbers of private Men, and to allow them a competent *Premium*, provided they obliged themselves to exchange those Notes for Ready Money, when tendred to them for that purpose; which the Lords of the Treasury did accordingly. The Credit of the Exchequer Notes being thus secured, they daily rose nearer to *par*, till at last they exceeded the Value of Money: And whereas the Trustees, with whom the Government had contracted to exchange them, were at first allowed ten *per cent.* as a *Premium*, they were since contented to do it for four. These Bills passed as so many Counters, which the People were satisfied to receive, because they knew the Exchequer would receive them again as so much ready Money: And these State-Counters so well

Anno 3 W. III.  
1696.



Royal Assent  
given to several  
Acts.

Copies of  
Grants from the  
Crown read.

supplied the want of Money, till new Coin was issued from the Mint, that Trade and Commerce were maintained, and mutual Payments well enough made, to answer the Necessities of the Government and the People. This Project (which proved an effectual, tho' a Paper-prop to support the State, when its Silver-Pillars, if I may so speak, were for a time removed) was likewise owing to the Prudence and Industry of Mr. Charles Montague, as well as that of re-coining the Money; which those very Men who envied most his Success in the House of Commons, and growing Power at Court, were afterwards contented to call a fortunate Temerity.

December 3. His Majesty gave the Royal Assent to the following Bills, *viz.* *An Act for importing and coining Guineas and Half-Guineas.* *An Act for explaining an Act relative to the Duties on Low Wines, and Spirits of the first Extraction.* *And an Act for the further remedying the ill State of the Coin.*

The same Day the Copies of the Docquets of Grants of Crown-Lands, and Sums of Money for the Year 1696, were read, and are in Substance as follow.

A Revenue of 300 l. *per Annum* to Samuel Johnson Clerk, out of the Letter-Office, (*vid.* Tome II. p. 334.)

A Grant of certain Buildings in White-Hall for 45 Years at the Rent of 6 s. 8 d. to the Earl of Portland.

A Warrant to the Exchequer for an Annuity of 400 l. to be paid quarterly to Sir R. Killigrew.

A Grant to the Earl of Rochford, of all the Messuages, and Tenements belonging to Powis-House, (the House itself was excepted) divers Messuages and Lands in the Parish of Hendon, together with the Rectory and Advowson of the said Parish; at the yearly Rent of 13 s. 4 d. Likewise all Ar-rears and Mesne Profits arisen and payable out of the late Marquiss of Powis's Estates in the Counties of Northampton and Montgomery, now about to be pass'd to the said Earl; likewise all Bonds, Mortgages, Debts, Sums of Money, Goods, and Chattels, and other the personal Estate belonging to the late Marquiss, and forfeited by reason of the High-Treason by him committed.

A Grant to William Saunderson Esq; of 25 Load of Hay, and 50 Quarters of Oats reserved on two Leases from the Crown, of certain Lands and Tenements in East Greenwich.

A Grant to the Earl of Portland of the Mannor of Grant-ham, the Honour of Penrith, the Mannor of Drachlow and Radheath, the Mannor of Torrington, the Mannor of Pratington, Bristolgarth, Hornsey, Thurry, Barnsley, and Leven, all part of the Ancient Revenue of the Crown of England: And of the Mannor of Pevensey, parcel of the Dutchy of Lancaster, together with the Mannor of East-Greenwich,



Greenwich, to have and to hold for ever, at the yearly Rent of 13 s. 4 d. Ann<sup>d</sup> 8 W. III.  
1696.

A Grant to Colonel Edward Leigh of 500 l. bequeathed by his Sister to Edward Lord Griffin outlaw'd for High-Treason.

A Grant to Charles Bertie, Samuel Travers, James Herbert, and Richard Powis Esqs; of Nercomb Farm, a Tenement in King-Street, Deptford, a Ditch or Piece of Ground there, a Close called West-Bromfield, together with certain other Lands in Deptford aforesaid. The Rents of Assize in East-Peckham, Rents of Assize in East-Farleigh; likewise the Treasury-Rents there; all in Kent; The Manors of East-Molesey, Hampton-Court Ferries, the Fisheries there, Richmond-Ferry, three Tenements call'd the King's-Bench, the Crane, and the Pike-Garden, in Southwark; the Scite of the Monastery of East-Sheen, all in Surry: The Lands called Northley, and Bernard's Castle; likewise Oldbury and Seabeth in Suffex: Comphill-Park in Bedfordshire: Certain Lands in Shot-over and Stowood, and certain other Lands in Oxfordshire: The Manor and Park of Marybone; a third part of the Demesnes of the Forest of Gillingham in Dorsetshire: The Herbage, &c. of the Forest of Mara, in the Manor of Macclesfield: The Bailiwick of the Hundred of Northwich: The Fraternity of Ively in Cheshire, the Tythes of the Vicarage of Hallifax, with their Appurtenances, to have and to hold from the Decease of Katherine now Queen Dowager of England, at the Yearly Rent of 3 l. 13 s. 4 d.  $\frac{1}{2}$  for 35 Years.

A Grant to Alexander Johnson Esq; of an Annuity of 300 l. chargeable upon several Manors, &c. forfeited by Sir Roger Strickland, for eight Years.

A Grant to Lord Raby of all Fines, called Port-Fines, to be levied in the Court of Common-Pleas, for the Term of 48 Years at the Yearly Rent of 2276 l.

A Grant to John Agar Esq; at the Nomination and Desire of Arthur Earl of Torrington, of the House and Scite of Oatlands in Surry; together with certain Chambers in Serjeants-Inn, forfeited by the Attainder and Outlawry of Sir Edward Herbert, as likewise of his Majesty's Manors of Greenwich at the Yearly Rent of 13 s. 4 d.

A Grant to the Lord Cutts of the Hundred of Durnford, and other Manors, Castles, Towns, Rectories, Advowsons, Goods, Debts, Chattels, &c. forfeited by the Outlawry of John Caryl Esq; at the Yearly Rent of 13 s. 4 d.

A Grant to Thomas Hall Esq; of St. James's Market with its Appurtenances, for 99 Years, to commence at the Expiration of a Term (of 44 Years, which was then to come,) granted to the late Earl of St. Albans.

A Certificate was then read of the vacating a Grant by Tally of 24,571 l. 5 s. 4 d. as of his Majesty's free Gift and

Anno 8 W. III. 1696. Royal Bounty, to the Earl of Portland, but not received, at the Desire of the said Earl.

The same day likewise, by the Accounts presented to the House, it appeared that the Arrears due to the Navy amounted to—1. 421,079 17 9  
 To the Army—1,850,197 13 0 $\frac{1}{2}$   
 To the Ordnance—58,321 1 9  
 For Transports—\* 439,544 00 0

Total L. 279,142 12 6 $\frac{1}{2}$

Several Amendments to the Bill *for the further regulating Elections*, being then made, a Motion was made, that the said Bill with the Amendments be engrossed, and passed in the Affirmative, Yeas 183, Noes 157.

Bank Account. The 4th, the Governour and Company of the Bank, attended with their Account Current, which was as follows.

|   | l.        | s. | d. |
|---|-----------|----|----|
| Debtor to sundry Persons for sealed Bank- }<br>Bills standing out ————— } | 893,800   | 00 | 00 |
| To <i>Ditto</i> , on Notes for Running-Cash—                              | 764,196   | 10 | 06 |
| To Moneys borrowed in Holland—  | 300,000   | 00 | 00 |
| To Interest due upon Bank-Bills standing }<br>out ————— }                 | 17,876    | 00 | 00 |
| Balance   | 125,315   | 02 | 11 |
|   | 2,101,187 | 13 | 05 |


|   |           |    |    |
|---|-----------|----|----|
| Creditor by Tallies on several Parlia- }<br>mentary Funds ————— }                                   | 1,784,576 | 16 | 05 |
| By $\frac{1}{2}$ Year's Deficiency of the Fund of }<br>100,000l. <i>per Ann.</i> in the 2d Year — } | 50,000    | 00 | 00 |
| By Mortgages, Pawns, Cash, &c.—   | 266,610   | 17 | 00 |
|   | 2,101,187 | 13 | 05 |

The 5th, by the Report of the Committee appointed to inspect the Mint, that from Jan. 1, 169 $\frac{5}{8}$ . to Nov. 30, 1696.  
 l. s. d.

|   |           |    |    |
|---|-----------|----|----|
| Account of Mo- The whole Coinage in the Tower a- }<br>ney coined.    mounted in Tale to about ————— } | 2,370,000 | 00 | 00 |
| Of which had been paid in to the Ex- }<br>chequer ————— }   | 2,175,000 | 00 | 00 |

\* This Article being afterwards examined by the Commissioners for stating the Deficiencies of Parliamentary Funds, was reduced to 350,255 l. 25 s. 3 farthings.

T.

|   |           |        |    |    |   |
|---|-----------|--------|----|----|---|
| To Importers of Ingots                    | l.        | 55,000 | 00 | 00 | Anno 8 W. III.<br>1696.   |
| To Importers of Plate                     |           | 66,000 | 00 | 00 |   |
| Coin'd at the<br>several<br>Country Mints | { York    | 30,000 |    |    |  |
|   | { Bristol | 30,000 |    |    |   |
|   | { Exeter  | 28,000 |    |    |   |
|   | { Norwich | 15,000 |    |    |   |
|   | { Chester | 7000   |    |    |   |

The 8th, the Committee appointed to examine the Petition of one Mary Greibe, made their Report ; by which it appeared that Conrade Greibe, Husband of the said Mary Greibe, having undertaken to deliver two Petitions in behalf of certain Officers and Soldiers turn'd out of Count Stanbock's Regiment, to the King and Parliament, was the Day before seiz'd by one Kitson, a Messenger, by Warrant from Mr. Secretary Trumball, charging him with treasonable Practices. That he was kept in the said Messenger's hands ten Days ; during which time, he had been oftentimes refus'd an Examination : And that at last about two or three o'clock in the Morning he was taken out of the Custody of the said Messenger by a Party of the Dutch Guards, who carry'd him on board a Dutch Vessel, from whence he was convey'd to Brussels, where he was thrown into a Dungeon, and is subsisted on Bread and Water only.

*Resolved*, That an humble Address be presented to his Majesty, that he will be pleased to cause the Informations in relation to Conrade Greibe, to be laid before the House ; to which his Majesty by Message, the 23d, return'd the following Answer.

W. R.

' His Majesty having receiv'd an Address from the House, whereby it was desir'd that he would please to cause the Informations, in relation to Conrade Greibe, to be laid before the House, is pleas'd to acquaint them, that upon the Discovery of the late Conspiracy against his Person and Government, the said Greibe was taken into Custody among other suspected Persons, as concerned in that Plot ; and about the same time, several Informations being sent and delivered to his Majesty, whereby he appeared to be a very dangerous Person ; his Majesty thought it for his Safety not to suffer him, being an Alien, to continue longer in this Kingdom ; and did order the Duke of Wirtemberg, who was then going for Flanders, to transport him thither, in order to send him to the Elector of Brandenburg, his natural Prince, which was done accordingly : and the said Greibe was deliver'd to the General of the said Elector, who was by him appointed to receive him, together with the Informations.'

The

Anno 8 W. III.  
1696.

Enquiry into  
the Conduct of  
the Fleet ends  
in a Motion for  
Candles.

The 9th, the House took into Consideration, according to Order, the Books and Papers laid before the House, relating to the Fleet; and enter'd upon Enquiries how it came to pass, that the French Toulon Squadron was not intercepted when going into Brest: Upon which Vice-Admiral Mitchel having been examin'd, and several Letters to and from Admiral Ruffel having been read, a Motion was made, that Candles should be brought in, which pass'd in the Negative, Yeas 128, Noes 150. Upon which, the House adjourn'd.

A Clause to render Merchants eligible, as Members of Parliament, being worth 5000l.

The 20th, the engrossed Bill for further regulating Elections being read the third time, an engrossed Proviso was offer'd and agreed to, to render any Merchant, being a natural-born Subject of England, eligible, on his making Oath, that he is worth 5000l. in real and personal Estate: But no Person to be esteemed a Merchant, for having Money in the Bank, or any other Company.

The Question being then put, that the Bill do pass, it pass'd in the Affirmative, Yeas 200, Noes 160.

Report of the  
Committee upon  
the Abuses  
of Prisons.

The 30th, Mr. Pocklington, from the Committee on the Abuses of Prisons, &c. among a Variety of other Matter, reported to the House, that one Brunskill a Solicitor, had inform'd the said Committee, that Tilly (who had lately procured an Act of Parliament to enable Bromshall, an Infant, to sell his Interest in the Fleet-Prison; which he, Tilly, had purchas'd) as he was informed, should say, That he obtain'd that Act by Bribery and Corruption.

That one Mrs. Hancock applying to Tilly not to protect one Guy, being his Clerk of the Papers, because he was perjured, &c. Tilly refused her Request: Upon which, being ask'd how he would do, if the Matter should be laid before Parliament? he reply'd, he could do what he would there; that they were a Company of bribed Villains; that, to his knowledge, they would all take Bribes; and that it cost him 300l. for his Share, and 300l. for the other Shop (meaning the King's-Bench) for bribing a Committee last Parliament.

That she then, intimating that she must then apply to the House of Lords; he answered, it was only palming 5 or 6 talking Lords, and they would quash all the rest. And she then said, she would try the King and Council; he added, the best of the Lord-Keeper's Fees were from him: That as to the Judges, they were all such a Parcel of Rogues, that they would swallow his Gold faster than he would give it them; and that as to the Members of the House of Commons, they were many of them Members of his House.

That

That several other Persons had charg'd him with other Particulars of the like nature. Anno 3 W. III.  
1697.

And that the said Tilly, to invalidate their Testimony, had insisted they were Persons of bad Character, and in a Confederacy against him, &c.

*Order'd*, That John Tilly Esq; be taken into the Custody of the Serjeant at Arms.

Jan. 5th, the said Mr. Pocklington from the said Committee likewise reported, that it was prov'd to them by two Witnesses that one Francis Duncomb had likewise reported, that he had distributed Money to several Members.

*Order'd*, That the said Francis Duncomb be taken into the Custody of the Serjeant at Arms.

Jan. 11th, His Majesty came to the House of Peers, and gave the Royal Assent to Royal Assent  
given to several  
Acts.

An Act to attain Sir John Fenwick, Baronet, of High-Treason.

*An Act to attain such of the Persons concerned in the late horrid Conspiracy, to assassinate his Majesty's Royal Person, who are fled from Justice, unless they render themselves to Justice; and for continuing several others of the said Conspirators in Custody: and several private Acts.*

The 21st, a tumultuous Croud of People filling all the Passages to the House, and clamouring to have the Bill pass'd for restraining the Wear of East-India Silks; Orders were given to the Justices to disperse them: and it was resolved, That the inciting and encouraging any Number of Persons to come in a riotous manner, either to hinder or promote the passing any Bill depending before this House, being against the Constitution and Freedom of Parliament, is a high Crime and Misdemeanour. Orders for dis-  
persing a Mob.

The 27th, a Motion being made for reading the Report deliver'd in by the Committee on the Abuses of Prisons, it pass'd in the Affirmative, Yeas 152, Noes 107. Farther Pro-  
ceedings on the  
Report concern-  
ing the Abuse of  
Prisons.

Accordingly, the said Report was read, and Mr. Tilly being brought to the Bar to make his Defence, he desir'd further time; and the House proceeded to take further Informations; on which occasion several Witnesses added yet farther Particulars to his Charge, and several endeavoured to prove that he was innocent of all: and that as it had been before urg'd, those who accus'd him were prejudiced Persons, and had enter'd into a Conspiracy against him; of which many Instances were enumerated before the House.

The whole Affair ended in ordering the said Report to be delivered to the Attorney-General and Solicitor-General, and that they do take care to prosecute the Persons concerned for the Crimes therein mentioned.

Anno 8 W. III.  
1697.



As likewise, that one Robert Markham, who was convicted of having spoke scandalous Words of the House, should for the said Offence be taken into the Custody of the Serjeant at Arms.

The 28th, the Committee appointed to examine several Petitions relating to the Newfoundland Trade, having made their Reports, the House agreed with the said Committee to the following Resolutions:

Votes relating  
to the New-  
foundland  
Trade.

' That the Trade to Newfoundland doth very much promote Navigation, increase Seamen, and is of great Profit to this Nation, and of Advantage to us in the Balance of Trade.

' That the great Losses sustain'd in the Newfoundland Trade were occasioned thro' Want of a sufficient Number of Men of War, to secure its Harbours, and to protect the Fishery.

' That an humble Address be presented to his Majesty, that a competent Number of Men of War and Land-Forces be sent as soon as conveniently may be to regain the lost Harbours in Newfoundland, to cruize on that Coast, to guard the Fishery, and annoy the Enemy trading to those Parts.'

Royal Assent  
given to several  
Acts.

A Minute,  
which was or-  
dered not to be  
printed.

The same day the King gave the Royal Assent to an Act, *for granting an Aid, as well by Land-Tax, as several Subsidies, &c.* and to two private Bills.

The 29th, the Committee appointed to make Enquiry into the Causes of the late Tumults, having made their Reports, a Motion was made, and the Question put, That Gabriel Glover, for speaking scandalous Words of this House and their Proceedings, be taken into the Custody of the Serjeant at Arms; it pass'd in the Negative.

*Order'd,* That the said Question be not printed.

The next Business of Importance was to retrieve and maintain the publick Credit; and to supply the Want of Money by the Currency of Exchequer-Bills, and to support the Bank of England: The Commons were so intent upon these wise Ends, that when in a Paper, entitled the Flying-Post, published on Thursday April the 1st, there was this Advertisement: *We hear, that when the Exchequer-Notes are given out upon the Capitation-Fund, whosoever shall desire Specie on them, will have it at five Pound and a half per Cent. of the Society of Gentlemen that have subscribed to advance some hundred thousands of Pounds:* They voted this Passage to be a malicious Insinuation, in order to destroy the Credit and Currency of the Exchequer-Bills. They ordered the Printer, John Salisbury, to be sent for in Custody: And gave leave to bring in a Bill, to prevent the Writing, Printing, or Publishing any News without Licence. And yet when

The Printer of  
the Flying-Post  
order'd into Cu-  
stody.

such

such a Bill was presented by Mr. Pulteney, it was thrown out before a second Reading; because tho' they saw the Mischiefs of the Liberty of the Press, they knew not where to fix the Power of Restraint.

Anno 9W. III.  
1697.

A Bill to restrain the Press rejected.

An Act for a farther Imposition on Coals, for finishing and adorning the Cathedral of St. Paul's, for preventing Abuses in Prisons and pretended privileged Places, and to restrain the Numbers and ill Practices of Brokers and Stock-Jobbers, put an end to the Business of this Session.

And on April 16th, His Majesty came to the House of Lords, when, after having given the Royal Assent to several Bills, he made this Speech to both Houses.

' My Lords and Gentlemen,

' **H**AVING given my Assent to the several Bills you have presented to me, I am now to return you my hearty Thanks for what you have done this Session; which has been carried on with great Prudence, Temper, and Affection.

King's Speech.

' At the Opening of the Session, I told you how sensible I was of the Difficulties to be struggled with, which were of such a nature, that, I will freely own, the Hopes I had of our being able to overcome them, were founded only upon the Wisdom and Zeal of so good a Parliament.

' My Expectation has been fully answered; you entered upon the Business with so much Chearfulness, proceeded so unanimously, and have at last brought things to such a Conclusion, that we may hope to carry on the War with Success, in case our Enemies do not think it their Interest to agree to an honourable Peace: And so effectual a Provision being made for supplying the Deficiencies of former Funds, (which is the best Foundation for re-establishing of Credit) I doubt not but in a short time it will have a very happy Effect, to the universal Ease and Satisfaction of my People.

' The Circumstances of Affairs making it necessary for me to be out of the Kingdom for some time, I shall take care to leave the Administration of the Government, during my Absence, in the hands of such Persons as I can depend upon.

' My Lords and Gentlemen,

' I have nothing more to ask of you, but that you would carry down the same good Disposition into your several Countries, which you have expressed in all the Proceedings of this Session.'

Anno 9 W. III.  
1697.

The 3d Session  
of the 3d Par-  
liament.

And then the Parliament was, by his Majesty's Command prorogued.

On Friday December 3, the Parliament met at Westminster, and the King in his Robes made this Speech to the two Houses.

King's Speech  
to both Houses.

My Lords and Gentlemen,

THE War which I entered into by the Advice of my People, is by the Blessing of God, and their zealous and affectionate Assistance, brought to the End we all proposed, an honourable Peace; which I was willing to conclude, not so much to ease my self from the Trouble or Hazard, as to free the Kingdom from the continuing Burthen of an expensive War.

I am heartily sorry, my Subjects will not at first find all that Relief from the Peace, which I could wish, and they may expect; but the Funds intended for the last Year's Service, have fallen short of answering the Sums for which they are given; so that there remain considerable Deficiencies to be provided for.

There's a Debt upon the Account of the Fleet and the Army. The Revenues of the Crown have been anticipated by my Consent, for public Uses; so that I am wholly destitute of means to support the Civil List; and I can never distrust you'll suffer this to turn to my Disadvantage, but will provide for me, during my Life, in such a manner, as may be for my Honour, and for the Honour of the Government.

Our Naval Force being increased to near double what it was at my Accession to the Crown, the Charge of maintaining it will be proportionably augmented; and it is certainly necessary for the Interest and Reputation of England, to have always a great Strength at Sea.

The Circumstances of Affairs abroad are such, that I think my self obliged to tell you my Opinion, that, for the present, England cannot be safe without a Land-Force; and I hope we shall not give those who mean us ill, the opportunity of effecting that, under the Notion of a Peace, which they could not bring to pass by a War.

I doubt not but you, Gentlemen of the House of Commons, will take these Particulars into your Consideration, in such a manner as to provide the necessary Supplies, which I do very earnestly recommend to you.

My Lords and Gentlemen,

That which I most delight to think off, and am best pleased to own, is, that I have all the Proofs of my People's Affection, that a Prince can desire; and I take this occasion to give them the most solemn Assurance, that as

I



' I never had, so I never will, nor can, have any Interest  
' separate from theirs. Anno 9 W. III.  
1697.

' I esteem it one of the greatest Advantages of the Peace,  
' that I shall now have leisure to rectify such Corruptions or  
' Abuses as may have crept into any part of the Administra-  
' tion during the War; and effectually to discourage Pro-  
' phaneness and Immorality: And I shall employ my  
' Thoughts in promoting Trade, and advancing the Hap-  
' piness and flourishing Estate of the Kingdom.

' I shall conclude with telling you, that as I have, with  
' the Hazard of every thing, rescued your Religion, Laws  
' and Liberties, when they were in the extremest danger;  
' so I shall place the Glory of my Reign in preserving them  
' entire, and leaving them so to Posterity.'

This Speech had various Effects in the House of Com-  
mons: Some thought some Expressions in it too magisterial;  
others seemed to be offended at his Majesty's putting them  
in mind of what he had done for the Nation; others again  
distrusted the great Promises of what he would do for them;  
and most began to be jealous of the Expression, That Eng-  
land could not be safe without a Land-Force: By which  
they understood that odious thing a standing Army. How-  
ever, on December 9th, the Commons presented this humble  
Address to the King.

' We your Majesty's most dutiful and loyal Subjects, the Commons Ad-  
dressed. Commons in Parliament assembled, who have so frequently  
waited on your Majesty with the Tender of our Assistance  
for carrying on the War, come now to congratulate your  
Majesty upon the happy Conclusion of it, in a Peace so ho-  
nourable and advantageous to the Nation, as sufficiently  
justifies the Wisdom of the Commons in advising, and your  
Majesty's Conduct in the Prosecution of it.

' The Prospect of the Benefits your People will receive  
from this Peace, is very pleasing. The Honour your Ma-  
jesty has restored to England, of holding the Balance of  
Europe, gives your Subjects great Content. But what your  
Commons are most affected and delighted with, is, that your  
Majesty's sacred Person will now be secure, from those many  
and great Dangers, to which you have so often exposed it  
for our Sakes: Nothing being so evident, as that your Ma-  
jesty's Return in Safety, was a Blessing more welcome to  
your People than Peace, and received with greater Demon-  
strations of Joy.

' We therefore with Hearts full of Affection, Duty, and  
Gratitude, do assure your Majesty in the Name of all the  
Commons of England, that this House will be very ready  
to assist and support your Majesty, who, by putting a period

Anno 9 W. III. 1697. to the War, has confirmed us in the quiet Possession of our Rights and Liberties, and so fully completed the glorious Work of our Deliverance.\*

The King answered thus :

King's Answer. ' Gentlemen, Nothing that relates to the Peace pleases me so much, as the Satisfaction you have in it: And as you have assisted me in the War, beyond all Expression, I do not doubt, but you will be as zealous in maintaining the Peace.'

The Grievance  
of Standing  
Forces.

Arguments used  
for them.

And against  
them.

Standing Forces, however established and regulated by Law, or however necessary to maintain the Peace, were thought intolerable ; and therefore upon entering into a Consideration of his Majesty's Speech, the first Resolution of the Commons, was on December 11th. That all the \* Land-Forces of this Kingdom, that have been raised since the 29th of September 1680, shall be paid and disbanded. The Friends of the King and his Government had argued, that the Nation was still unsettled, and not quite delivered from the Fear of King James ; that the Adherents to that abdicated Prince, were as bold and numerous as ever ; and he himself still protected by the French King : who, having as yet dismissed none of his Troops, was still as formidable as before. That if our Army was entirely disbanded, the Peace which was obtained at the Expence of so much Blood and Treasure, would be altogether precarious: And not only England, but all Europe lie once more at the mercy of that ambitious Monarch, an inveterate Enemy to King William, the Protestant Religion, and the Liberties of Christendom. On the other hand, the Country Party, who valued themselves upon opposing any Motions of the Court ; the disaffected Party, who never heartily approved the Revolution ; the Commonwealth Party, who were secretly driving at a Change of Government into their own Scheme and Interest ; and even many worthy Patriots, who had no worse view than the Rights and Liberties of their Country : All, upon different Thoughts, agreed in the same Aversion to a standing Army, and laboured to represent it as absolutely destructive to the Constitution of the English Government. And it was no wonder that their Objections prevailed when they were more popular, and had this weight in them, that standing Forces would want a continual Tax ; and disbanding would relieve the People from the Burthen of the War, which they would never be willing to bear in a time of Peace. The King hoped that he had prevented the warmth of these Debates at his last coming over, when he had caused several Regiments of Horse, Dragoons, and Foot to be disbanded ;

\* The Army then consisted of 17656 Foot, and 6876 Horse and Dragoons.

banded ; and even others to be reduced, and sent away (most of them) either to Scotland or Ireland \*. And therefore he resented it as the greater Hardship upon him, that he must have no Troops remaining, but be left so naked and exposed, as if the Peace were only to encourage his Enemies to surprize him with another War.

Anno 9 W. III.  
1697.

The Commons however persisted in their Resolutions of Disbanding ; but to make it the more palatable, they passed a Vote, December the 13th, That it be an Instruction to the Committee who were to consider of the Supply, that they should likewise consider of a Gratuity, to be given to such Officers and Soldiers of the English Army who were or should be disbanded: And, at the same time, ordered Mr. Hammond and Mr. Moyle to bring in a Bill, to enable Soldiers who should be disbanded, to exercise their Trades in any Town or Corporation throughout this Kingdom. And, to provide for the Security of the Kingdom, when the Army should be disbanded. On December the 17th, they appointed several Members to prepare and bring in a Bill, to regulate the Militia, and make them more useful. And on December the 18th, they *Resolved*, That ten thousand Men are necessary for a Summer and Winter-Guard at Sea, for the Year one thousand six hundred ninety eight.

Commons for  
disbanding the  
Army.

On December the 20th, the Commons took the Supply into Consideration, and *Resolved*, that in a just Sense and Acknowledgment of what great Things his Majesty has done for these Kingdoms, a Sum not exceeding seven hundred thousand Pounds be granted to his Majesty during his Life, for the Support of the Civil-List.

Supply took  
into Considera-  
tion.

A Civil-List of  
700,000 l. set-  
tled on the  
King for Life.

On Friday, Jan. 14, The King gave the Royal Assent to an *Act to prevent the Currency of hammer'd Money, and for Re-coining it.* 2. *An Act against corresponding with King James and his Adherents.* 3. *An Act for imprisoning Counter, and others, for the Assassination-Plot, &c.*

Royal Assent  
given to several  
Acts.

The same day, the House of Commons agreed to the Resolutions which had been taken in a grand Committee about the Supply ; First, That a Sum not exceeding three hundred and fifty thousand Pounds, be granted to his Majesty, for maintaining Guards and Garrisons for the Year 1698. Secondly, That a Supply be granted to his Majesty, which, together with the Funds already settled for that Purpose, should be sufficient to answer and cancel all Exchequer-Bills, issued or to be issued, not exceeding two Millions seven hundred thousand Pounds. Thirdly, That a Supply be granted to his Majesty, for the speedy paying and disbanding the Army. And then they ordered, that a Bill be brought in for reducing the Discount upon Exchequer-Bills, and giving them a better Currency.

Sums granted,  
and for what  
Uses.

On

\* *The Court Language of these times.*

Anno 9<sup>th</sup> W. III.  
1698.

Bounties granted to disbanded Soldiers.

Deficiencies made good.

Three Shillings in the Pound laid upon Land.

On January the 18th, they came to other softning Resolutions. First, That upon Disbanding the Army, over and above what is due to them, there be allowed by way of Bounty, fourteen Days Subsistence to each Foot-Soldier and Non-Commission Officer; and to each Foot-Soldier three Shillings more, in lieu of his Sword, which he is to deliver up. Secondly, That upon disbanding the Army, over and above what is due to them, there be allowed by way of Bounty, six days full Pay to each private Trooper and Non-Commission Officer of the Horse and Dragoons. Thirdly, That, out of the Supply to be granted to his Majesty, the Sum of two hundred and fifty thousand Pound be allowed upon Account, towards defraying the Charge of disbanding the private Troopers, and Centinels, and Non-Commission Officers, of the Horse, Dragoons, and Foot. Fourthly, That Provision be made for giving Half-pay to the Commission-Officers, (his Majesty's natural-born Subjects of England) till the said Officers shall be fully paid off and cleared, and be otherwise provided for.

To proceed in these softer Ways, the Commons *Resolved* to make good the Deficiencies of former Funds; and therefore, on January the 22d, they voted the Sum of four hundred and seven thousand Pounds, for making good the Deficiency of the Aid of three Shillings in the Pound, granted to his Majesty the last Session of Parliament; and nine hundred and forty thousand Pounds, for making good the Deficiency of the Subsidies, and other Duties granted at the same time; and one hundred twenty nine thousand Pound, for making good the Deficiency of the Aid of one Shilling in the Pound. And they ordered a Committee to consider of Ways and Means for making good the said Deficiencies. On Feb. the 1st, having taken the Arrears of the Army into consideration, they *Resolved* that the Sum of 1,254,000 l. was necessary to clear the Arrears of Pay, due to the Land-Forces, according to the Establishment from the first of April 1692, to the last day of September 1697, besides 940,815 l. for Subsistence, 28,295 l. for Contingencies, 5000 l. for the General-Officers, and 75,000 l. for the Guards and Garrisons; in all 2,348,102 l. And that there was but 855,502 l. remaining in the hands of the Pay-Master of the Army, the first day of January 1697-8.

To raise the Sums which the Parliament had voted necessary for disbanding the Army, paying of Seamen, and towards making good of Loans, and the Deficiencies of former Funds; they *Resolved*, February the 9th, to lay an Aid of three Shillings in the Pound upon Land, by way of Assessment upon every County, in proportion to the Rates of the first four Shillings Aid granted in 1691, by which means they

they prevented any future Deficiency of this Fund. The next day, they considered the Account of what was due to some of his Majesty's Allies, both for Arrears of Subsidies, and for Payment of Auxiliaries; and *Resolved*, that 180,000 Rix-dollars were due to the Elector of Brandenburg; 250,000 Rix-dollars to the Landgrave of Hesse-Cassel; 121,223 Rix-dollars to the Duke of Wolfenbuttle; 149,997 Rix-dollars to the Bishop of Munster; 50,000 Rix-dollars to the Duke of Hanover and Zell; 25,000 Rix-dollars to the Duke of Holstein, and 200,000 Rix-dollars to the King of Denmark, both upon the fore-mentioned Account, and in consideration of an entire Prohibition of Commerce between that Crown and France. They also *Resolved*, that there was due the Sum of 177,000 Pounds to the Contractors for Bread and Forage. Four days after, they farther examined into the Debt of the Nation, and *Resolved*, that the Sum of 1,392,742 l. was due upon the several Heads of the Estimate of the general Debt of the Navy; 204,157 l. to the Office of Ordnance; 340,708 l. for Transports for Reducing of Ireland; 125,785 l. for other Transport-service; and 49,929 l. for quartering and cloathing the Army raised by Act of Parliament in 1677, and disbanded by another Act in 1679.

Anno 9 W. III.  
1698.

Summs voted to  
foreign Princes.

It being impossible for the Nation to acquit this vast Debt at once, the Commons resolved to do it by degrees; and therefore voted, First, That the Debt due for clearing the Army, from the first of April 1692, to the last day of September 1697, amounting to 1,254,000 l. the Sum of 139,066 l. be raised in the Year 1698, which would clear the Army to the first day of April, 1693. Secondly, That the Sum of 203,450 l. be raised for the clearing the Arrears of Subsistence to the Troops in England, between the first day of January 1696, and the first day of August, 1697. Thirdly, That 450,816 l. be raised for clearing the Arrears of Subsistence to the Troops in Flanders, to the 4th day of October, 1697. Fourthly, That the Sum of 50,000 l. be raised for the General-Officers. Fifthly, That 137,990 l. be raised for clearing the Arrears of Subsistence, due to the Troops in Flanders, from the 4th October, 1697, to the last of December. Sixthly, That the Sum of 1,100,117 l. be raised for the Navy; *viz.* 100,000 l. for Wear and Tear; 600,000 l. for Seamen's Wages, in Part of 1,862,849 l. due on that score; 16,389 l. due to the Register'd-Seamen; 24,000 l. for the Salaries of the Commissioners of the Admiralty, and other Officers, and for Contingencies; 28,663 l. for Half-pay Sea-Officers; 90,073 l. for Pensions to superannuated Sea-Officers and Widows; 15,927 l. for the Charge of the Yards; 848 l. for the Muster-masters of the Out-Ports; 43,399 l. for Wages to Ships and Vessels in Ordinary;

Order of Paying  
off all Arrears  
of Debt.

19,608 l.

Anno 9 W. III.  
1698.

Enquiry into  
the false En-  
dorsements on  
Exchequer-  
Bills.

Duncomb and  
Knight, two  
Members,  
expell'd and im-  
prisoned for the  
same.

19,608 l. for Victuals of the Ships in Ordinary; 32,558 l. for Harbour-moorings; 35,848 l. for ordinary Repairs of the Navy; 55,520 l. for the two marine Regiments; and 37,286 l. for the Charge of the Office for Registering Seamen. Seventhly, That the Sum of 60,000 l. be allowed for the Ordinance. And Eighthly, That Provision be made towards Payment of the Principal and Interest of the Transport-Debt. All which Sums they resolved to raise in the Year 1698.

The false Endorsement of Exchequer-Bills was such a scandalous Practice, that it took up much of the Commons time to enquire into it, and reform it. These Exchequer-Bills were of mighty Use in the Nation, by supplying the Scarcity of Money during the Re-coining of the Silver Species. Now, because there was an Interest of seven Pounds twelve Shillings *per Annum* allowed upon the second issuing the said Bills out of the Exchequer, after they had been paid in, on any of the King's Taxes; whereas at their first issuing out of the Exchequer, they bore no Interest; this encouraged several of the King's Officers, both in the Exchequer, the Customs, and the Excise, to contrive together to get great Sums of Money by false Endorsements on these Exchequer-Bills, before they had circulated about, and been brought into any Branch of his Majesty's Revenue. The most considerable Persons that had carried on this unwarrantable Practice, were Mr. Charles Duncomb, Receiver-General of the Excise; Mr. John Knight, Treasurer of the Customs; Mr. Bartholomew Burton, who had a Place in the Excise-Office; and Mr. Reginald Marryot, one of the Deputy-Tellers of the Exchequer; which last, to get his Pardon, compounded to accuse the rest. Upon a full Proof of the matter, Duncomb and Knight, who were Members of the House of Commons, were first expelled the House, and committed Prisoners to the Tower; Burton was sent to Newgate, and Bills were ordered to be brought in to punish them. The Bill against Mr. Duncomb, whereby a Fine of near half his Estate, (which at that time was judged to be worth 400,000 l.) was set upon him, did quickly pass the House of Commons, notwithstanding the Opposition that was made to it, particularly by the Attorney-General: But being sent up to the House of Lords, and their Lordships being equally divided, the Duke of Leeds gave his casting Vote for the rejecting of the Bill. It was then the common Report, that Mr. Duncomb dispelled the impending Storm by a golden Sacrifice; which however History cannot relate as a Truth, because it never came to public notice: But we must not pass over in silence, that Mr. Duncomb being set at liberty by the Order of the House of Lords, without the Consent of the Commons, the latter resented it to that degree, that they caused

caused him to be remanded to the Tower of London, where he continued to the End of the Session. The Bills against Knight and Burton had the same fate; and so all those threatening Clouds that seemed ready to crush the false Endorsers, spent themselves in Vapour and Noise.

Anno 10 W. III.  
1698.

The Commons did this Year design to apply Part of all the forfeited Estates to the Use of the Public; in order to which, they enquired into the Grants made by King Charles II. and King James II. and ordered a Bill to be brought in to make them void. Afterwards they examined the Grants made by his present Majesty in Ireland; and because a Grant was found made to Mr. Railton, which Mr. Montague, Chancellor of the Exchequer, owned to be for his Benefit; a warm Debate arose thereupon; and the Enemies of the latter, who were not few, moved, that he should withdraw; which passing in the Negative, it was *Resolved* by a great Majority, That it was the Opinion of this House that the honourable Charles Montague Esq; Chancellor of the Exchequer, for his good Services to this Government, did deserve his Majesty's Favour: A Vote that will render his Name famous to all succeeding Ages.

A Bill of Re-  
sumption order-  
ed.

On Feb. 9th. A Committee was appointed to draw up an humble Address to his Majesty, upon the Debate of the House, to suppress Prophaneness and Immorality, and all Books which endeavour to undermine the Fundamentals of the Christian Religion, and to punish the Authors. So that on Feb. 17th, this Address was presented to the King by the whole House.

State of Religi-  
on.

' May it please your Majesty, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do with great Joy and Comfort remember the many Testimonies which your Majesty has given us of your Sincerity and Zeal for the true Reformed Religion, as established in this Kingdom: And in particular, we beg leave to present to your Majesty our most humble and thankful Acknowledgments, for the late gracious Declaration your Majesty has made to us from the Throne, that you would effectually discourage Prophaneness and Immorality, which, chiefly by the Neglect and ill Example of too many Magistrates, are, like a general Contagion, diffused and spread throughout the Kingdom, to the great Scandal and Reproach of our Religion, and to the Dishonour and Prejudice of your Majesty's Government.

The Commons  
Address.

' Therefore, in Concurrence with your Majesty's pious Intentions, we do most humbly desire, that your Majesty would issue out your Royal Proclamation, commanding all your Majesty's Judges, Justices of the Peace, and other Ma-

Anno 10 W. III.  
1698.

gistrates, to put in speedy Execution those good Laws that are now in force against Prophaneness and Immorality, giving due Encouragement to all such as do their Duty therein: And that your Majesty would be pleased to require from your Judges and Justices of Assize, from time to time, an Account of such their Proceedings.

‘ And since the Examples of Men in high and public Stations have a powerful Influence upon the Lives of others, we do most humbly beseech your Majesty, that all Vice, Prophaneness and Irreligion, may in a particular manner be discouraged, in those who have the Honour to be employed near your Royal Person; and in all others who are in your Majesty’s Service, by Sea and Land; appointing strict Orders to be given to all your Commanders that they do not only shew a good Example themselves, but also inspect the Manners of those under them; and that your Majesty would upon all Occasions distinguish Men of Piety and Virtue, by Marks of your Royal Favour.

‘ We do further in all Humility beseech your Majesty, that your Majesty would give such effectual Orders, as to your Royal Wisdom shall seem fit, for the suppressing all pernicious Books and Pamphlets, which contain in them impious Doctrines against the Holy Trinity, and other fundamental Articles of our Faith, tending to the Subversion of the Christian Religion, and that the Authors and Publishers thereof may be discountenanced and punished.

‘ And we do also most humbly beseech your Majesty, that your said Proclamation may be ordered to be read at least four Times in the Year, in all Churches and Chappels, immediately after divine Service; and at the Assizes and Quarter-Sessions of the Peace, just before the Charge is given.

‘ We present to your Majesty this our most humble Address, proceeding from our Duty and Zeal for the Glory of God, and to the end that all our Councils may be blessed by his divine Assistance, and may produce Honour, Safety and Happiness, with all the Blessings of a lasting Peace, to your Majesty and your People.’

His Majesty received this Address with a singular Satisfaction, and gave this agreeable Answer.

His Majesty’s  
Answer.

‘ Gentlemen, I cannot but be very well pleased with an Address of this nature; and I will give immediate Directions in the several Particulars you desire: But I could wish some more effectual Provision were made, for the suppressing those pernicious Books and Pamphlets which your Address takes notice of.’

Upon



Upon this seasonable Intimation of his Majesty, leave was given, Feb. 26th, to bring in a Bill or Bills, for the more effectual suppressing Prophaneness, Immorality and Debauchery; and Sir John Philips, and Mr. Edward Harley were ordered to prepare and bring in the said Bill or Bills. In the mean time, an ingrossed Bill from the Lords came down to the Commons, entitled, *An Act for the more effectual suppressing of Atheism, Blasphemy and Prophaneness: Which,* being committed at the second reading to a Committee of the whole House, was, after some Amendments and Conferences, (on certain Points contain'd in it, which too nearly affected the Jews) happily agreed to. And in the mean time, his Majesty, in immediate compliance to the Request of the Commons, published a Proclamation for preventing and punishing Immorality and Prophaneness

Anno 10 W. III.  
1698.

An Act for suppressing  
Atheism, &c.

Several Bills being ready for the Royal Assent, his Majesty came to the House, March the 7th, and pass'd *An Act for explaining the Mum Act; An Act for discharging the Arrears on several Annuities; An Act for all Retailers of Salt to sell by Weight; An Act for preventing the Importation of foreign Bonelace, &c. An Act to prevent the throwing and firing of Squibs; and to some private Acts.*

Royal Assent  
given to several  
Acts.

And April 2. other Bills being ready for the Royal Assent, his Majesty came again to the House of Peers, and pass'd *An Act for disbanding the Army, paying Seamen, &c. for which they gave 1,484,015 l. An Act explaining some part of an Act made last Session for the better Relief of the Poor; An Act for the enlarging, repairing and preserving the Bridge and Key of the Borough of Bridgewater, in the County of Somerset; An Act for dissolving the Marriage, between Charles Earl of Macclesfield, and Anne his Wife, and to illegitimate the Children of the said Anne; and to several private Bills.*

May the 16th, Articles of Impeachment were read, and agreed to be ingrossed against J. Gaudett, D. Barran, P. Longueville, S. Seignoret, R. Baudouin, P. Deheerce Merchants, and J. Pierce Gent. for confederating with several other Persons, in carrying on a Trade to France during the late War.

Several Merchants im-  
peach'd of high  
Crimes and Mis-  
demeanours.

For carrying on a Correspondence with several Persons in France, and giving intelligence to the Enemy of the State of the Realm.

For importing great Quantities of French Goods.

For Exporting Wool.

For conveying Criminals out of the Kingdom.

And for selling French Lustrings, and Alamodes with counterfeit Seals and Marks, in breach of several Laws.

The same day the King gave the Royal Assent to *An Act for granting to his Majesty several Duties upon Coals and Culin; An*

Royal Assent  
given to several  
Acts.

Anno 10 W. III.  
1698.



Grievance of  
the Victuallers  
of the Tower  
Hamlets.

*An Act for continuing the Duties upon Coffee, Teas, Chocolate and Spices, for Discharge of the Transport-Debt; An Act for the better preventing the diminishing the Coin; An Act relating to an Act for taking away the Courts held before the President of the Marches of Wales; An Act for determining Differences by Arbitration; An Act for the better Payment of Bills of Exchange; An Act to naturalize the Children of Officers and Soldiers, and others, being the natural-born Subjects of this Realm, who were born abroad during the War; An Act to repeal an Act to restrain the excessive making of Malt; and 19 private Acts.*

The 20th, the Report, on a Petition from the Victuallers, &c. of the Tower-Hamlets, complaining, that under pretence of Subsistence-Money, &c. they had been obliged by the Justices to disburse several Sums to the Officers and Soldiers of Colonel Tidcombe's Regiment, &c. was read, together with the Resolutions of the Committee, to whom the said Petition was referred, on the same; which were agreed to by the House, and are as follow.

*Resolved,* That the Petitioners had no Cause of Complaint against the Justices of the Peace, who acted in relation to the quartering Colonel Tidcombe's Regiment.

That by an Account stated between the Victuallers, and Mr. Moyer Agent to the said Regiment, it appears that the Sum of three thousand, six hundred and twenty three Pounds fourteen Shillings and eight Pence, is due to the said Victuallers; and that there is due from his Majesty to the said Regiment, four thousand, nine hundred, and seventy five Pounds nine Shillings and seven Pence.

The great Case of the East-India Company, (which had been depending many Years, and because of its Intricacy, had been first referred by the Parliament to the King, and by them back to the Parliament again,) was taken into Consideration by the House, May 4. but we have postponed the Proceedings on that Article till now, for the sake of giving it to the Reader entire, as follows:

The Dispute between the two  
East-India  
Companies.

The old Company having offered to advance 700,000 l. at four *per cent.* for the Service of the Government, in case the Trade to India might be settled on them exclusive of all others, the House seemed inclined to embrace their Proposal; when another number of Merchants, of whom one Shepherd was the Chief, and who were protected by Mr. Montague, Chancellor of the Exchequer, proposed, to the House to raise two Millions at 3 *per cent.* on Condition the Trade to India might be settled on the Subscribers, exclusive of all others: They also proposed that these Subscribers should not be obliged to trade in a Joint-Stock; but if any Members of them should afterwards desire to be incorporated, a Charter should be granted to them for that purpose. The House judged

judged this new Overture not only to be more advantageous to the Government, but likewise very likely to settle this controverted Trade on a better Foundation than it was on before. A Bill was therefore, on May the 26th, ordered to be brought into the House, for settling the Trade to the East-Indies on those who should subscribe the two Millions, according to the Limitations beforementioned, and the following Resolutions.

Anno 10<sup>th</sup> W. III.  
1698.

‘ First, That every Subscriber might have the liberty of trading Yearly, to the amount of his respective Subscription; or might assign over such his liberty of Trading to any other Person. Secondly, That his Majesty be empowered to incorporate such of the said Subscribers, as should desire the same. Thirdly, That the Powers and Privileges for carrying on the East-India Trade, should be settled by Parliament. Fourthly, That the said Subscribers should enjoy the said eight Pounds *per cent.* and liberty of trading to the East-Indies,\* exclusive of all others, for the terms of ten Years, and until the same should be redeemed by Parliament. Fifthly, That every Person subscribing five hundred Pounds, have a Vote; and no Person to have more Votes than one. Sixthly, That all Ships laden in the East-Indies, should be obliged to deliver in England. Seventhly, That no Person that should be a Member of any Corporation trading to the East-Indies, should trade otherwise than in the Joint-Stock of such Corporation of which he was a Member. Eighthly, That five Pounds *per Cent. ad valorem*, upon all returns from the East-Indies, be paid by the Importer; to be placed to the Account of the Subscribers, towards the charge of sending Ambassadors, and other extraordinary Expences. And Ninthly, That over and above the Duties now payable, a further Duty of one Shilling and ten Pence *per Pound Weight*, be laid upon all wrought Silks imported from India and Persia; to be paid by the Importer.’ This Bill being accordingly brought into the House, the old East-India Company presented a Petition against it.

Resolutions  
thereon.

And June the 10th, a Motion being made, that the said Bill be read a second Time, it pass’d in the Affirmative, Yeas 135. Noes 99.

State of the  
Dividends,  
Debts, &c. of  
the old Com-  
pany.

The 13th, the Committee, appointed to inspect the Books of the East-India Company, made their Report; by which it appeared:

That the original Stock of the said Company in the Year 1657, was 369,891 l. 5 s.

That 390  $\frac{1}{2}$  *per cent.* was divided between Octob. 1. 1661. and April 1. 1681.

That at a general Court, November 2. 1681. a Call was made

\* The House divided on this Article, and it was carried in the Affirmative, Yeas 126. Noes 99.

Anno 10<sup>th</sup> W. III.  
1698.

made for the Residue of the Adventurers Subscriptions, at 100 *per cent.* at two equal Payments.

That Jan. 18. 1681. the said Call was revoked, and a Dividend of 150 *per cent.* was order'd, *viz.* 100 *per cent.* to double their Stock, and 50 *per cent.* in Money.

That it appear'd upon Enquiry, that this sudden Difference in the Company's Affairs, was owing to the Arrival of 6 Ships valued at 500,000 l.

That December 31. 1680. the Company was in debt 532,589 l. 7 s. 6 d.

That in the Year 1681. they took up at Interest 80,940 l.

That from the Time of doubling their Stocks as above, their Dividends were made regularly after the Rate of 25 *per cent.*

So that their Dividends from 1657 to 1681, amount to 440  $\frac{1}{2}$  *per cent.* and from 1681 to 1691 doubling the same, according to the nominal Duplication of the Stock, to 400 l. *per cent.* in all from 1657 to 1691, 840  $\frac{1}{2}$  *per cent.* of the 369,891 l. 5 s. original Stock.

That these Dividends were always made on the Arrival of Ships on general Computations, without the Help of their Books or a minute State of their whole Account.

That March 31. 1698. their Books not being balanced any farther, the Total of their Debt upon Bond, amounted to 631,554 l. 19 s. 10 d.

That what is owing by Customs, amounts by Computation to ————— l. 44,177 9 4  
And for Freight and Demurrage ————— 10,191 7 3

That in regard to their Debts in India, they could not compute them in less than ten Days.

That their Cash amounted to ————— l. 5400 0 0

That there was due to them upon Account. 10,000 0 0

That they have Salt-Petre to the value of 13,000 0 0

• That the Cargoes of their Ships abroad are }  
valued at ————— } 925,539 5 3

That with regard to their dead Stock in India, they give the same Answer that they did to their Debts there.

That the Company having received 144,000 l. new Subscriptions, and Enquiry being made how it was disposed of, it was answer'd that it was impossible to give the Particulars, but that all was comprized in their Cash-Books; which being examined, they found that, beside 525,565 l. 0 s. 4 d. repaid to the old Adventurers, the following Particulars were plac'd to Account, *viz.*

|   | l.       | s. | d. |
|---|----------|----|----|
| November 30. 1693. paid for the Company's   | } 24,983 | 00 | 0  |
| Special Service —————                       |          |    |    |
| December 7. 1694. for Disbursements for the | } 7828   | 13 | 0  |
| Company —————                               |          |    |    |
|   |          |    | To |

To Sir Thomas Cook, on his Note dated } 90,000 00 0  
 January 10. 1693. ————— }  
 Anno 10 W. III.  
 1698.

Progress of the  
 Bill.

A Motion was then made, that Satisfaction be given to the late Subscribers to the East-India Company, for all Damages done them, by making Dividends beyond the real Value of the Company's Stock, at the Time of such Dividend; And also by ordering to be paid out of the new Subscriptions a Sum of about 325,000 l. lent by the Members of the old Company by way of Increase of their Capital Stock; such Damage to be answered out of the Estates of the said Members, respectively receiving such Dividend and Payment: and a Debate arose, which was adjourn'd till the next day, when the said Company remonstrated, that at the time of calling in the 50 per Cent. they had a good Estate to that Value: That the said 50 per Cent. was repay'd to the old Adventurers, with the Concurrence of the new Subscribers.

The 20th, both Companies delivered in their Proposals.

The 22d, the Amendments to the Bill were read, one of which being to restrain the Company for the future from borrowing Money at above 6 per Cent. it pass'd in the Negative, Yeas 92, Noes 103.

Another, enacting, That the said Company shall pay and discharge all just Debts which they now owe or are subject to, and that all Manors and Lands, heretofore granted to them under the Great Seal, or any private Grant, which they now or hereafter shall be possessed of, shall be subject to the Payment of such just Debts, pass'd in the Affirmative, Yeas 113, Noes 100.

Another being offer'd, that the Company be established in pursuance of this Act, and that their Successors shall never suffer their Debts to exceed their capital Stock, undivided; a Motion was made to adjourn, and over-rul'd; after which, the said Amendment was added to the Bill.

The 23d, another Amendment was offered to the Bill, That the Trade established by this Act, except the exclusive Right, shall be subject to such Regulations as the Parliament shall think most for the Advantage of the Kingdom, and pass'd in the Negative, Yeas 66, Noes 97.

A Motion being then made, that the Bill and Amendments be engross'd, it was resolv'd in the Affirmative, Yeas 120, Noes 80.

The 26th, the Bill was pass'd on a Division, Yeas 115, Noes 78.

The Bill pass'd  
 in favour of the  
 new Company.

We must now go back, in order to take notice of some other Particulars, which were transacted this Session.

May 28. *Resolved*, That the new Subsidies of Tonnage and Poundage, to make up his Majesty's Revenue 700,000 l. per Ann. be granted to his Majesty for Life.

700,000 l. per  
 Ann. granted to  
 the King for  
 Life.

That

Anno 10 W. III.  
1698.

That the Surplus of the said Subsidies shall be dispos'd of at the Discretion of Parliament.

The 30th, the Answers of Gaudett and the other Persons impeached, were read, and importing that they would abide their Trial, Replies were order'd to be prepared thereto.

Three Negatives.

June 8. A Negative was put on the second Reading of certain Resolutions of a Committee appointed to examine the Petition of Col. Michelborne, joint Governour with Dr. Walker of London-Derry; Tho' it appear'd, that all the Allegations in the said Petition were made good; tho' 992 l. was due to the said Colonel upon his Pay as Governour, and 14,949 l. 18 s. 6 d. to the said Colonel, his Officers and Soldiers; and tho' the said Committee gave it as their Opinion, that, in consideration of the eminent Services of the said Colonel, and his said Regiment, an Address ought to be presented to his Majesty in their favour.

The 9th, on a Reading of the Civil-List Bill, a Clause being offer'd to secure the Rights of the late Bankers to their Debts, it pass'd in the Negative, Yeas 82, Noes 92.

The 10th, the House entering into Consideration for granting a further Aid to his Majesty, by a Quarterly Poll; a Motion was made to adjourn, and pass'd in the Negative, Yeas 19, Noes 89.

The 11th, Order'd that a Clause of Loan be admitted on the said Bill, and on the Duties for Coal and Culm.

Controversy between the two Houses, occasioned by the Impeachment of Gaudett, &c.

During this Interval, the two Houses had several Conferences on a Demand of the Commons, to have a convenient Place assign'd them to manage the Prosecution of their Impeachment against Gaudett, &c. which the Lords refus'd, as unprecedented, except in capital Cases, when Trials were carried on in Westminster-Hall. The Controversy was carry'd on with great Steadiness on both sides, but came to no Issue; the said Persons acknowledging their Guilt, upon which they were severally fin'd by the Lords; and the Session soon after breaking up.

Issue of the said Impeachment.

Molyneux's Case of Ireland complain'd of.

May 21st, Complaint had been made of a printed Book, entitled, *The Case of Ireland being bound by Acts of Parliament in England*, (written by William Molyneux of Dublin Esq;) which denied the Dependence of Ireland upon the Authority of the Parliament of England. A Committee was thereupon appointed, to examine further into the said Pamphlet, to enquire into the Author of it; and also to search what Proceedings had been in Ireland, that might occasion the said Book; and an Address to the King voted, that his Majesty would give Directions for the Discovery and Punishment of the Author.

June 22. Upon the Report of the Committee, it was unanimously resolv'd, ' That the said Book was of dangerous


dangerous consequence to the Crown and People of England, by denying the Authority of the King and Parliament of England, to bind the Kingdom and People of Ireland, and the Subordination and Dependence that Ireland has, and ought to have upon England, as being united and annexed to the Imperial Crown of this Realm; and that a Bill entitled, *An Act for the better Security of his Majesty's Person and Government*, transmitted under the Great Seal of Ireland; whereby an Act of Parliament made in England, was pretended to be re-enacted, Alterations therein made, and divers things enacted also, pretending to oblige the Courts of Justice, and the Great Seal of England, by the Authority of an Irish Parliament; had given occasion and encouragement, to the forming and publishing the dangerous Positions contained in the said Book.

Anno 10 W. III.

1698.

The House in a Body then presented an Address to the King: Wherein they laid before his Majesty, the dangerous Attempts that had been of late made by some of his Subjects of Ireland, to shake off their Subjection to, and Dependence on this Kingdom; which had manifestly appeared to the Commons, not only by the bold and pernicious Assertions in a Book published and dedicated to his Majesty, entitled, *The Case of Ireland being bound by Acts of Parliament in England stated*: But more fully and authentically by the Votes and Proceedings of the House of Commons in Ireland, in their late Sessions; and whereby the forementioned Bill sent hither under the great Seal of Ireland, whereby they would have an Act passed in the Parliament of England, expressly binding Ireland, to be re-enacted there, and Alterations therein made; some of which amounted to a Repeal of what is required by the said Act made in England: and in others, of the said Alterations, pretending to give Authority to, and oblige the Courts of Justice and Great Seal here in England. That this they could not but look on as an occasion and encouragement, in the forming and publishing the dangerous Positions contained in the said Book. That the Consequence of such Positions and Proceedings, would be so fatal to this Kingdom, and even to Ireland itself, that they needed not to be enlarged on, or aggravated. Therefore they rested satisfied that his Majesty by his Royal Prudence, would prevent their being drawn into Example; so they assured his Majesty of their ready Concurrence and Assistance, in a parliamentary way, to preserve and maintain the Dependence and Subordination of Ireland to the Imperial Crown of this Realm. And they humbly besought his Majesty, that he would give effectual Orders, to prevent any thing of the like nature for the future, and the pernicious Consequences of what was

Address thereon.

Anno 10 W. III. 1698.  past, by punishing and discountenancing those that had been guilty thereof: That he would take all necessary care that the Laws which direct and restrain the Parliament of Ireland, in their Actings, be not evaded, but strictly observed; and that he would discourage all things which might in any degree lessen the Dependence of Ireland upon England. To this his Majesty's Answer was, That he would take care that what was complained of, might be prevented and redressed as the Commons desired.

Address in Behalf of the City of London-derry, the Governour and Garison. The 23d, an Address was read and agreed to, recommending the Services and Sufferings of the City of London-Derry to his Majesty's Consideration, for Relief in the Kingdom of Ireland; that they might no longer remain a ruinous Spectacle to all, a Scorn to their Enemies, and a Discouragement to his Majesty's well-affected Subjects.

As likewise the Governour and Garison of the said City, as those who thro' the utmost Sufferings and Extremities have defended the same; and for so signal Service, did deserve to have some special Marks of his Majesty's Favour for a lasting Monument to Posterity.

In answer to which, his Majesty was pleased to promise to take them into Consideration.

Royal Assent given to several Acts.

July 5. The King came to the House of Peers, and gave the Royal Assent to the *Act for the new East-India Company*; to an *Act for paying to his Majesty, his Heirs and Successors, farther Duties on Stamp Paper, &c. an Act for raising the 700,000 l. a Year, for the Civil-List on Tunnage and Poundage, &c.*

King's Speech to both Houses. ' My Lords and Gentlemen,  
' I Cannot take leave of so good a Parliament, without publicly acknowledging the Sense I have of the great things you have done for my Safety and Honour, and for the Support and Welfare of my People.

' Every one of your Sessions hath made good this Character. That happy uniting of us in an Association for our mutual Defence; the remedying the Corruption of the Coin, which had been so long growing upon the Nation; the restoring of Credit; the giving Supplies in such a manner for carrying on the War, as did by God's Blessing produce an honourable Peace; and after that, the making such Provisions for our common Security, and towards satisfying the Debts contracted in so long a War, with as little Burthen to the Kingdom as is possible, are such things as will give a lasting Reputation to this Parliament, and will be a Subject of Emulation to those which shall come after.

' Besides all this, I think myself personally obliged to return my Thanks to you, Gentlemen of the House of Commons,



‘ mons, for the Regard you have had to my Honour, by the  
 ‘ establishing of my Revenue.

Anno 10<sup>th</sup> W. III.  
 1698.

‘ My Lords and Gentlemen,

‘ There is nothing I value so much as the Esteem and  
 ‘ Love of my People; and as for their sakes I avoided no  
 ‘ Hazards during the War, so my whole Study and Care  
 ‘ shall be, to improve and continue to them the Advantages  
 ‘ and Blessings of Peace.

‘ And I earnestly desire you all, in your several Stations,  
 ‘ to be vigilant in preserving Peace and good Order, and in  
 ‘ a due and regular Execution of the Laws, especially those  
 ‘ against Prophaneness and Irreligion.’

And then the Lord-Chancellor, by his Majesty’s Com-  
 mand, prorogued the Parliament until Tuesday the second  
 Day of August next, which was soon afterwards dissolved.

On Tuesday December 6<sup>th</sup>, a new Parliament met at  
 Westminster; and his Majesty coming to the House of Peers  
 with the usual Solemnity, sent for the Commons, to whom  
 the Lord-Chancellor signified his Majesty’s Pleasure, that  
 they should proceed to the Choice of a Speaker, and pre-  
 sent him on Friday next. The Commons made choice of  
 Sir Thomas Littleton Bart. who being presented on Decem-  
 ber 9<sup>th</sup>, was graciously approved by his Majesty, who then  
 made this Speech to both Houses.

Fourth Parlia-  
 ment.

‘ My Lords and Gentlemen,

‘ I Have no doubt but you are met together with Hearts  
 ‘ fully disposed, to do what is necessary for the Safety,  
 ‘ Honour and Happiness of the Kingdom; and that is all I  
 ‘ have to ask of you.

King’s Speech.

‘ In order to this, two Things seem principally to require  
 ‘ your Consideration.

‘ The one is, what Strength ought to be maintained at  
 ‘ Sea, and what Force kept up at Land for this Year. All  
 ‘ I shall observe to you upon this head is, that the flourish-  
 ‘ ing of Trade, the supporting of Credit, and the quiet of  
 ‘ People’s Minds at home, will depend upon the opinion  
 ‘ they have of their Security; and to preserve to England  
 ‘ the Weight and Influence it has at present on the Coun-  
 ‘ cils and Affairs abroad, it will be requisite Europe should  
 ‘ see you will not be wanting to yourselves.

‘ The second thing I shall mention to you as of great  
 ‘ consequence, is the making some further Progress toward  
 ‘ discharging the Debts, which the Nation has contracted  
 ‘ by reason of the long and expensive War. In this the  
 ‘ public Interest as well as Justice is concerned; and, I  
 ‘ think an English Parliament can never make such a

Anno 10 W. III. 1698. ‘ Mistake, as not to hold sacred all Parliamentary Engagements.

‘ Gentlemen of the House of Commons,  
‘ I do earnestly recommend these things to you, that you  
‘ may provide such Supplies as you shall judge necessary for  
‘ these several Occasions.

‘ My Lords and Gentlemen,  
‘ I think it would be happy, if some effectual Expedient  
‘ could be found for employing the Poor, which might tend  
‘ to the Increase of our Manufactures, as well as remove a  
‘ heavy Burthen from the People. I hope also you will em-  
‘ ploy your Thoughts about some good Bills for the Ad-  
‘ vancement of Trade, and for the further discouraging of  
‘ Vice and Prophaneness. The Things I have mentioned  
‘ to you being of common Concern, I cannot but hope for  
‘ Unanimity and Dispatch.

This Speech, as usual, being taken into Consideration by the House, it was thought by the Majority but a natural Effect of Peace, to reduce the Army. Accordingly, after the Affair had been thoroughly debated on both sides, they came to the following Resolutions, *viz.*

Vote to reduce  
the Army.

‘ That all the Land-Forces of England, in English Pay, exceeding seven thousand Men (and those consisting of his Majesty’s natural-born Subjects) be forthwith paid and disbanded. And that all the Forces in Ireland, exceeding twelve thousand Men (and those his Majesty’s natural-born Subjects, to be kept and maintained by the Kingdom of Ireland) be likewise forthwith disbanded. And they ordered a Bill to be brought in upon the said Resolutions, which was eagerly pushed on, and soon brought to perfection.

These Proceedings, we are told, made the King very uneasy; and the more so, because his Dutch Regiment of Guards, who had so long served him, was by this Bill to be torn away from him, and to be sent out of the Kingdom. However, his Majesty like a wise and good Prince, never opposing his own Will, to what seemed to be the Voice and Judgment of his People, chose rather to compliment the Commons, than to contend with them. So on Wednesday Feb. the 1st, the King came to the Parliament, and gave the Royal Assent to several Bills.

After which his Majesty made the following Speech, to shew his Reasons for passing the disbanding Bill, and yet to expostulate a little upon the Hardship of it.

‘ My

Anno 11 W. III.  
1699.

‘ My Lords and Gentlemen,  
‘ **I** Came to pass the Bill for disbanding the Army, as soon  
‘ as I understood it was ready for me: Though in our  
‘ present Circumstances there appears great hazard in break-  
‘ ing such a Number of the Troops: And though I might  
‘ think my self unkindly used, that those Guards who came  
‘ over with me to your Assistance, and have constantly at-  
‘ tended me in all the Actions wherein I have been en-  
‘ gaged, should be removed from me; yet it is my fixed  
‘ opinion, that nothing can be so fatal to us, as that any  
‘ Distrust or Jealousy should arise between me and my Peo-  
‘ ple, which I must own would have been very unexpected,  
‘ after what I have undertaken, ventured, and acted for the  
‘ restoring and securing of their Liberties.

King's Speech  
to both Houses  
on that occasion.

‘ I have thus plainly told you the only Reason which  
‘ has induced me to pass this Bill: And now I think my  
‘ self obliged, in Discharge of the Trust reposed in me, and  
‘ for my own Justification, that no ill Consequences may lie  
‘ at my door, to tell you as plainly my Judgment, that the  
‘ Nation is left too much exposed.

‘ It is therefore incumbent on you to take this Matter  
‘ into your serious Consideration, and effectually to provide  
‘ such a Strength as is necessary for the Safety of the King-  
‘ dom, and the Preservation of the Peace which God hath  
‘ given us.’

The Commons were so well pleased with this gracious  
Complaisance of the King, that they immediately resolved,  
That an humble Address be presented to the King, to give  
his Majesty Thanks for his most gracious Speech to both  
Houses of Parliament with the Assurances of this House,  
That they will stand by, and assist his Majesty in the Sup-  
port of him and his Government, against all Enemies what-  
soever. And they accordingly put their Resolution into this  
Form of Address.

‘ Most gracious Sovereign,

‘ We your Majesty's most dutiful and loyal Subjects, the  
Commons in Parliament assembled, being highly sensible  
of the Difficulties your Majesty has undertaken, the La-  
bours you have sustained, and the Hazards you have run,  
in rescuing us from Popery and Arbitrary Power, restoring  
our Liberties, and giving Peace and Quiet to all Christen-  
dom; beg leave to return our most hearty Thanks, for  
your most gracious Speech: In which you express so great  
a Regard for the good Will and Affections of your Peo-  
ple, and have given so undeniable a Proof of your Readiness  
to comply with the Desires of your Parliament; and as

Commons Ad-  
dress of Thanks.

Anno 11 W. III.  
1699.

your Majesty has shewn a most tender and fatherly Concern for the Security and Safety of your People ; so give us leave to assure your Majesty, That you shall never have reason to think the Commons are undutiful, or unkind to your Majesty ; but that we will upon all occasions stand by, and assist your Majesty in the Preservation of your sacred Person, and Support of your Government against all your Enemies whatsoever.

This Address being presented by the whole House, had the Honour to be thus answered by the King.

‘ Gentlemen,

King’s Answer. ‘ I take this Address very kindly : I am fully satisfied of your Duty and Affection to me, and have no doubt but you will always act in the manner you have expressed on this occasion.’

Admiral Ruffel’s  
Account.

March 10. An Account of Admiral Ruffel’s Receipts and Disbursements for the Service of the Navy was laid before the House. Whereby it appear’d that the Admiral had received 10,000 l. and had disbursed 18,666 l. But, of the Items contained in his Account, but two Vouchers being sent to the Auditors, one of which was for 2000 l. and the other for 400 l. the said Auditors refused to pass the said Account, till they received his Majesty’s Command, signify’d from the Admiralty-Board.

The 11th, The House divided, on a Motion that the Bill for granting a Supply of 1,484,015 l. for Disbanding the Army, &c. should then be read a second Time, it pass’d in the Negative, Yeas 72, Noes 139.

The same Day, the several Half-pay Establishments were laid before the House, by which it appear’d that the annual Expence of the said Establishments would be 57,334 l. 13 s. 10 d. *per Annum.*

A Bill to re-  
strain the Num-  
ber of Officers  
in the House of  
Commons pass’d.

The 16th, a Bill *to restrain the Number of Officers sitting in the House of Commons*, was read the third Time, pass’d, and sent up to the Lords for their Concurrence.

The

The 17th, the Commissioners of the Navy presented to the House, according to Order, an Account of what Money, Tallies, and Malt-Tickets, remained in their Hands, which was as follows:

|                                      | For Seamen's-Wages. |    |    | Wear<br>and<br>Tear. | Half-Year's<br>Wages to<br>Workmen. | Regiment:<br>Office. | Marines. | Of Prizes. |           | Total.   |       |
|--------------------------------------|---------------------|----|----|----------------------|-------------------------------------|----------------------|----------|------------|-----------|----------|-------|
|                                      | l.                  | s. | d. |                      |                                     |                      |          | Thirds.    | Tenths.   | l.       | s. d. |
| In Money ———                         | 26,538              | 6  | 0  | ————                 | ————                                | 500                  | ————     | 24         | 4 6       | 33,656   | 2 10  |
| Malt Lottery-<br>Tickets ———         | 40,374              | 17 | 7  | ————                 | ————                                | 23 00                | 1802 0 0 | ————       | ————      | 44,467   | 17 7  |
| On the 3 s. Aid —                    | 74,903              | 7  | 3  | ————                 | ————                                | ————                 | ————     | ————       | ————      | 74,903   | 7 3   |
| On Coal trans-<br>fer'd to Leather } | 58,620              | 7  | 2  | 4926 13 8            | ————                                | ————                 | ————     | ————       | ————      | 63,547   | 0 10  |
| First 3 s. Aid —                     | 113,829             | 1  | 11 | ————                 | ————                                | ————                 | ————     | ————       | ————      | 113,829  | 1 11  |
| Duties on Coals —                    | 61,215              | 2  | 1  | ————                 | ————                                | ————                 | ————     | ————       | ————      | 161,215  | 2 1   |
| Poll-Act ———                         | 200                 |    |    | ————                 | ————                                | ————                 | ————     | ————       | ————      | 200      |       |
| Additional Excise                    | 5863                | 8  | 11 | ————                 | ————                                | ————                 | ————     | ————       | ————      | 5863     | 8 11  |
| Births, Marria-<br>ges and Burials } | ————                |    |    | 807 10               | ————                                | ————                 | ————     | ————       | ————      | 807 10   |       |
| Fourth 4 s. Aid —                    | ————                |    |    | 455 13 2             | ————                                | ————                 | ————     | ————       | ————      | 455 13 2 |       |
| New E. Ind. Comp. —                  | ————                |    |    | 988 2                | 60,031                              | ————                 | 217 4 0  | ————       | ————      | 61,236   | 6 0   |
|                                      | 382,532             | 12 | 11 | 6189 16 10           | 60,031 0 0                          | 2000 0 0             | 2019 4 0 | 24 4 6     | 6592 12 4 | 460,190  | 10 7  |
|                                      |                     |    |    |                      |                                     |                      |          |            |           |          | At    |

An Account of  
Cash, &c. in  
the hands of the  
Treasurer of  
the Navy.  
1699.  
Anno 17 W. III.

Anno 11 W. III.  
1699.

An Account of  
Grants.

At the Foot of this Account, was a Note signifying, That the Money due for Wages was then paying off, and that the 60,031 l. Tallies for the Yards, was just received, and would likewise be paid to the Workmen, as soon as they could be turn'd into Money.

The same day, an Account of the Grants made since Jan. 1, 1697, was presented to the House, an Abstract of which is as follows:

A Grant to Francis Vaughan, of several Goods and Chattles, Value 129 l. seiz'd by the Sheriff of Somerset, upon a *special Capias*.

A Grant to Sir Francis Leigh, in consideration of 600 l. paid into the Exchequer, and 1000 l. to Sir Henry Sheers, of certain Lands forfeited by John Strafford Esq; out-law'd, under the yearly Rent of 6 s. 8 d.

A Grant to Ralph Grey Esq; Governor of Barbadoes of 1200 l. *per Ann.* during Pleasure, out of the 4  $\frac{1}{2}$  *per Cent.* arising within the said Island.

A Grant to Samuel Day Esq; Governor of Bermudas, of 240 l. *per Ann.* out of the Exchequer, during his Continuance in that Government.

A Release or Discharge to Anthony Stoner and others, as Sureties for Daniel Ballard of a Bond of 2000 l. entered into by John Dutton Colt Esq; Collector of Bristol.

A Privy-Seal, for paying 85,000 l. with 6 *per Cent.* Interest, to Prince George of Denmark, in lieu of 340,000 Rix-dollars due to the said Prince upon two Mortgages on the Isle of Jannieren, and the Bailleries of Transbottle and Steinhurst, Part of the Duke of Holstein's Territories, surrender'd to the said Duke on his Majesty's Promise to pay the same.

A Warrant from his Majesty, to the Trustees for Sale of Fee-farm Rents, to convey a Fee-farm Rent of 66 l. 13 s. 4 d. *per Ann.* arising out of Brigstock-Park, to Frances, Countess Dowager of Salisbury, her Heirs and Assigns for ever, in Corroboration of her Title to the said Rent and Arrears thereof, purchased of his Majesty.

A Grant of 200 l. *per Ann.* to Isaac Manley Esq; for the Life of his \* Father John Manley Esq; payable out of the Post-Office.

A Privy-Seal. for 120 l. *per Ann.* to George Fielding Esq; during Pleasure

A Grant of the Office of Trover and Poiser, to the Mayor and Burgesses of Newcastle, for three Lives.

A Discharge to the Marquis of Winchester of 1050 Ounces of White-Plate, for the Service of his Table, when Chamberlain to the late Queen.

A

\* Perhaps the Gentleman of that Name, committed to the Tower for his free Speaking in Sir John Fenwick's Case, *Vid.* p. 52.

A Warrant for paying to the Treasurer of Greenwich-Hospital 19500*l.* being the Amount of the Fines imposed on Gaudett and others, *vid. P. 88.*

Anno 11 W.III.  
1699.

A Grant to Nathaniel Crow, of the forfeited Estates, Real and Personal, belonging to Arthur Mangey, Robert Child, and J. Hurst, convict of High-Treason, subject to the Payment of 256*l.* 6*s.* and Interest to Richard Aslton Esq; and 300*l.* to such Persons as his Majesty shall be pleased to appoint.

A Grant to the Poor of St. Margaret's, of the Old Clock-House and Bell therein, in Palace-yard.

A Grant to Otto Baron of Schwerin, his Heirs and Assigns for ever, of the Estate of Ernbert Maria, his Wife; which, by reason of his being an Alien born, is vested in his Majesty.

A Grant to Doctor Titus Oates, of 300*l.* *per Ann.* for 99 Years, out of the Post-Office, if he or his Wife should live so long.

A Grant of the Isle of Scilly, to Sidney Lord Godolphin, for the Term of 89 Years, after the Expiration of the present Lease, at the yearly Rent of 40*l.*

A Grant of 200*l.* *per Ann.* to the Relict of Dr. Tillotson, in addition to her former Annuity of 400*l.* payable out of the Duty of 4 *per Cent.* during Life.

A Warrant from his Majesty, to the Trustees for Sale of Fee-farm Rents, to contract with the Earl of Dorset, for 300*l.* *per Ann.* in the said Rents, and to convey the same to him.

A Privy-Seal, for 15,000*l.* *per Ann.* to the Duke of Gloucester, during Pleasure.

A Grant to the Earl of Jersey of 3000*l.* as his Majesty's Bounty.

The like to Doctor Oates, of 500*l.*

A Warrant for 15,000*l.* to the French Protestants.

A Grant of a Piece of Wood-land in Richmond New-Park, valued at 6*l.* *per Ann.* to Laurence Earl of Rochester, his Heirs and Assigns, for ever, at the annual Rent of 6*s.* 8*d.*

A Grant, in Trust for the Earl of Ranelagh, of the Reversion of certain Parcels of Ground in Chelsea; whereon his Lordship hath built a House, under the yearly Fee-farm Rent of 5*l.*

A Grant to Japhet Croke, of certain Shares in the Phoenix Brew-House, forfeited by the Attainder of Sir John Friend, in Consideration of 5500*l.* to be paid into the Exchequer:

Not yet paid.

A Discharge to John Dee, Senior, of Part of a Fine of 300*l.*

A Grant to Patience Bond of a Lease, seiz'd into his Majesty's Hand, upon the Outlawry of Epaphroditus March.

Annos) W. III.

1699.



A Warrant to the Commissioners for Sale of Fee-Farm Rents, to contract with R. Topham Esq; for the Purchase of 14 l. 5 s. 4 d.  $\frac{1}{2}$  *per Ann.* payable out of the Mannor of Windsor.

A Discharge to Pierce Row of a Fine of 500 Marks.

A Grant to ————— of a Pension for Life of 500 l. *per ann.* payable out of the Post-Office.

A Warrant for the Payment of 600 l. being the Remainder of 1800 l. set in super upon the Proprietors of the new River Water in the Receivers Account of the Poll-Tax.

A Grant to John Gore, his Heirs and Assigns for ever, of the Reversions expectant upon several Estates for Lives in several Manors, &c. belonging to Sir William Williams Bart. and which were devis'd to his Majesty after the Deaths of two Sons of Sir Bouchier Wray and others, subject to the Payment of a Rent-Charge of 540 l. *per Annum*, and other Incumbrances.

A Grant to William Petre of several Goods and Chattels forfeited by Sir Augustine Palsgrave, upon an Outlawry.

*Grants, &c. in Ireland, from January 1. 1697.*

A Warrant to the Lords Justices to levy 8000 l. pursuant to a Clause in the Act of Settlement, or Explanation, on the Estates of several Roman Catholicks; and to pay the same to Lionel, Earl of Orrery, pursuant to a Grant of Charles II. to Roger Earl of Orrery.

A Grant to John Yeard, of the Profits of the Deanery of Aechory and Chautership of Killala, from the Time of their being vacant.

A Grant of several Parcels of Land, valued at 35 l. *per Ann.* to Dorothy Baroness Dowager of Upper Ossory for Life.

A Grant to G. Fitzgerald of 200 l. *per Annum* in Consideration of his surrendering the Office of Comptroller of the Musters.

A Grant of several forfeited Lands specified in a Schedule, of the clear Yearly Value of 679 l. 7 s. 1 d. to the Earl of Rochford and his Heirs.

A Grant to Sir Edward Biron of certain forfeited Lands valued at 104 l. 3 s. 8 d. *per Annum* for the Term of 99 Years.

A Grant to John Butcher of certain Quit and Crown Rents, valued at 883 l. 9 s. *per Annum* for 99 Years.

A Grant to Thomas Pendergrafs, his Heirs and Assigns for ever, of several forfeited Lands of the clear Yearly value of 334 l. 0 s. 2 d.  $\frac{1}{2}$  to make good the Deficiency of a former Grant for 500 l. a Year.

A Grant to James Puissar, and his Heirs for ever, of several forfeited Lands of the clear Yearly value of 341 l. 14 s. 6 d.  $\frac{1}{2}$ , likewise to make good the Deficiency of a former Grant.

A



A Grant to Colonel Hamilton of certain forfeited Lands of the clear Yearly value of 500 l. 8 s. 6 d.  $\frac{1}{2}$ . Anno 11 W. III. 1699.

A Grant of the Custody of certain forfeited Lands belonging to Sir Drury Wray, to his Son Christopher Wray Esq; during the Life of his Father.

A Grant to Dr. John Leslie, of the Inheritance of several forfeited Lands to the value of 400 l. *per Annum*, which were before granted him for 99 Years.

A Grant to Thomas Lord Coningsby, for the Offices of Vice-Treasurer, General-Receiver, Pay-Master General, and Treasurer at War, with the Yearly Fee of 60 l. 13 s. 4 s. Sixpence in the Pound in all Payments made by him or his Deputies, during Pleasure.

A Discharge to Sir Richard Bellingham of the Remainder of a Debt of 2000 l. and Interest.

A Warrant for allowing and discharging to William Griffith, the Collector of Sligo, the Sum of 894 l. 13 s. 7 d.  $\frac{3}{4}$ , which he was robbed of.

A Grant of the forfeited Estate of Sir Neill Oneile, to Dame Frances Oneile for 41 Years.

A Grant to Richard Fitzpatrick Esq; of all the forfeited Estate of Barnaby Lord of Upper Ossory, valued at 60 l. *per Annum*, and subject to the Payment of 35 l. *per Annum* to Dorothy Lady Dowager of Upper Ossory, for Life.

A Grant or Demise to Major-General Stewart, in Consideration of a Release of 3537 l. 12 s. 8 d. due to him on account of his Regiment, the Loss of his Right Arm, and other Losses; certain forfeited Estates of the clear Yearly value of 751 l. 18 s. 5 d.  $\frac{3}{4}$  for 99 Years.

A Grant to John Ellis Esq; his Heirs and Assigns for ever, of the forfeited Estate of his Brother Sir William Ellis, from whom there was due to the said John Ellis 1200 l. and Interest; the said Estate was otherwise much encumbered.

A Discharge to the Viscount Lanesborough of 162 l. 7 s. 10 d.  $\frac{1}{2}$  due for Quit Rents.

A Warrant to lease out the Estates of Sir Valentine and Sir Nicholas Browne, at the best improved Value for 21 Years, and out of the Produce to pay to the Earl of Bellamont 1000 l. a Year, (which by virtue of a former Grant, was charg'd to be paid out of the said Estate, to the said Earl for 999 Years,) and 400 l. more to Helen Viscountess Kenmure, for the Support of herself and Children.

The same Day the Earl of Ranelagh delivered a Message from the King to the House, which was all writ by his Majesty's own Hand, as follows:

' WILLIAM R.

' His Majesty is pleased to let the House know, that the necessary Preparations are made for transporting the Guards who came with him into England; and that he

The King's  
Message to the  
Commons.

ANNO: W.III.  
1699.

‘ intends to send them away immediately, unless, out of Con- sideration to him, the House be disposed to find a way for continuing them longer in his Service, which his Majesty would take very kindly.’

Upon reading this Message, the question was put, ‘ That a Day be appointed to consider of his Majesty’s said Message;’ but it was carried in the Negative, and resolved, ‘ That a Committee be appointed to draw up an humble Address, to be presented to his Majesty, representing the Reasons why the House cannot comply with the purport of his Majesty’s Message this Day communicated to the House.’ And this \* Address was accordingly prepared, as follows, and delivered on the 24th.

The Commons  
Address.

‘ Most gracious Sovereign, We your Majesty’s most dutiful and loyal Subjects, the Commons in this present Parliament assembled, do, with unfeigned Zeal to your Majesty’s Person and Government, (which God long preserve) most humbly represent to your Majesty,

‘ That the passing the late Act for disbanding the Army, gave great Satisfaction to your Subjects; and the readiness your Majesty has expressed by your Message, to comply with the punctual execution thereof, will prevent all Occasions of distrust or jealousy between your Majesty and your People.

‘ It is, Sir, to your loyal Commons an unspeakable Grief, that your Majesty should be advised to propose any thing in your Message, to which they cannot consent, with due Regard to that Constitution your Majesty came over to restore, and have so often exposed your Royal Person to preserve, and did in your gracious Declaration promise, that all those foreign Forces which came over with you, should be sent back.

‘ In duty therefore to your Majesty, and to discharge the Trust reposed in us, we crave leave to lay before you; that nothing conduceth more to the Happiness and Welfare of this Kingdom, than an entire Confidence between your Majesty and your People; which can no way be so firmly established, as by entrusting your sacred Person with your own Subjects, who have so eminently signalized themselves on all Occasions, during the late long and expensive War.

His Majesty’s Answer was as follows:

‘ Gentlemen, I came hither to restore the ancient Constitution of this Government. I have had all possible Re- gard

\* When the Address was first read, a Motion was made, to recommit it; which pass’d in the Negative, Yeas 156. Noes 175. After which, another Motion being made, to leave out the Words (and did in your gracious Declaration promise, that all those foreign Forces which came over with you, should be sent back) the Question was put, That the said Words do stand as Part of the Address, and pass’d in the Affirmative, Yeas 163. Noes 157.

gard to it since my coming, and I am resolved through the Course of my Reign, to endeavour to preserve it entire in all the Parts of it.

‘ I have a full Confidence in the Affections of my People, and I am well assured, they have the same in me; and I will never give them just Cause to alter this Opinion.

‘ As to my Subjects who served during the War, I am an Eye-Witness of their Bravery, and of their Zeal for my Person and Government; and I have not been wanting to express my Sense of this to my Parliament as well as upon other Occasions.

‘ I have all the reason to trust and to rely upon them that a Prince can have; and I am satisfied, there is not one Person among them capable of entertaining a Thought, that what was proposed in my Message, proceeded from any distrust of them.

‘ It shall be my study to the utmost of my power, to perform the part of a just and a good King: And as I will ever be strictly and nicely careful of observing my Promise to my Subjects, so I will not doubt of their tender Regards to me.’

This Answer, though it could not but please, yet it would not move the Commons from their Resolutions; so that the Dutch Guards were soon after shipped off for Holland: Which, though it seemed to weaken his Majesty in his Military Defence and Safety, yet it strengthened his Interest in the Hearts of all good Subjects, who saw now in an extraordinary Instance, that the King could deny himself any thing to oblige his People.

The same Day likewise, his Majesty gave the Royal Assent to *An Act to prevent the excessive distilling of Spirits from Corn, &c. An Act to enlarge the Trade to Russia. An Act to prevent irregular Returns of Members to serve in Parliament; and to several private Acts.*

Royal Assent  
given to several  
Acts.

*The Editor of Torbuck's Edition tells us, nothing beside, material, was transacted during this Session; yet we think ourselves oblig'd to mention what follows:*

The Day before the Transactions relating to the Dutch Guards, the Question being put that the House do agree with the Committee of the whole House upon the Supply, That more Bills of Credit be issued out of his Majesty's Treasury, which shall be current in all Branches of the public Revenue; it pass'd in the Negative, Yeas 148, Noes 182.

A Negative  
put on issuing  
more Bills of  
Credit from the  
Treasury.

The 29th, pursuant to the Resolutions of the House, the following Address was reported, agreed to, and order'd to be presented to his Majesty by the whole House.

‘ Most gracious Sovereign,

‘ We your Majesty's, &c. having taken into our serious Consideration the State of the Navy, do most humbly represent to your Majesty,

‘ That

Annos W. III.  
1699.

‘ That the Streights Squadron not sailing till September last, was prejudicial to England, and a great Mismanagement.

‘ That the Order made by the Commissioners of the Admiralty, September 12, 1693, giving Henry Priestman Esq; an Allowance of ten Shillings *per Diem*, from the Date of his Commission, as Commander in Chief before Saltee in 1684, till the Ship Bonaventure was paid off, over and above his Pay as Captain of the said Ship, was very unreasonable and a Misapplication of the public Money.

‘ That the \* Victualling any of his Majesty’s Ships by others than by the Victuallers appointed for that Service, or their Agents, is contrary to the Course of the Navy, and may be of ill consequence.

‘ That many new and unnecessary Charges have, in an extraordinary manner, been introduced into the Navy, contrary to the Rules of the Navy, which is a great Mismanagement.

‘ That the Deductions of Poundage taken by the Pay-Masters of the Navy, for Slop-Clothes, Dead Men’s Clothes, Tobacco, Chest at Chatham, Chaplain and Surgeon, is without Warrant, and ought to be † accounted for.

‘ That it is inconsistent with the Service of the Navy, for the same Person to be one of the Commissioners for executing the Office of Lord High-Admiral and Treasurer of the Navy at the same time.

‘ And that the passing any Account of Moneys impress’d for the contingent Use of the Navy, without regular Vouchers, or such other Proof, as the Nature of the Service will admit, either with, or without a Sign Manual, is contrary to the Rules and Methods of the Navy, and of dangerous Consequence.

‘ All which we beg leave to lay before your Majesty, desiring that you will be graciously pleas’d to || take effectual Care that the Mismanagements herein complain’d of may be prevented for the future.

His Majesty’s Answer was as follows:

His Majesty’s  
Answer,

‘ Gentlemen, I will consider your Address: It is my desire that all sorts of Mismanagements and Irregularities should be prevented or redress’d; you may be assured I will

\* While this Article was under Debate, the following Words were offered to be added to it by way of Amendment (except only in Cases of Necessity happening abroad) and pass’d in the Negative, Yeas 154, Noes 167.

† Another Amendment was propos’d by leaving out these Words (to be accounted for) and inserting in their stead, not to be taken for the future; but over-ruled.

|| An Objection being made to the Words take Care, the Question was put, that the said Words stand as Part of the Resolution, and pass’d in the Affirmative, Yeas 164. Noes 160. And when the Address was reported, it was agreed that the said Words should be altered to take effectual Care.

‘ will take the best Care I can, in relation to the Navy; the  
 ‘ right Management whereof, is of so great concern to the  
 ‘ Kingdom.’

Annor: W. III.  
 1699.

The 30th, the Accounts relating to the Transports were  
 laid before the House; whereby it appear'd, that there had  
 been paid on that Service ———— l. 100,107 8 5½  
 That there was still due ———— 441,637 9 5

Transport-Ac-  
 counts.

And that the Cash in the Office amounted to 9030 16 1  
 April 1. Sir George Rook presented to the House, accord-  
 ing to Order, a State of the Debt of the Navy, the Total  
 of which appear'd to be 2,245,957 l. exclusive of what was  
 due to Marines.

Navy-Debt.

The 5th, a Complaint was made to the House of certain  
 Letters written by Henry Chivers Esq; a Member, as not  
 only reflecting on, but misrepresenting several Members of  
 the House; which Letters are as follow:

Certain Letters  
 of Mr. Chivers  
 a Member com-  
 plain'd of.

‘ Dear Will. London January 5. 1698.

Yesterday we had a great Contest in the House, concerning  
 augmenting the Forces; in which my Brother Member  
 signaliz'd himself for the Good of his Country. He made a  
 very violent Speech for keeping up more Forces than the  
 Sense of the House was for; so that we poor Country-Gentle-  
 men were forc'd to labour hard, and sit late to overcome  
 them: I do really believe he will never give his Country one  
 Vote, he is so link'd in with the Court-Party. If you please,  
 you may communicate this to your Friends, and let them  
 know that I shall always be ready to serve both them and you,  
 here and elsewhere. So I remain

Your Humble Servant

to command,

For Mr. William Wilks  
 in Calne, Wiltshire.

Henry Chivers.

‘ Dear Brother, London February 5. 1698.

I Have sent you his Majesty's Speech, and a List of those Gentle-  
 men who voted for a standing Army. The Question was  
 whether the Army should stand, or the Bill be thrown out:  
 But God be prais'd we carried it. The Number for disband-  
 ing the Army was 221, and the List will satisfy you how  
 many were against it. So I remain

Your Servant

to command,

To Mr. John Hoskins  
 at Calne.

Henry Chivers.  
 These

Ann<sup>o</sup> 1<sup>o</sup> W. III.  
1699.

These Letters being read, Mr. Chivers was ordered to attend in his Place, but pleaded Indisposition by way of Excuse: Upon which, a Motion being made for him to attend the next Day notwithstanding, it was carried in the Affirmative, Yeas 119. Noes 83. But he not obeying the said Summons, the Question was put, that he be sent for in Custody of the Serjeant at Arms, and pass'd in the Negative, Yeas 99. Noes 134.

Upon the whole, the House came to the following Resolution:

Vote thereon.

*Resolved*, That the publishing the Names of the Members of this House, and reflecting upon them, and misrepresenting their Proceedings in Parliament, is a Breach of the Privilege of this House, and destructive of the Freedom of Parliament.

List of General Officers.

The 4<sup>th</sup>, a List of General Officers was presented to the House, consisting of three Generals of Horse, at 61. a Day; seven Lieutenant-Generals, at 41. a Day; eight Major-Generals, at 21 a Day; and eleven Brigadier-Generals, at 11. 10s. a Day; at which Rates the Total *per Ann.* amounted to 29,382 l. 10s.

Pensions on the Royal-Oak Lottery.

The 17<sup>th</sup>, by an Account presented to the House, of Pensions paid out of the Royal-Oak Lottery, it appeared that no less than 3950 l. *per Annum* was charg'd on that iniquitous Game.

Commissioners for the taking an Account of the forfeited Estates in Ireland.

The 21<sup>st</sup>, the House proceeded to the Choice of seven Commissioners for taking an Account of the forfeited Estates in Ireland by Ballot, when the Numbers stood thus.

|                        |     |
|------------------------|-----|
| Francis Annesly Esq;   | 222 |
| Henry Earl of Drogheda | 220 |
| John Trenchard Esq;    | 208 |
| James Hamilton Esq;    | 158 |
| Henry Langford Esq;    | 136 |
| Sir Richard Leving     | 127 |
| Sir Francis Brewster   | 122 |

Bill of Supply pass'd.

The 23<sup>d</sup>, the Bill for granting his Majesty the Sum of 1,484,015 l. was read the third Time, pass'd, and order'd up to the Lords for their Concurrence.

Resolutions on the Petition of Russel against Gwynn.

May 2 the House agreed with the Committee appointed to examine the Petition of John Russel Gent against Daniel Gwynn, in the following Resolutions, *viz.*

That the said Daniel Gwynn, Agent for the Spanish Expedition and Alliance Packet-Boats, hath been guilty of false Musters.

That the said Gwynn, being likewise Collector of the Customs and Excise, hath frequently imported great Quantities of Salt, on board the said Packers, without paying either Custom, or Excise, and charg'd the same to the King, as if he had paid both.

That he hath been guilty of several notorious Frauds in victualling the said Packer. Anno 11 W. III.  
1699.

That he hath been guilty of divers Extortions from the Sailors and others.

That for the said Offences, he is not fit to be continued or employ'd in any Place under the Government.

Ordered, That Mr. Attorney-General do prosecute the said Daniel Gwynn for the said Offences.

The 4th, the King came to the House of Peers, and pass'd several Bills, as, *An Act for raising 1,484,015 l. for disbanding the Army, &c. An Act to lay Duties upon Sweets; An Act for encouraging the Newfoundland-Trade; An Act for preventing the Exportation of Wool; An Act against Burglaries. For a free Market at Billingsgate; for suppressing of Lotteries; for the more effectual charging the Duties upon Rock-Salt: An Act for limiting certain Times within which Writs of Error shall be brought for the reversing of Fines, &c. another Tithe-Act; An Act for taking off the remaining Duty upon Glass-Ware; An Act to enable Posthumous Children to take Estates as if born in their Fathers' Life-Time; An Act for the Imprisonment of Counter, and others, for the Assassination Plot; and a great many private Acts.* Royal Assent  
given to several  
Acts.

After which his Majesty was pleased to make the following Speech.

' My Lords and Gentlemen,

' **A**T the Opening of this Parliament, I told you my Opinion was, that you were come together with Hearts fully dispos'd to do what was necessary for the Safety, Honour, and Happiness of the Kingdom; and having nothing else to recommend to you, I had reason to hope for Unanimity and Dispatch. King's Speech,

' You have now sat so many Months, that the Season of the Year, as well as your particular Affairs, make it reasonable you should have a Recess. I take it for granted, you have finish'd all the Bills, which for the present you think requisite to be pass'd into Laws: And I have given my Assent to all you have presented to me.

' If any thing should be found wanting for our Safety, the Support of Public Credit, by making good the Faith of the Kingdom, as it stands engag'd by Parliamentary Securities, and for discharge of the Debts occasion'd by the War, or towards the advancing of Trade, the suppressing of Vice, or the employing of the Poor; which were all the things I propos'd to your Consideration when we met first, I cannot doubt but effectual Care will be taken of them next Winter: and I wish no Inconveniences may happen in the mean time.'

Anno 11 W. III.  
1699.

The Second  
Session of the  
4th Parliament.

'Then the Lord Chancellor prorogu'd the Parliament till the first of June.

The Parliament met at Westminster on Thursday the 16th of November, and his Majesty with the usual Solemnity made this Speech to both Houses.

King's Speech. ' My Lords and Gentlemen,

' I Hope you will not think I have called you out of your Countries too soon, if you consider, that our common Security requires a farther Provision should be made, for the Safety of the Kingdom by Sea and Land, before we are at the end of what was granted for that purpose last Session. and when you enter upon this Business, I believe you will think it necessary to take care of the Repairs of the Ships and of the Fortifications; without which our Fleet cannot be safe when it is in Harbour.

' I cannot omit to put you in mind of another matter, in which so great a Number of my Subjects is concerned, and wherein the Honour of the Kingdom, and the Faith of Parliaments is so far engaged, that our future Security seems to depend upon it; I mean, the making good Deficiencies of the Funds, and the discharging the Debts contracted by reason of the War.

' And till we may be so happy as to see the public Debts paid, I shall hope that no Session will end, without something done towards lessening them. While I am speaking to you on this Head, I think myself obliged to mention, with a particular concern, a Debt which is owing to the Prince of Denmark, the state whereof I have ordered to be laid before you.

Gentlemen of the House of Commons,  
' These things are of such Importance, that I must earnestly recommend them to your Consideration, and desire you to provide the necessary Supplies.

' My Lords and Gentlemen,  
' There is nothing I could more rejoice in, than that I were not under the necessity of so often asking Aids of my People; but as the Reason of it is evident, because the Funds formerly applied to defray the Public Expence, are now anticipated for Payment of the Debts of the Kingdom; so it is my Satisfaction, that you all see that nothing of what is demanded, is for any personal use of mine. And I do faithfully assure you, that no part of what is given, shall be diverted from any Purpose for which it is designed.

' I believe the Nation is already sensible of the good Effects of Peace, by the manifest Increase of Trade, which I shall make it my Business to encourage by all means in my power; probably it might receive an Advantage, if some  
good



‘ good Bill were prepared, for the more effectual preventing  
 ‘ and punishing unlawful and clandestine trading, which  
 ‘ does not only tend to defraud the Public, but prejudice the  
 ‘ fair Merchant, and discourage our own Manufactures.

Anno 11 W. III.  
 1699.

‘ The Increase of the Poor is become a Burthen to the  
 ‘ Kingdom, and their loose and idle Life, does in some  
 ‘ measure contribute to that depravation of Manners, which  
 ‘ is complained of, (I fear with too much Reason.) Whether  
 ‘ the ground of this Evil be from defects in the Laws already  
 ‘ made, or in the Execution of them, deserves your Consi-  
 ‘ deration. As it is an indispensable Duty, that the Poor,  
 ‘ who are not able to help themselves, should be maintained;  
 ‘ so I cannot but think it extremely desirable, that such as  
 ‘ are able and willing, should not want Employment; and  
 ‘ such as are obstinate and unwilling, should be compelled  
 ‘ to labour.

‘ My Lords and Gentlemen,

‘ I have a full Assurance of the good Affections of my  
 ‘ People, which I shall endeavour to preserve by a constant care  
 ‘ of their just Rights and Liberties; by maintaining the estab-  
 ‘ lished Religion, by seeing the Course of Justice kept  
 ‘ steady and equal, by countenancing Virtue, and discourag-  
 ‘ ing Vice, and by declining no Difficulties or Dangers,  
 ‘ where their Welfare and Prosperity may be concerned.  
 ‘ These are my Resolutions; and I am persuaded that you  
 ‘ are come together with Purposes on your part suitable to  
 ‘ those on mine. Since then our Aims are only for the gene-  
 ‘ ral Good, let us act with Confidence in one another;  
 ‘ which will not fail, by God’s blessing, to make me a hap-  
 ‘ py King, and you a great and flourishing People.’

The House, having taken this Speech into Consideration,  
 agreed upon the following Address.

‘ Most gracious Sovereign, We your Majesty’s most dutiful  
 and loyal Subjects, the Commons in Parliament assembled being  
 highly sensible, that nothing is more necessary for the Peace  
 and Welfare of this Kingdom, the quieting the Minds of your  
 People, and disappointing the Designs of your Enemies, than a  
 mutual and entire Confidence between your Majesty and your  
 Parliament, do esteem it our greatest misfortune, that after  
 having so amply provided for the Security of your Majesty  
 and your Government, both by Sea and Land, any Jealousy  
 or Distrust hath been raised, of our Duty and Affections  
 to your sacred Majesty and your People; and beg leave  
 humbly to represent to your Majesty, that it will greatly con-  
 duce to the continuing, and establishing an entire Confidence  
 between your Majesty and your Parliament, that you would

The Commons  
 Address.

Anno 11 W. III. be pleased to shew marks of your high displeasure towards  
 1699. all such Persons who have, or shall presume to misrepresent  
 their Proceedings to your Majesty.

‘ And your Commons (having likewise a due Sense of the great Care and Concern, your Majesty has always expressed, for preserving and maintaining the Religion, Rights, and Liberties of your People, in defence of which your Majesty hath so often exposed your Royal Person) will use their utmost care and endeavours, to prevent and discourage all false Rumours and Reports, reflecting upon your Majesty and your Government, whereby to create any Misunderstandings between you and your Subjects.’

To this his Majesty was pleased to give the following Answer.

King's Answer.

‘ Gentlemen, My Parliament have done so great things for me, and I have upon all proper Occasions expressed so great a Sense of their Kindness, and my Opinion has been so often declared, that the happiness of an English King depends upon an entire good Correspondence between him and his Parliament, that it cannot seem strange for me to assure you, that no Persons have ever yet dared to go about to misrepresent to me the Proceedings of either House. Had I found any such, they would have immediately felt the highest Marks of my Displeasure. It is a Justice I owe not only to my Parliaments, but to every one of my Subjects, to judge of them by their Actions: And this Rule I will steadily pursue. If any shall hereafter attempt to put me on other Methods, by Calumnies or Misrepresentations, they will not only fail of Success, but shall be looked upon, and treated by me as my worst Enemies.’

‘ Gentlemen,

‘ I am pleased to see by your Address, that you have the same Thoughts of the great Advantages which will ensue to the Kingdom, from our mutual Confidence, as I expressed to both Houses at the opening of the Session. I take very kindly the assurance you give me, of using your utmost care and endeavour to prevent and discourage all false Rumours and Reports reflecting upon me and my Government: And I faithfully promise you, that no Actions of mine shall give a just ground for any misunderstanding between me and my People.’

Motion with  
 regard to Lord  
 Bellamont.

December 6th, it appearing to the House that a Grant had been made by Letters Patent to the Earl of Bellamont and others, of Pirates Goods; the Question was put, that the said Letters Patent were dishonourable to the King, against the Law of Nations, contrary to the Laws and Statutes of the Realm, an Invasion of Property, and destructive of Trade and Commerce, and pass'd in the Negative.

The

The most material Business that occur'd next in the House, was the Report of the Commissioners for taking an Account of the Forfeited Estates in Ireland; an Abstract of which is as follows.

Anno 11 W. III.  
1699.

The Commissioners met with great Difficulties in their Enquiry, which were occasioned chiefly by the Backwardness of the People of Ireland to give any Information, out of fear of the Grantees, whose Displeasure in that Kingdom was not easily borne; and by Reports industriously spread and believed, that their Enquiry would come to nothing. Nevertheless, it appeared to them, that the Persons (outlawed in England, since the 13th of February, 1688. on account of the late Rebellion, amounted in number to fifty seven, and in Ireland to three thousand nine hundred and twenty one. That all the Lands in the several Counties in Ireland belonging to the forfeited Persons, as far as they could reckon, made 1060792 acres, worth *per annum* 211623 l. which by computation of six years purchase for a Life, and thirteen years for the Inheritance, came to the full value of 2685138 l. That some of those Lands had been restored to the old Proprietors, by virtue of the Articles of Limerick and Galloway, and by his Majesty's Favour, and by Reversal of Out-lawries, and royal Pardons, obtained chiefly by Gratifications to such Persons as had abused his Majesty's royal Bounty and Compassion. Beside these Restitutions, which they thought to be corruptly procured, they gave an Account of seventy-six Grants and Custodiams, under the Great Seal of Ireland; as to the Lord Romney three Grants now in being, containing 49517 Acres; to the Earl of Albemarle in two Grants 108633 Acres in Possession and Reversion; to William Bentinck Esq; Lord Woodstock, 135820 Acres of Land; to the Earl of Athlone two Grants containing 26480 Acres; to the Earl of Galloway one Grant of 36148 Acres, &c. wherein they observed, that the Estates so mentioned did not yield so much to the Grantees as they were valued at; because as most of them had abused his Majesty in the real Value of their Estates, so their Agents had imposed on them, and had either sold or lett the greatest Part of those Lands at an Under-Value. But after all Deductions and Allowances, there yet remained 1699343 l. 14 s. which they lay before the Commons as the gross Value of the Estates since the 13th Day of February, and not restored; besides a Grant under the Great Seal of Ireland, dated the 13th Day of May, 1695. passed to Mrs. Elizabeth Villiers, now Countess of Orkney, of all the private Estates of the late King James, (except some small Part in Grant to the Lord Athlone) containing 95649 Acres, worth *per Annum* 25995 l. 18 s. Value, total 331943 l. 9 s. Concluding, that there was payable out

Report of the  
Commissioners  
for taking an  
Account of the  
Irish Forfeited  
Estates.

Anno 11 W. III.  
1699.

of this Estate, two thousand Pounds *per annum* to the Lady Susanna Bellasis, and also one thousand Pounds *per annum* to Mrs. Godfrey, for their Lives; and that almost all the old Leases determined in May 1701. and then this Estate would answer the Value above-mentioned.——Signed Francis Annesley, John Trenchard, James Hamilton, and Henry Langford.

A Bill for applying the Forfeited Estates in Ireland to the Use of the Public.

The Commons having examined this Report, came to an unanimous Resolution, 15th of December, that a Bill be brought in *to apply all the forfeited Estates and Interests in Ireland, and all Grants thereof, and of the Rents and Revenues belonging to the Crown within that Kingdom, since the 13th of February 1688, to the Use of the Public;* and ordered a Clause to be inserted in that Bill, *for erecting a Judicature for determining Claims touching the said forfeited Estates.* They likewise resolved, That they would not receive any Petition from any Person whatsoever, touching the said Grants or forfeited Estates; and that they would take into Consideration the great Services performed by the Commissioners appointed to enquire into the forfeited Estates of Ireland.

Jan. 15. A Motion being made that the four Commissioners, who had signed the Reports, presented to this House, had proceeded in the Execution of that Commission with Understanding and Integrity; a Debate arose thereon, which was adjourned 'till the next Day, when it was resum'd; when six of the said Commissioners were examined as follows.

Examination of the said Commissioners.

Sir Richard Leving first by himself.

Mr. Speaker. Sir Richard Leving, The House having been inform'd of something that you have said to a worthy Member of this House (which I am confin'd to examine you to) I may name the Person, because you have said it, as the House is inform'd, to more than one: The Member's Name is Vernon, and it is in relation to some Discourse that passed between you and one or more of the Commissioners for the Irish Forfeitures concerning the private Estate being put into the Report. The House requires you to give an Account of what you informed that worthy Member.

Sir Richard Leving. Mr. Speaker, I shall very readily obey the Commands of the House; but, before that, I would inform you (if it be the Pleasure of the House) of all that then passed.

Mr. Speaker. Pray take your own Method, give an Account of what you know.

Sir Richard Leving. There was a Debate arose between the Commissioners concerning the reporting the private Estate: Upon that Debate I was of opinion, That that Estate ought not to have been reported, because not within our  
Power

Power by the Act: Upon this a Debate happen'd; and several Reasons were offer'd why this might be understood to be a Forfeiture; one Reason that was given was, that the Estate was the late King James's Estate, and so it was forfeited. To which answer was made; That if King James had forfeited it, yet it was not within the Act, because the Words of the Act confin'd our Enquiry to Forfeitures since the 13th of February 1688. When that was said, there was another of the Commissioners, that did say, I was always of Opinion that this was a Forfeiture within the Act, because tho' King James had not forfeited before; yet he coming into Ireland on March 15, 1688. he committed Treason against King William and Queen Mary, and forfeited that Estate. It was then objected, That this private Estate of the late King was Parcel of the Possessions of the Crown of England, and was vested in him as Parcel of the Crown of England; and the Crown being vested in King William and Queen Mary by an Act of Parliament made in this Kingdom, which settled the Crown in King William and Queen Mary, the Crown and all the Possessions were vested in them Feb. 13. 1688. So that that Estate being actually in his Majesty then; and tho' otherwise it might have been conceiv'd that King James had forfeited afterwards, tho' not then attainted, it could not be conceived how he could forfeit that Estate because it was before in the King and Queen. And the same Gentleman that urg'd, that upon the 15th of March King James landed in Ireland and committed Treason, was pleas'd to say, I don't dislike the 30th of January, nor the Deed that was done that Day; I like both the Day and the Deed. I confess I was surpriz'd at it, and said, If those be your Reasons, and this is your Agreement, I declare I will never join in it.

One of the Commissioners at this time was absent, but the next day that Gentleman was brought into the Room with the other Commissioners, and then this was debated again, and upon that Debate much of that Matter was spoke over again (not that relating to the 30th of January) but then it was again urg'd, that that Estate might be said to be forfeited; and the same Objections were repeated, and it seem'd to be assented to by the other Commissioners, that it was not strictly a Forfeiture, and some of them said it might not be within the Commission; then it was ask'd, Why then will you report it? And one of the Gentlemen did answer, that it was a villainous Grant, and therefore fit to be expos'd: I did not write down the Words at that time, because I had then no Intention of making any Complaint, or publishing these Matters. But since they have cut off our Hands and Seals from the Report, it made us think it necessary to do what we have done. And it being said by a Commissioner not here, but in  
Ireland,

Anno 11 W. III.  
1699.

Anno 11 W. III.  
1699.

Ireland, If we take it not to be within our Commission, why will you report it? for it will fly in the King's Face: To which another answered, Why the Commission flies in the King's Face; if you won't fly in his Face, you can't execute this Commission, or you must not execute it, one of them two.

Upon this it was further urg'd, That this Matter should be reported; and one of the Commissioners said, Tho' it was not clearly within the Act, yet he had receiv'd several Letters from several Members of this House to report this Matter, and he said it was as good (or contain'd in the Letter, that it was as good) do nothing as not to report it. There was upon this an Expression by one of the Commissioners, that a great Person was concern'd [that was my Lady Ork-y] and the Application of that was, that if he was so tender of that Person, we should not join with them in any thing else: For, Sir, the Debate was grown to this pass, whether if we did not join in this thing, we should not join in any thing else. This I think is the Substance of what I told that worthy Member: if I am ask'd as to any other Person, I shall give you a true Account.

*Mr. Speaker.* I am commanded to ask you, who were by upon this Discourse between you and the rest of the Commissioners concerning the Differences in Opinion, and how many; and particularly at that time that one of the Commissioners did say, that he thought that since it was not in your Commission to report that Grant, it would be a flying in the King's Face, &c.

*Sir Richard Levins.* It was the day that the Commissioner that was sick first came to us, I believe about the 24th of October last: There were present at that time the Lord Drogheda, Sir Francis Brewster, Mr. Annesly, Mr. Trenchard, Mr. Hamilton, Mr. Langford, the Secretary, and myself, all were in the Room when this was said.

*Mr. Speaker.* Who was it said it was a flying in the King's Face? and who made answer that the Commission did fly in the King's Face?

*Sir R. Levins.* It was my Lord Drogheda said the first part, and Mr. Hamilton was the Person that said the other.

*Mr. Speaker.* Who said that concerning the 30th of January, that it was a good Day and a good Deed?

*Sir R. Levins.* That was the day before the other Discourse was; there were all but Mr. Trenchard, who was sick and came next day.

*Mr. Speaker.* Who said it, and upon what Occasion?

*Sir R. Levins.* It was not a particular Direction to any Person as I remember; but it was spoke by way of Answer: It was told Mr. Langford when he came in, the Objection that

that was made against this being return'd as a Forfeiture, &c. And then he said, I was always of Opinion that this was a Forfeiture, and that Kings might forfeit as well as others; and he thereupon said he did not dislike the 30th of January.

Anno 11 W. III.  
1699.

*Mr. Speaker.* You mention'd that some of the Commissioners said they receiv'd Letters from Members of Parliament to insert this Grant into the Report: Please to repeat who had them, and from whom?

*Sir R. Leving.* The first time I heard mention of any such Letter was the first Night: After we rose we went to Mr. Trenchard's Chamber, who was sick, to consult; for this Debate occasion'd some concern in our Minds, and we did apprehend some Breach amongst us, and went to his Chamber to see if we could come to an Accommodation; and offer'd Mr. Trenchard, and the rest of the Gentlemen present, That if they would take the whole Report without the private Estate, and sign it, we could join with them; and if they would put in an Article of the private Estate, they might sign it by themselves: for we thought if we could not agree to it, we would be no hindrance to them if they thought fit to do it; and then Mr. Trenchard said, he had Letters from several Members to report this private Estate, and that it would signify nothing if we did not report it.

*Mr. Speaker.* Did he say that from himself, or that it was in any Letter?

*Sir R. Leving.* I do not say that positively, he shew'd me no Letter.

*Mr. Speaker.* Did he name any Member?

*Sir R. Leving.* I do not remember that he named any Member.

*Mr. Speaker.* Who were present at that time in Mr. Trenchard's Chamber?

*Sir R. Leving.* Most of those Gentlemen I have named were there the next day.

*Mr. Speaker.* Who were by?

*Sir R. Leving.* My Lord Drogheda and Sir F. Brewster were not there, but the rest were there, and the Secretary I believe was there. The next day, when we met again, there were present, as I inform'd you, all the Commissioners; and then Mr. Trenchard, amongst other Discourse, did express himself in the said manner; and Mr. Annetly said, that he had received Letters from Members of the House.

*Mr. Speaker.* But Mr. Annetly nor Mr. Trenchard did not tell you the Contents of those Letters, nor from whom they receiv'd them.

*Sir R. Leving.* They said they had Letters to report this Estate, but they did not as I remember name any body, tho'

Anno. 11 W. III. 1699. I did hear from my Lord Drogheda and Sir Francis Brewster, that they had named Persons, but I did not myself take particular Notice of any body.

*Mr. Speaker.* Did they produce any Letter, or shew you any?

*Sir R. Leving.* Not then.

*Mr. Speaker.* When did you see any?

*Sir R. Leving.* I did see a Letter the next Morning, and that Letter was shew'd to me by Mr. Annesly, but I did not think that Letter came up to the Point they spake over-night.

*Mr. Speaker.* Can you remember the Contents of it?

*Sir R. Leving.* I had rather refer myself to the Letter; I believe Mr. Annesly has it.

*Mr. Speaker.* Who wrote it?

*Sir R. Leving.* Must I name him?

*Mr. Speaker.* Yes, the House expects it of you.

*Sir R. Leving.* His Name is Mr. Arthur Moore: And I did then take notice of it to Mr. Annesly, that this Letter did not amount to what they told us the Night before.

*Mr. Speaker.* You say you said to Mr. Annesly, you told us of a Letter you receiv'd from some Members to report this private Estate, but this Letter does not come up to what you told us. Upon which Mr. Annesly answered as for himself, If we do not report that private Estate, we had as good do nothing.

*Sir R. Leving.* I don't say so: Upon recollection, I do now believe that those Gentlemen, Mr. Trenchard and Mr. Annesly, did say that there was contain'd in the Letter that Expression, that if they did not put that Estate into the Report, they had as good do nothing; but when I once saw that Letter, I thought they had imposed upon us.

Then Sir R. Leving withdrew, and all the rest of the Commissioners that were then in Town, with their Secretary, were order'd to be brought in.

And accordingly Sir Francis Brewster, Mr. Annesly, Mr. Trenchard, Mr. Langford, and Mr. Hooper their Secretary were brought in.

*Mr. Speaker.* Gentlemen, I am commanded to enquire of you, and if you please you may speak severally to it: The House has been inform'd of some Discourses among you Gentlemen of this Commission, when you differed in Opinion about returning of King James's private Estate; the first time Mr. Trenchard was not there, and the next day that Mr. Trenchard was brought there: but I think the Discourse the House would enquire after was the second day when Mr. Trenchard was there, which was to this Effect, That some Argument being given why this Estate was a Forfeiture, and



and other Arguments being given that it was not, one of the Commissioners, as this House hath been inform'd, should say, If it be not within our Commission, 'tis a flying in the King's Face. Upon which another Commissioner made answer, Why the Commission itself flies in the King's Face; And for what are we sent hither but to fly in the King's Face, or to that effect?

Anno 11 W. III.  
1699.

*Members.* No, no.

*Mr. Speaker.* I beg pardon if I mistake, the Words were to this Effect: The Commission flies in the King's Face; and if you will not fly in his Face, you must not, or you cannot execute this Commission. You are all said to be present when these Words were spoken; so you will please to give account severally to the House what passed upon this Occasion, and what you remember of it. Sir Francis Brewster, if you please.

*Sir Francis Brewster.* I beg leave to say, I am sorry for any Differences between us, and that we were as hearty as any in the Execution of this Commission. But for the Matter of the Words now spoke of, there was some Discourse concerning the reporting that private Estate: Sir R. Leving said, it was not within our Enquiry. To which some Reply was made, Why if it was not within our Commission, yet it might be fit to be reported. My Lord Drogheda made answer, If it be not within our Commission, then it will be to fly in the King's Face to report it. Another then said, The Commission flies in the King's Face, and we can't act in this Commission unless we fly in his Face; I think that was said by Mr. Hamilton. Upon which some other Arguments went on to enforce the passing of it. At last some of the Commissioners said they had a Letter from several Members of the House of Commons, that gave them reason to believe they should report this Estate: I think it was said by Mr. Annesly. Upon which Sir R. Leving made answer, I do not think these Gentlemen have changed their Minds, that was, that Forfeitures might be made by Kings: Upon which it was answer'd, You are mistaken, a great many of your Friends are now come over to us; and they urged it still more, and at last they said they had had several Letters about it. I must confess I made answer, I know not whether you have had any Letter, I never had any: But I must needs say, If I had no other reason, I should not sign this Report, for I think I ought not to be directed by any private Member of the House of Commons, and that no Letter should prevail with me to do it; I am loth to name any one.

*Mr. Speaker.* The House expects it.

*Sir F. Brewster.* I think they nam'd Mr. Harcourt.

*Mr. Speaker.* Who named him?

Anno 11 W. III.

1699.

*Sir F. Brewster.* Mr. Annesly. He did not say in his Letter particularly, but did say something to that purpose, that if we did not report the private Estate we had as good do nothing; and he said it was so in the Letter.

*Mr. Speaker.* Was you at Mr. Trenchard's Chamber the first Night that he was not at the Commission, the Night before he was brought thither?

*Sir F. Brewster.* No, Sir, I was not.

*Mr. Speaker.* Mr. Annesly, if you please, give an Account of what you know of this Matter: you hear to what the House hath a mind to be inform'd; 'tis as to the Discourse that hapen'd amongst you the Commissioners the two days you differ'd in Opinion concerning the inserting of this Grant into your Report, and particularly as to the Words spoken by Mr. Hamilton, or what else you heard then.

*Mr. Annesly.* Truly, Mr. Speaker, I never expected to have been call'd to an Account for any thing that was said among the Commissioners in Ireland upon their Debates, or that any Gentleman in Commission with us would have acted such a Part here; otherwise I should have been more observant thereof. But the particular Expressions which some of us are charged with by the Evidence now given, are of so extraordinary a Nature, that I could not easily have forgotten them; Flying in the Face of the King, is so great a Reflection, and so foolish an Expression, that I think I could not have pass'd it by without the Censure it deserv'd. Sir, I do affirm to you upon my Reputation, my Credit and all that is dear to me, that I never heard the least Reflection upon the King by any of the Commissioners, either in their Debates or otherwise, in execution of their Authority.

When I had the Honour to be appointed by you one of your Commission, I naturally reflected upon the Part I was to act in it, the many Enemies I must in likelihood create upon a faithful discharge of my Duty, as well amongst Men in Power, the Grantees, as the Purchasers, and others claiming under them; of which I had some Knowledge, having been formerly in Ireland. However, I was resolv'd, upon a very short notice, not only to subject my own private Concerns to Disappointments, but to dispose of other Mens Business, with which in the way of my Profession I was entrusted, to their best Advantage in my Absence.

In discharge whereof I did act (and I hope it will appear I did so) with all imaginable Integrity. And it will be my hard Fortune, if after such my Endeavours I should fall under your Displeasure.

And as to what is alledg'd with respect to Mr. Harcourt, I do not remember that I ever mention'd his Name upon any Debate at our Board, whereby to influence any Man in his

his Judgment; nor indeed upon any other Account except in private Conversation, by drinking his Health, and by expressing myself with that Gratitude which became me towards one whom I had receiv'd particular Obligations from, and deserv'd well from me.

Anno 11 W. III.  
1699.

I never had any Letter from Mr. Harcourt, that took the least notice of the private Estate, nor indeed that related to the Execution of our Commission, except in one Letter he said I might easily imagine with what Pleasure he heard of the Success of our Labours, and that he was glad to find by the Account I gave him, that the Forfeitures were likely to answer the End for which we were sent over, and that was the only Letter I receiv'd from him during my stay in Ireland. Hearing abroad of such a Letter being mention'd in the House, I look'd all the Letters I receiv'd from any of the Gentlemen of this House during my stay in Ireland; but I own I am very unwilling to produce the Letters of any Person who favour'd me with his Correspondence, and do hope I shall not be oblig'd to it.

*Mr. Speaker.* For that you will have the further Pleasure of the House; but do you say you never heard of those words of Flying in the King's Face, or that your Commission did Fly in the King's Face?

*Mr. Annesly.* From the time we first began to execute our Commission, till our Power was determin'd, I never was absent one Hour, I think I may say one Moment from Business; and I assure you I never heard those Words, nor any thing like them, fall from any one of the Commissioners. As to the Debate among the Commissioners about returning the private Estate, some hot Words did pass, and I will take Notice to you (if you please) of some of them.

The Gentleman on my Left-hand did give very abusive Language to one of the other Commissioners.

*Mr. Speaker.* To whom?

*Mr. Annesly.* To Mr. Trenchard.

Another of the Commissioners said, he would battle it with us at the Bar of the House of Commons.

*Mr. Speaker.* Who was that?

*Mr. Annesly.* That was my Lord Drogheda. Says Sir Francis Brewster, I have as good friends as you, meaning Mr. Trenchard, and we shall be as well heard there as you. Mr. Trenchard answer'd, I don't fear what you can do, if you won't be an Evidence against me: The ill Language Sir Francis gave, forced that Expression from him; the Resentments were high, and the rest of the Commissioners then present endeavour'd to pacify and make them Friends. I own I then little suspected that Sir Francis, who took the Expression so ill, would have made good Mr. Trenchard's

Words

ANNALS W. III.  
1699.

Words at this Bar; if I had, I should have taken more notice of what passed. There might be some other Particulars that Sir Francis Brewster has charg'd us with, which I may have omitted answering; if you please, Sir, to remind me of them, I will give them the best Answer I can.

*Mr. Speaker.* Mr. Trenchard, if you please to give the House an Account of what you know of this Matter?

*Mr. Trenchard.* I was present at the Debate about the private Estate, which was managed with great Warmth, and much said on both sides; but I do not remember one Word which this Gentleman speaks of, that was directly so said; I do own there were some Words that might give Umbrage to this Accusation with those that were resolv'd to misunderstand them. The Occasion was this: My Lord Drogheda, as I remember, or Sir Richard Leving said, it would be Flying in the King's Face to report this Grant. Upon which one of the Commissioners reply'd; My Lord, We have heard too much of this Argument already, and 'tis time to have done with it; we were not sent here to flatter, and if the enquiring into the Mismanagement of the Forfeitures be a flying in the King's Face, then our whole Commission is a flying in his Face. 'Tis not dishonouring, but vindicating his Majesty, to shew he has been abus'd by ill Men; and I doubt not but he will desert them when he has discover'd it, as the best and wisest Princes in all Ages have done. More than this I do affirm, upon the Reputation of a Gentleman, and the Word of an honest Man, was not said whilst I was at the Board.

*Mr. Speaker.* Who said the Words you have repeated?

*Mr. Trenchard.* 'Twas I, Sir.

*Mr. Speaker.* You don't remember that Mr. Hamilton said any thing as to the Flying in the King's Face?

*Mr. Trenchard.* I do affirm that Mr. Hamilton, to the best of my Memory (and I think I could not mistake it) did not say any Words relating to that Matter, more than that since we had enquired into the private Estate, and it was known in both England and Ireland, we should be thought bribed and corrupt if we did not report it: But I am very sure he said no Words dishonourable of his Majesty; and if he had, I would have resent'd it at that time, as I suppose these Gentlemen would have done, and call'd upon others to have taken notice of it.

*Mr. Speaker.* What Words did you hear said in your Chamber?

*Mr. Trenchard.* A great Part of the Time I was in that Kingdom, I was confin'd to my Chamber being sick, which I impute in a great measure to the Fatigue of our Commission, during which time I had the Favour to be visited some-  
times

times with ten or a dozen in an Evening, sometimes twice the number of the People of the best Fashion in that Country, and amongst the rest my own Brethren often oblig'd me with their Company; without doubt in this time many Subjects were discours'd of, but the Particulars of any one Discourse I do not remember. I never treasure up what is said in private Conversation; and if I did, I scorn to tell it.

Anno 11 W.III.  
1699.

*Mr. Speaker.* Mr. Langford, you hear what the Gentlemen have given an Account of, 'tis of what pass'd between you about putting the private Estate into the Report, and whether upon my Lord Drogheda's saying it would be a Flying in the King's Face, Mr. Hamilton answer'd, Our Commission flies in the King's Face?

*Mr. Langford.* I was present when this Debate happen'd about the private Estate, and it was with a great deal of Heat. It was objected by my Lord Drogheda, that it would be a Flying in the King's Face to report the private Estate, and was not in our Commission. It was answer'd by Mr. Trenchard, we had that too often mention'd, to put us by the Execution of this Commission; that we did not think the discovering Abuses, a flying in the King's Face; but that, on the contrary, we should do Service to his Majesty to lay the Matter before him, that he might see how the Grants were dispos'd of, and how he was deceiv'd in them; and he thought it was also necessary that both this House and the Kingdom should know it.

*Mr. Speaker.* What did Mr. Hamilton say?

*Mr. Langford.* I did not hear Mr. Hamilton speak one Word relating to the King, on this Point.

*Mr. Speaker.* Do you know of any Letters from Members of this House?

*Mr. Langford.* No, Sir, I had not the Honour to be acquainted with many Members; I had no Letter myself, nor did I see any.

*Mr. Speaker.* You are accus'd about Words of your own.

*Members.* Do not ask him to that.

*Mr. Speaker.* Mr. Hooper, you hear to what Purpose you are call'd in.

*Mr. Hooper.* Yes, I do, the whole Matter seems strange to me; I have not been absent from the Board, except when I was sick at Limerick, one Hour during the whole Execution of this Commission: Nor did I hear one Word spoken reflecting upon his Majesty, unless the Insinuation, that doing our Duty would be Flying in the King's Face, which I think was a great Reflection upon him; and I think Mr. Trenchard has very well repeated his own Words. I am sure in Substance they are the same. I am confident there

was

Anno 11 W. III.  
1699.

was no Letter produc'd whilst I was at the Board, from any Member: And I believe by what Conversation I had with the four Commissioners, they never had any but what was fit to be produc'd; and for the Substance of what Mr. Annesly and Mr. Trenchard have said, I know it to be true. I never heard Mr. Hamilton speak but with great Honour of the King; and I do positively assert, to the best of my Memory, he never said any such Thing, as is alledg'd against him, at the Board. I am confident I was present at all the Debates about the private Estate, and do remember the three dissenting Commissioners did immediately declare themselves against the inserting it in the Report; three others that are present did as readily declare for it. So that Mr. Hamilton being in a manner solely left to determine this Matter, complain'd that it was a great Hardship upon him; for says he, my Lord Ork--y is my Relation and my Friend, and besides I am a Tenant to the private Estate, and 'tis very severe that the Decision of this Matter should lie upon me. He added, he should be very well pleas'd if the Objection had been made sooner, and perhaps it might have had more Weight with him; and truly, Mr. Speaker, it did not appear that there was one of the Commissioners for above five Months, but seem'd to be peremptory for the reporting it, and accordingly Sir Richard Leving, and Sir Francis Brewster, join'd in the Examination of many Witnesses to the Value of it at Limerick, and other Places, till about five days before the Power of the Commission ceas'd, when I mov'd the Board that I might have some Direction about that Estate; and they made an Order that I should immediately prepare the Report, and put this in it. And Mr. Hamilton gave this Reason when he join'd with the Commissioners, We have made so great a Noise about this Estate, by examining so many People to the Value, and sending for the Rent-Rolls of it, that it is now the public Discourse that it will be reported; and I know the World must needs say that we are bribed and corrupted if we do it not: If it was possible, I should be glad to be excus'd; but I will rather lose my Friend, I will rather lose my little Estate, than be thought guilty of Bribery and Corruption, and so gave his Consent to the reporting of it. And for the Words relating to Flying in the King's Face, I affirm they are false.

*Sir Francis Brewster.* I desire to speak a few Words: You were pleas'd to ask me to give an Account of what pass'd about the Words, Flying in the King's Face, and I find the House expects I should give an Account of the whole that pass'd then: And I beg leave to say farther, that when the Debate was about the private Estate, and those Words were said about Flying in the King's Face, which my Lord Drogheda,

Drogheda, and others will take their Oaths of, and I be-  
lieve Mr. Hamilton will not deny; at the same time this was  
said by Mr. Trenchard, I heard you talk of flying in the  
King's Face; I hope 'tis not flying in his Face; but this I  
must tell you, 'tis a villainous Grant, and ought to be ex-  
pos'd. Upon his speaking so, Words arose, and that Gentle-  
man gave me ill Language; but my Language was not so  
bad, but he was forced to beg my Pardon at the Board, and  
I did not his; there he stands, let him deny it if he can.

Anno 11 W. III.

1699.

Mr. Trenchard. Sir, it is true, I did ask his Pardon, and  
the Occasion was this, as Mr. Annesly has acquainted you:  
I was provoked by his opprobrious Language to reply, I  
feared him in no Capacity but as an Evidence, which he  
took very heinously: He repeated the word Evidence; he  
said 'twas below a Gentleman, below a Man of Honour,  
that such a one ought to be shun'd by all civil Conversation,  
that I had better have stuck a Dagger in his Heart, than  
have called him an Evidence; which now I think, Mr.  
Speaker, he won't resent so highly. This put the Board in  
great Disorder, and one of the Commissioners whisper'd to me  
(I think it was the absent Member, but I am sure all agreed  
in it) you know he is a very simple, old Fellow; and tho'  
he gave the Affront, you are in the wrong that you are  
capable of being angry with him. Truly, Sir, I was con-  
scious to myself that I was much to blame, to suffer myself  
to be provoked by him; and therefore, that the Debate  
might be interrupted no longer, I ask'd his Pardon. As to  
the other Part I am charg'd with, that I called the Grant  
of the private Estate a villainous Grant, I directly deny it.  
'Twas possible I might say 'twas an extravagant Grant, an  
unreasonable Grant, an unconscionable Grant, that the King  
was imposed upon and deceiv'd in this Grant, to give that  
for 5000*l. per Ann.* which is worth between five and six  
and twenty thousand. These are Words that amount to it,  
and might fall from me, but that I used the Word villainous  
I positively deny; 'tis a Word I don't use in my ordinary  
Conversation; a Word that never comes out of the Mouth  
of a Gentleman, and is false.

Mr. Speaker. Mr. Annesly, 'tis understood that you re-  
ceiv'd a Letter from a worthy Member of this House, Mr.  
Moore; and I think you told us that you had that Letter,  
and all other Letters that you had received from any Mem-  
bers; I know not whether the House will order the rest,  
but that worthy Member desires that his Letter may be  
produc'd if you have it.

Mr. Annesly. Mr. Moore has desir'd it, has he?

Mr. Harcourt. I desire mine too.

Mr. Speaker. Mr. Harcourt would have his too.

TOME III.

Q

Mr.

Anno 11 W. III.  
1699.

*Mr. Annesly.* It is with great Regret that I bring the Letters of Gentlemen here, especially those I receiv'd from any of the Members of this House, who did me the Honour to-correspond with me at that time; tho' I think there is nothing written in them that any Man need decline owning. And therefore, I think it will be more for their Service to shew them, lest they may be suspected for what they don't deserve: If this House obliges me to lay them all before them, I must submit.

*Members.* No, no.

*Mr. Speaker.* But that Gentleman desires you to produce his.

And *Mr. Harcourt* also desires his.

*Mr. Annesly.* I have but four in my Hand, one from *Mr. Moore*, one from *Mr. Harcourt*, the rest are from *Mr. Sloane*.

*Mr. Sloane.* I desire he will produce mine too.

*Mr. Speaker.* I think you named but three, *Mr. Sloane* desires his too.

*Mr. Annesly.* There are two from *Mr. Sloane*, one from *Mr. Harcourt*, and the other from *Mr. Moore*.

Which Letters *Mr. Annesly* delivered in to the Clerk.

*Mr. Annesly.* I think it my Duty to say something for *Mr. Hamilton* who is absent, and that is to assure you that I never heard any Words fall from him that were unbecoming a Gentleman fit to be intrusted by you in this Commission; and as for that which is said of *Mr. Trenchard*, 'tis false as to my hearing of it: I was present at all the Debates, and I do not remember the least thing that ever came from him, reflecting upon the King or his Grants, in the whole course of our Conversation, otherwise than as he has told you himself.

There having been divers groundless and scandalous Aspersions cast upon *Francis Annesly*, *John Trenchard*, *James Hamilton* and *Henry Langford Esqrs*;

*Resolved*, That the said four Commissioners have acquitted themselves, in the Execution of that Commission, with Understanding, Courage and Integrity.

That *Sir Richard Leving*, another of the said Commissioners, has been the Author of the said groundless and scandalous Reports upon the four Commissioners before-mentioned.

That the said *Sir Richard Leving* be committed to the Tower for the said Offence.

And he was committed accordingly.

Two Days after, the Bill for applying the Irish Forfeitures to the Use of the Public, was read a second Time, and committed



mitted to a Committee of the whole House. Upon this Oc- Anno 21 W. III.  
 casion, the Courtiers made a Motion, and caused the Question 1699.  
 to be put, That the said Committee be empowered to receive  
 a Clause for reserving a Proportion of the Forfeited Estates  
 in Ireland, to the Disposal of his Majesty; which passing  
 in the Negative, it was resolved on the 18th, That the ad-  
 vising, procuring and passing the said Grants of the Forfeited  
 and other Estates in Ireland, had been the Occasion of con-  
 tracting great Debts upon the Nation, and levying heavy  
 Taxes on the People; that the advising and passing the said  
 Grants was highly reflecting on the King's Honour; and  
 that the Officers and Instruments concerned in the procuring  
 and passing these Grants had highly failed in the Performance  
 of their Trust and Duty.

All this while the Business of the Supply went on, and Resolutions on  
 they resolv'd, That the Sum of 76383 l. now remaining in the Supply.  
 the Exchequer, on account of Tonnage and Poundage,  
 with what the Subsidy should bring in more to the 25th of  
 December, should be applied towards the Payment of Sea-  
 mens Wages, and that 220000 l. be borrowed at 5 per Cent.  
 for the same Use: That 7000 Seamen be the Complement  
 for the next Year's Service; that 1800 l. be allowed for  
 Bounty-Money to the Officers of the Fleet; 90,000 l. for the  
 Extraordinary of the Navy; 300,000 l. for Guards and Gar-  
 risons; and 25,000 l. for the Office of Ordnance for the  
 Year 1700. They likewise made a Provision for Half-Pay  
 to the disbanded Officers; and laid two Shillings in the  
 Pound Land-Tax. On the 6th of February they resolv'd  
 to raise Money to discharge the Debt due to Army; and be-  
 ing in a hot Scent after Grants, a Motion was made and the  
 Question put, That the procuring or obtaining of Grants of  
 Estates belonging to the Crown, by any public Minister  
 concern'd in the directing or passing such Grants, to or for  
 their own Use or Benefit, while the Nation lay under the  
 heavy Taxes of the late War, was highly injurious to his  
 Majesty, and prejudicial to the State, and a Violation of the  
 Trust repos'd in them. Whereon the Court-Party carried it  
 in the Negative; but at the same time, they gave their consent  
 to an Order for bringing in a Bill, *To resume the Grants of  
 all Lands and Revenues of the Crown, and all Pensions granted by  
 the Crown since the 6th of February, 1684, and for applying the  
 same to the Use of the Public.*

The Resumption  
 Bill ordered.

On February the 15th, the Commons proceeded to consider  
 further of the State of the Nation; and upon a very hot and  
 long Debate, it was resolved, That an Address be presented  
 to his Majesty, representing to him the Resolutions of this  
 House of the 18th of January last, relating to the Grants of  
 the Forfeited Estates in Ireland.

Anno 11 W. III.  
1699.

Votes of the  
House relating  
to the said Grants  
presented to his  
Majesty, with  
the Address.

The King's An-  
swer.

On the 21st, the Commons in a Body having waited on the King, with their Address of the 15th of that Month, in relation to the Irish Forfeitures, his Majesty told them:

‘ Gentlemen,  
‘ I WAS not led by Inclination, but thought myself  
‘ obliged in justice to reward those who had served well,  
‘ and particularly in the Reduction of Ireland, out of the  
‘ Estates forfeited to me, by the Rebellion there. The long  
‘ War in which we were engaged did occasion great Taxes,  
‘ and has left the Nation much in debt; and the taking just  
‘ and effectual Ways for lessening that Debt and supporting  
‘ Public Credit, is what, in my Opinion, will best contribute  
‘ to the Honour, Interest and Safety of this Kingdom.’

Warm Votes  
thereon.

Ways and Means

The Speaker having, five Days after, reported this Answer, the Commons were so provoked by it, that they resolved, That whosoever advised it, had used his utmost Endeavours to create a Misunderstanding and Jealousy between the King and his People.

Coll. Granville, afterwards Lord Granville, was, during this Interval, Chairman of the Committee of the whole House, who took into Consideration the State of his Majesty's Revenue, and Resolv'd, That there had been a great Loss in his Majesty's Revenue of Excise; and, That it be an Instruction to the Committee of the whole House, to whom the Land-Tax and Irish Forfeiture Bills were committed, that they receive a Clause to enable his Majesty, for the Improvement of the Revenue, to let to farm the Duties of Excise; but no Member of the House to be a Farmer or Manager of Excise.

On the 7th of March they voted 1000 l. to be paid the Earl of Drogheda, Francis Annesly, John Trenchard, James Hamilton, Henry Langford, Esqrs; and to James Hooper, Secretary to the Commissioners; but to Sir Richard Leving and Sir Francis Brewster, who had been at as much Trouble as the rest, only 500 l. each, in Consideration of their Expences. They laid a Duty on Irish Hops, on East-India Goods, and continued the Duties on French Goods and Wines, towards raising the Supply; and ordered a Clause in one of the Money-Bills for the importing, Custom-free, a certain Quantity of Paper for printing Dr. Alix's Ecclesiastical History. They Resolved, That a Supply be granted to his Majesty towards the Payment of his Proportion of the Debt owing to the Prince of Denmark, and the Moneys to be rais'd to be laid out in this Kingdom, and settled upon the Prince and Princess, and their Issue, according to their Marriage-Agreement. That an Address be presented to his Majesty,

that

that he would use his Endeavour to procure other Princes and States to pay their Proportions of the said Debt. They agreed upon a Supply for the Coinage, for circulating Exchequer-Bills one Year longer, for making good the Deficiencies of the three Shillings in the Pound, in the eighth Year of his Majesty's Reign, and of the Duty on stamp'd Paper and Parchment, granted in the same Session of Parliament; of the Malt-Tickets and Quarterly Poll granted in the next Year, for paying off the Transport-Debt, and for Payment of the Debt due to the Navy, and sick and wounded Seamen.

Anno 11<sup>th</sup> W. III.  
1700.

The 16th, an Address was presented to the King, That Capt. Kidd might not be tried, discharg'd, or pardon'd, until the next Session of Parliament; and that the Earl of Bellamont, Governour of New-England, might transmit over all Instructions and Papers taken with, or relating to the said Kidd; which his Majesty complied with.

Address relating  
to Capt. Kidd.

March 26. The House having considered of the Number, Qualifications, and Manner of chusing the Trustees for the Bill of Irish Forfeitures, they Resolved, That the Number of the said Trustees be thirteen: That no Person be a Trustee who had any Office or Profit, or was accountable to his Majesty; or was a Member of this House. And that the said Trustees be chosen by balloting. Two Days after, the several Members of the House having given in Lists of thirteen Persons Names, which were put into Glasses, the Majority fell upon Francis Annesly, James Hamilton, John Biggs, John Trenchard, James Isham, Henry Langford, James Hooper, Esqrs; Sir Cyril Wyche, John Cary, Gent. Sir Henry Sheers, Thomas Harrison, Esq; Sir John Worden, William Fellows, and Thomas Rawlins, Esqs; The two last Persons having equal Voices, either of them must have been left out; but the House being informed, that Sir John Worden was a Baron of the Exchequer, in the County-Palatine of Chester, during his Life, at a yearly Salary from the Crown, it was Resolved, That the said Sir John Worden was not capable of being Trustee in the said Bill, and so the other two stood.

Commissioners  
nominated for  
the Sale of the  
Irish Forfeitures.

On the 2d of April, the Commons passed the Bill for granting an Aid to his Majesty, by Sale of the Forfeited and other Estates and Interests in Ireland; and by a Land-Tax in England for the several Purposes therein mentioned: and sent it to the Lords for their Concurrence.

Bill of Resump-  
tion pass'd.

The 8th, the House ordered the Report of the Commissioners for Irish Forfeitures to be published; and that the Resolutions of the 18th of January last, the Resolution of the 4th of April 1690, relating to the forfeited Estates; his Majesty's Speech to both Houses, the 5th of January, 1690-1. the Address of the House to the King the 5th of February last;

Proceedings of  
the House or-  
dered to be  
printed.

Anno 11 W. III.  
1700.



last; his Majesty's Answer thereunto the 26th of the same February, and the Resolution of the House thereupon; and lastly, the Address of the House of Commons, of the 4th of March, 1692-3, and his Majesty's Answer thereunto, be also reprinted with the said Report. And Resolv'd, That the procuring or passing exorbitant Grants, by any Member now of the Privy-Council, or by any other that had been a Privy-Counsellor in this or any former Reign, to his Use or Benefit, was a High Crime and Misdemeanour.

Amendments  
made, by the  
Lords, to the Bill  
of Supply.

On the other hand, the Court finding their Party extremely weak in the House of Commons, endeavoured to oppose the passing of this complicated Bill in the House of Lords; to which the Majority of that illustrious Assembly was inclined; some out of Complaisance to the King, and most of them because they looked upon the tacking of one Bill to another, as an Innovation in parliamentary Proceedings, and such as evidently tended to retrench, if not wholly to take away the Share the Peers of England ought to have in the legislative Authority. But because they could not reject the Bill without leaving the urgent Necessities of the State unprovided, their Lordships contented themselves to make great Amendments to that Part of it that related to Forfeitures. The Commons having considered and unanimously disapproved the said Amendments, sent to desire a Conference with the Lords thereupon; appointed a Committee to draw up Reasons to be offered to their Lordships; resolved, That two Days after, they would proceed in the further Consideration of the Report given in by the Commissioners for Irish Forfeitures; and ordered a List of his Majesty's Privy-Council to be laid before the House.

Conferences be-  
tween the two  
Houses thereon.

On the 9th of April, a Conference was managed between both Houses, in which the Lords did warmly insist on their Amendments; and the Commons as vehemently maintain'd their Disagreement with their Lordships. The next Day two Conferences were had on the same Subject, and with as little Success; at which the Commons were so exasperated, that they ordered the Lobby of their House to be cleared of all Strangers; the Back-Doors of the Speaker's Chamber to be lock'd up; and that the Serjeant should stand at the Door of the House, and suffer no Members to go forth; and then proceeded to take into Consideration the Report of the Irish Forfeitures, and the List of the Lords of the Privy-Council.

The King de-  
sires the Lords  
to comply, which  
they do.

The King being informed of the high Ferment the Commons were in, and apprehending the Consequences, sent a private Message (by the Earl of Albemarle) to the Lords, to pass the Bill without Amendments; which their Lordships did accordingly, and acquainted the Commons with it.

This

This Condescension did not wholly appease the Commons, who, pursuing their Resentment against the present Ministry, put the Question, That an Address be made to his Majesty, to remove John Lord Somers, Lord Chancellor of England from his Presence and Councils for ever; which though it was carried in the Negative, by reason of the acknowledged Merit and great Services of that Peer, yet it was Resolved, That an Address be made to his Majesty, that no Person, who was not a Native of his Dominions, except his Royal Highness Prince George of Denmark, be admitted to his Majesty's Councils in England or Ireland.

Anno 11 W. III.  
1700.

The King did not think it proper to receive any such Address, and therefore to prevent the offer of it, his Majesty came the day following, viz. Thursday, April 11. to the House of Peers, and after passing a great Number of Bills, commanded the Earl of Bridgewater to prorogue the Parliament to the 23d of May. It was afterwards dissolved on the 19th of December; and a new Parliament called, to begin at Westminster, Feb. 6th.

Parliament  
prorogued.

The new Parliament according to the Writs of Summons, met at Westminster on Feb. 6th, and was prorogued to Monday, Feb. 10th. when the King came to the House of Peers, and sending for the Commons, signified to them by the Lord Keeper, that they should forthwith proceed to the Choice of a fit Person to be their Speaker, and present him to his Majesty. The next Day the Commons returning to their House, made choice of Robert Harley Esq; who was the next Day presented and approved by the King; after which, his Majesty made this Speech to both Houses.

Mr. Harley  
Speaker.

‘ My Lords and Gentlemen,  
‘ **O**UR great misfortune in the loss of the Duke of Gloucester, hath made it absolutely necessary, that there should be a further Provision for the Succession to the Crown in the Protestant Line, after me and the Princess. The Happiness of the Nation, and the Security of our Religion, which is our chiefest Concern, seems so much to depend upon this, that I cannot doubt but it will meet with a general concurrence: And I earnestly recommend it to your early and effectual Consideration.  
‘ The Death of the late King of Spain, with the Declaration of his Successor to that Monarchy, has made so great an alteration in the Affairs abroad, that I must desire you very maturely to consider their present State; and I make no doubt but your Resolutions thereupon will be such, as shall be most conducing to the Interest and Safety of England, the Preservation of the Protestant Religion in general, and the Peace of all Europe.

King's Speech.

‘ The

ANNO 12 W. III.  
1708.



‘ These things are of such Weight, that I have thought  
‘ them most proper for the Consideration of a new Parlia-  
‘ ment, to have the more immediate Sense of the Kingdom  
‘ in so great a Conjunction. -

‘ I must desire of you Gentlemen of the House of Com-  
‘ mons, such Supplies as you shall judge necessary for the  
‘ Service of the current Year; and I must particularly put  
‘ you in mind of the Deficiencies and Public Debts occasion’d  
‘ by the late War, that are yet unprovided for.

‘ I am obliged further to recommend to you, that you  
‘ would inspect the Condition of the Fleet, and consider  
‘ what Repairs or Augmentations may be requisite for the  
‘ Navy, which is the great Bulwark of the English Nation,  
‘ and ought at this Conjunction most especially, to be put into  
‘ a good Condition; and that you would also consider, what  
‘ is proper for the better Security of those Places where the  
‘ Ships are laid up in Winter.

‘ The Regulation and Improvement of our Trade, is of  
‘ so Public Concern, that I hope it will ever have your se-  
‘ rious Thoughts; and if you can find proper means of set-  
‘ ting the Poor at work, you will ease your selves of a  
‘ very great Burthen; and at the same time add so many  
‘ useful Hands to be employed in our Manufactures, and  
‘ other public Occasions.

‘ My Lords and Gentlemen,

‘ I hope there will be such an Agreement and Vigour in  
‘ the Resolutions you shall take, upon the important matters  
‘ now before you, as may make it appear, we are firmly  
‘ united among ourselves; and in my Opinion nothing can  
‘ contribute more to our Safety at home, or to our being con-  
‘ siderable abroad.’

The Commons spent the two succeeding Days in qualifying  
themselves; and on the 13th began with the Business of  
Bribery in Elections, which was a Matter of long Debates  
and Censures. On the 14th, upon reading his Majesty’s  
Speech, they came to this Resolution; (on a Division,  
Yeas 181. Noes 160.) ‘ That they would stand by and  
support his Majesty and his Government, and take such ef-  
fectual measures as may best conduce to the Interest and  
Safety of England, the Preservation of the Protestant Reli-  
gion, and the Peace of Europe.’ This Resolution was pre-  
sented to his Majesty by the whole House, on February the  
17th, and the King gave them this gracious Answer.

The Commons  
Address.

King’s Answer.

‘ I thank you for this Address, and your ready Concur-  
‘ rence to those great Ends therein mentioned, which I take  
‘ to be extremely important to the Honour and Safety of  
‘ England; and I assure you, I shall never propose any thing  
‘ but what is for our common Advantage and Security.

‘ Having this Occasion, I think it proper to acquaint you, Anno 12 W. III.  
1700.  
 ‘ that yesterday I received a Memorial from the Envoy Extraordinary of the States-General, a Translation whereof  
 ‘ I leave with you: As to the first Part of it, I think it necessary to ask your Advice, as to the latter Part I desire  
 ‘ your Assistance.’

Upon the Report of the King’s Answer, to their Address above-mentioned, the Commons farther Resolved, ‘ That an humble Address be made to his Majesty, by such Members as are of the Privy Council, that he will please to cause the Treaty between England and the States-General of the third of March, 1677, and all the renewals thereof since that time, to be laid before the House. Which his Majesty commanded to be done by Mr. Secretary Hedges. And the House was so well satisfied, that on February the 20th they resolved, ‘ That an humble Address be made to his Majesty, that he will please to enter into such Negotiations, in concert with the States-General of the United Provinces, and other Potentates, as may most effectually conduce to the mutual Safety of these Kingdoms, and the States-General, and the Preservation of the Peace of Europe; and giving him Assurances of Support and Assistances, in performance of the Treaty made with the States-General, the third of March, 1677.’ This Address was presented by the whole House on Friday the 21st of February. And his Majesty was pleased to return the following Answer.

‘ Gentlemen,

‘ I Thank you heartily for the Advice you have given me, King’s Answer.  
 ‘ and your unanimous Resolution to support and assist  
 ‘ me, in making good the Treaty mentioned in your Address;  
 ‘ and I will immediately order my Ministers abroad, to enter into Negotiations in concert with the States-General, and other Potentates, for the attaining those great Ends which you desire. Nothing can more effectually conduce to our Security, than the Unanimity and Vigour you have shewed on this Occasion: And I shall always endeavour on my Part, to preserve and increase this mutual Trust and Confidence between us.’

On Consideration of that Part of his Majesty’s Speech, which related to the Succession, the Commons resolved, (the 3d of March) That for the preserving the Peace and Happiness of this Kingdom, and the Security of the Protestant Religion by Law established, it is absolutely necessary, a further Declaration be made of the Limitation and Succession of the Crown, in the Protestant Line, after his Majesty, and the Princess, and the Heirs of their Bodies respectively.

Anno 12 W. III.

1700.

Heads of the  
Bill of Succession.

spectively. And that farther Provision be first made, for Security of the Rights and Liberties of the People.

On March the 12th, Mr. Conyers reported the further Resolutions of the Committee appointed for that purpose; and the House did then agree and resolve, 1st, That all things relating to the well-governing of this Kingdom, which are properly cognizable in the Privy-Council, shall be transacted there, and all Resolutions, taken thereupon shall be signed by the Privy-Council. 2d, That no Person whatsoever, that is not a Native of England, Scotland or Ireland, or the Dominions thereunto belonging; or who is not born of English Parents beyond the Seas (although such Person be naturalized or made Denison) shall be capable of any Grant of Lands, Tenements or Hereditaments from the Crown, to himself, or any other in Trust for him. 3d, That upon the further Limitation of the Crown, in case the same shall hereafter come to any Person not being a Native of this Kindom of England, this Nation be not obliged to engage in any War for the Defence of any Dominion, or Territories not belonging to the Crown of England, without the Consent of Parliament. 4th, That whosoever shall hereafter come to the Possession of this Crown, shall join in Communion with the Church of England as by the Law established. 5th, That no Pardon be pleadable to any Impeachment in Parliament. 6th, That no Person who shall hereafter come to the Possession of this Crown, shall go out of the Dominions of England, Scotland, or Ireland, without Consent of Parliament. 7th, That no Person who has any Office under the King, or receives a Pension from the Crown, shall be capable of serving as a Member of the House of Commons. 8th, That further Provision be made, for the confirming of all Laws and Statutes for the securing our Religion, and the Rights and Liberties of the People. 9th, That Judges Commissions be made *Quam diu se bene gesserint*, and their Salaries ascertained and established; but upon the Address of either House of Parliament, it may be lawful to remove them. 10th, That the Princess Sophia Dutcheß Dowager of Hanover, be declared the next in Succession to the Crown of England in the Protestant Line, after his Majesty and the Princess, and the Heirs of their Bodies respectively; and that the further Limitation of the Crown be to the said Princess Sophia and the Heirs of her Body, being Protestants. 11th, That a Bill be brought in upon the said Resolutions.

On the 18th of March, the following Message was delivered to the House of Commons by Mr. Secretary Hedges, and read by the Speaker.

‘ WILLIAM



‘ WILLIAM Rex,

‘ His Majesty having directed Mr. Stanhope, his Envoy  
‘ Extraordinary and Plenipotentiary at the Hague, to  
‘ enter into Negotiations in concert with the States-General  
‘ of the United Provinces, and other Potentates, for the  
‘ mutual Security of England and Holland, and the Prefer-  
‘ vation of the Peace of Europe, according to an Address of  
‘ this House to that effect: And the said Mr. Stanhope hav-  
‘ ing transmitted to his Majesty, Copies of the Demands  
‘ made by himself and the Deputies of the States upon that  
‘ Subject, to the French Ambassador there; his Majesty hath  
‘ thought fit to communicate the same to you, it being his  
‘ Majesty’s gracious Intention, to acquaint you from time to  
‘ time with the State and Progress of those Negotiations,  
‘ into which he has entered pursuant to your Address above-  
‘ mentioned. Kensington the 17th of March, 1700.’

Anno 12 W. III.

1700.

King’s Message  
to the Com-  
mons.

When this Message was taken into the Consideration of  
the Commons on the 21st of March, they began with the  
great Obstruction to it, the Treaty of Partition: And after  
reading the said Message the Proposals made to the French  
Ambassador by Mr. Stanhope, and the Resolution of the  
States-General for treating with Monsieur d’Avaux, they  
resolved, That the Treaty of Partition be read; and after  
reading of it, they proceeded to this Resolution, ‘ That an  
humble Address be presented to his Majesty; to return the  
Thanks of this House for his gracious Message, wherein he  
is pleased to communicate his Royal Intentions, to acquaint  
this House from time to time with the State and Progress of  
those Negotiations, into which his Majesty had entered pur-  
suant to the Address of this House. And also to lay be-  
fore his Majesty the ill Consequences of the Treaty of Par-  
tition (passed under the Great Seal of England, during the  
sitting of Parliament, and without the Advice of the same)  
to the Peace of Europe, whereby such large Territories of  
the King of Spain’s Dominions were to be delivered up to  
the French King. When this Address was presented to the  
King, he did somewhat resent the Unkindness of it; and  
thought there was much more Reason to complain of the  
perfidious Breach of the Treaty, than of the making of it.  
However, to decline the entering into any Defence of it,  
he gave this prudent Answer.

Address on the  
Partition-  
Treaty.

‘ Gentlemen,

‘ I am glad you are pleased with my communicating to  
‘ you the State of the Negotiations I have entered into, pur-  
‘ suant to your Address; I shall continue to inform you of  
‘ the Progress that shall be made in them; and be always  
‘ willing to receive your Advice thereupon; being fully  
‘ persuaded, that nothing can contribute more effectually to

King’s Answer.

Anno 12 W. III.  
1701.

‘ the Happiness of this Kingdom, and the Peace of Europe,  
‘ than the Concurrence of the Parliament in all my Negotia-  
‘ tions, and a good Understanding between me and my  
‘ People.’

Upon the French Ambassador's declining to give a satis-  
factory Answer to the Memorials presented by Mr. Stanhope  
and the Dutch, his Majesty sent this Message to the House  
of Commons.

‘ WILLIAM Rex,

‘ His Majesty having received an Account from Mr.  
‘ Stanhope, his Envoy Extraordinary at the Hague, that the  
‘ French Ambassador there had declared to the Pensionary,  
‘ that the King his Master had no other Answer to return  
‘ to the Demands made by the States-General of the United  
‘ Provinces, than that he is ready to renew and confirm the  
‘ Treaty of Ryfwick, it being all the Security the States are  
‘ to expect; and that he has no Orders to give any Answer  
‘ to his Majesty's said Envoy; but if his Majesty has any  
‘ thing to demand, it may be done by his Ambassador at  
‘ Paris, or to the French Minister at London; and that he  
‘ has no Commission to treat with any but the States. And  
‘ his Majesty having also received two Resolutions of the  
‘ States, and a Memorial from their Envoy here, relating  
‘ to the Ships they are sending to join his Majesty's Fleet,  
‘ and the Succours they desired may be hastened to them,  
‘ by virtue of the Treaty made the third of March, one  
‘ thousand six hundred seventy-seven: His Majesty has  
‘ thought fit to communicate the whole to this House, that  
‘ they may be particularly informed of the present State of  
‘ Affairs abroad, where the Negotiations seem to be at an  
‘ end, by the positive Answer the French Ambassador has  
‘ given to the States. Which his Majesty recommends to the  
‘ serious Consideration of this House, as a Matter of the  
‘ greatest Weight and Consequence; and desires that they  
‘ will give his Majesty such Advice thereupon, as may be for  
‘ our own Security, and that of the States-General, and the  
‘ Peace of Europe. Kensington, the thirty first day of  
‘ March, one thousand seven hundred and one.’

Humble Advice  
of the Com-  
mons.

When this Message was taken into the Consideration of  
the House, they Resolved, *nemine contradicente*, April 2.  
‘ That the humble Advice of this House be given to his Ma-  
‘ jesty, to desire, that his Majesty will be pleased to carry on  
the Negotiations in concert with the States-General, and  
take such measures therein as may most conduce to their Se-  
curity; and that his Majesty will pursue the Treaty made  
with the States-General the third of March, 1677. and to  
assure his Majesty, that this House will effectually enable  
him to support the said Treaty of 1677.’

When

When this Resolution of Advice was presented to his Majesty, Mr. Secretary Hedges reported his Majesty's Answer to this effect: ' That according to the Advice of the House of Commons, his Majesty has given Orders to his Envoy Extraordinary at the Hague, to carry on the Negotiations in concert with the States-General, and to take such measures therein, as may most conduce to their Security. His Majesty thanks you for the assurance you have given, that this House will effectually enable him to support the Treaty of 1677, and will pursue the same as you advise. He does not doubt, but the readiness you have shewn upon this Occasion, will very much contribute to the obtaining such a Security as is desired.'

Anno 12 W. III.  
1701.

King's Answer.

The Commons of England, not content with their Address to the King against the Treaty of Partition, proceeded to shew their Abhorrence of it, in a manner that seemed to affect our Peace at home, more than to prepare for a War abroad. For, on April the first, they Resolved, That William Earl of Portland by negotiating and concluding the Treaty of Partition, (which was destructive to the Trade of this Kingdom, and dangerous to the Peace of Europe) is guilty, and shall be impeached, of high Crimes and Misdemeanors. And they ordered Sir John Levison Gower to go up to the Lords, and at their Bar to impeach the said Earl, and to acquaint their Lordships, that they will in due time exhibit particular Articles against him. And then desired a Conference with the Lords upon matters relating to the Treaty of Partition; at which Conference the Commons delivered this Paper to the Lords.

Resolution to  
impeach the  
Earl of Port-  
land.

It appearing by your Lordships Journal, that your Lordships have received Information of some Transactions between the Earl of Portland, and Mr. Secretary Vernon, relating to the Partition of the Spanish Monarchy, the Commons having the said Matter under their Consideration, desire your Lordships will be pleased to communicate to the Commons, what Informations your Lordships have had, of any Transactions relating to any Negotiations or Treaties of Partition of the Spanish Monarchy, by Letters or otherwise. And the Commons are fully assured, that your Lordships will readily concur in assisting them in this Enquiry, which they conceive absolutely necessary for the Safety and Honour of this Kingdom, and the Preservation of the Peace of Europe.'

Paper delivered  
to the Lords at  
a Conference.

The Lords ordered the two Latin Commissions of Powers granted to the Earls of Portland and Jersey, for Negotiating the said Treaties, one dated the 1st of July, 1699, the other on the 2d of January, 1700, as also a private Paper of the Lord Portland's running thus;

At

Anno 12 W. III.  
1701.

A printed Paper  
of the Earl of  
Portland's.

' At the beginning of the Summer of the Year 1699, when I was in Holland, at my Country-House, and when the King would have me concerned in the Negotiation of this Treaty with the Emperor, the French King, and the States; being very unwilling to meddle with Business again, from which I was retired, before I would engage myself, I advised with my Friends in Holland, and writ into England to Mr. Secretary Vernon, as my particular Friend, whether it was advisable for me to engage in any Business again? To which Mr. Vernon answered in substance, that this would not engage me but for a little while: That I being upon the Place, and generally acquainted with the Foreign Ministers, it would be easier for the King, and more proper for me to be employed in it, than any body else, that must be otherwise sent for on purpose.'

Impeachment  
of the Lord  
Somers.

The next Person whom the Commons intended to call upon, was John Lord Somers, late Lord-Chancellor of England, on whose Judgment and Fidelity the King had very much relied: His Lordship being sensible of the Storm that was coming on, desired the Earl of Portland, with leave of the House, to declare if he pleased, whether the Lord Somers's Name was mentioned in the Letter he received from Mr. Secretary Vernon? The Earl of Portland stood up and declared, ' That if he had remembered any such thing in the Letter, and had not inserted it in the Paper which he had delivered to the House, he should have thought he had deceived the House.'

He is heard by  
the House.

On April the 14th, the Lord Somers sent in an Information to the House of Commons, That having heard the House was upon a Debate concerning him, he desired that he might be admitted in and heard: This was granted, and a Chair was set by the Serjeant, a little within the Bar on the left Hand; then the Serjeant had Directions to acquaint the Lord Somers, that he might come in; and the Door being opened, his Lordship came in, and Mr. Speaker acquainted his Lordship, that he might repose himself in the Chair provided for him; and his Lordship was heard what he had to offer to the House, which he did with great plainness and presence of mind. But when his Lordship withdrew, the House came to this Resolution, ' That John Lord Somers, by advising his Majesty in the Year 1698, to the Treaty for Partition of the Spanish Monarchy, whereby large Territories of the King of Spain's Dominions, were to be delivered up to France, is guilty of a high Crime and Misdemeanour: And they ordered Mr. Harcourt to go up to the Lords, and at their Bar to impeach him, and to acquaint their Lordships, that the House will in due time exhibit particular Articles against him.' And immediately after, they

Vote against  
him.

they Resolved, That Edward Earl of Orford, and Charles Lord Hallifax be for the same Reasons impeached of high Crimes and Misdemeanours.

Anno 12 W. III.

1701.

The Lord Somers had delivered to the House of Commons a Copy of the Letter which he had sent to his Majesty, in Answer to one from his Majesty, upon Occasion of that Treaty: Both which are fit to be inserted.

And the Earl  
of Orford, and  
Lord Hallifax.

At Loo,  $\frac{1}{2}$  of August, 1698.

‘ I Imparted to you before I left England, that in France there was expressed to my Lord Portland some Inclination to come to an Agreement with us, concerning the Succession of the King of Spain; since which, Count Tallard has mentioned it to me, and has made Propositions, the Particulars of which my Lord Portland will write to Vernon, to whom I have given Orders not to communicate them to any other besides yourself, and to leave all to your Judgment, and to whom else you would think proper to impart them; to the end that I might know your Opinion upon so important an Affair, and which requires the greatest Secrecy. If it be fit this Negotiation should be carried on, there is no time to be lost, and you will send me the full Powers under the Great Seal, with the Names in blank, to treat with Count Tallard. I believe that this may be done secretly, that none but you and Vernon, and those to whom you shall communicate it, may have knowledge of it; so that the Clerks who are to write the Warrant and the full Powers, may not know what it is. According to all Intelligence, the King of Spain cannot out-live the Month of October, and the least Accident may carry him off every Day. I received Yesterday your Letter of the 9th. Since my Lord Wharton cannot at this time leave England, I must think of some other to send Ambassador into Spain; if you can think of any one proper, let me know it, and be always assured of my Friendship.’

King's Letter  
to Lord Somers.

WILLIAM Rex.

The Lord Somers's Answer.

‘ S I R,

Tunbridge Wells, 28th  
August, 1698. O. S.

HAVING your Majesty's permission to try if the Waters would contribute to the re-establishment of my Health, I was just got to this Place, when I had the Honour of your Commands; I thought the best way of executing them would be to communicate to my Lord Orford, Mr. Montagu, and the Duke of Shrewsbury (who, before I left London,

Lord Somers's  
Answer.

Annos 12 W. III.  
1701.

had agreed upon a meeting about that time) the Subject of my Lord Portland's Letter; at the same time letting them know, how strictly your Majesty required that it should remain an absolute Secret.

' Since that time, Mr. Montagu, and Mr. Secretary are come down hither; and upon the whole discourse, three things have principally occurred, to be humbly suggested to your Majesty.

' First, That the entertaining a Proposal of this Nature, seems to be attended with very many ill Consequences, if the French did not act a sincere Part; but we were soon at ease, as to any Apprehension of this sort, being fully assured your Majesty would not act but with the utmost nicety, in an Affair wherein the Glory and Safety of Europe were so highly concerned.

' The second thing considered, was the very ill Prospect of what was like to happen upon the Death of the King of Spain, in case nothing was done previously towards the providing against that Accident, which seemed probably to be very near: The King of France having so great a Force in such a readiness, that he was in a Condition to take Possession of Spain, before any other Prince could be able to make a stand. Your Majesty is the best Judge whether this be the Case, who are so perfectly informed of the Circumstances of Parts abroad.

' But so far as relates to England, it would be want of Duty not to give your Majesty this clear Account, That there is a deadness and want of Spirit in the Nation universally, so as not at all to be disposed to the thought of entering into a new War; and that they seem to be tired out with Taxes to a degree beyond what was discerned, till it appeared upon the Occasion of the late Elections. This is the Truth of the Fact, upon which your Majesty will determine what Resolutions are proper to be taken.

' That which remained, was the Consideration what would be the Condition of Europe, if the Proposal took place: Of this we thought ourselves little capable of judging; but it seemed that if Sicily was in the French Hands, they will be entirely Masters of the Levant-Trade; that if they were possessed of Final, and those other Sea-Ports on that side, whereby Milan would be entirely shut out from Relief by Sea, or any other Commerce, that Dutchy would be of little signification in the Hands of any Prince; and that if the King of France had Possession of that Part of Guipuscoa, which is mentioned in the Proposal, besides the Ports he would have in the Ocean, it does seem he would have as easy a way of invading Spain on that side, as he now has on the side of Catalonia.

' But

‘ But it is not to be hoped that France will quit its pretences, to so great a Succession, without considerable advantages; and we are all assured, your Majesty will reduce the Terms as low as can be done, and make them, as far as is possible in the present Circumstances of things, such as may be some Foundation for the future Quiet of Christendom; which all your Subjects cannot but be convinced is your true aim. If it could be brought to pass that England might be some way a gainer by this Transaction, whether it was by the Elector of Bavaria (who is the gainer by your Majesty’s interposition in this Treaty) his coming to an agreement to let us into some Trade to the Spanish Plantations, or in any other manner, it would wonderfully endear your Majesty to your English Subjects.

Anno 13 W. III.

1701.

‘ It does not appear, in case this Negotiation should proceed, what is to be done on your part in order to make it take place, whether any more be required than the English and Dutch should sit still, and France itself to see it executed. If that be so, what security ought to be expected, that if, by our being neutrals, the French be successful, they will confine themselves to the Terms of the Treaty, and not attempt to make further Advantages of their Success?

‘ I humbly beg your Majesty’s Pardon that these Thoughts are so ill put together: These Waters are known to discompose and disturb the Head, so as almost totally to disable one from writing: I should be extremely troubled if my absence from London has delayed the Dispatch of the Commission one Day. You will be pleased to observe that two Persons (as the Commission is drawn) must be named in it, but the Powers may be executed by either of them. I suppose your Majesty will not think it proper to name Commissioners that are not English, or naturalized, in an Affair of this nature.

‘ I pray God give your Majesty Honour and Success in all your Undertakings. I am with the utmost Duty and Respect,

Sir, your Majesty’s most Dutiful and

most Obedient Subject and Servant.

P. S. The Commission is wrote by Mr. Secretary, and I have had it sealed in such a manner, that no Creature has the least knowledge of the thing, besides the Persons named.

The Commons in pursuance of Resolutions taken the 15th of April, did on the 23d, present this Address to the King.

‘ Most gracious Sovereign, We your Majesty’s most dutiful and loyal Subjects, the Commons in Parliament assembled, do humbly crave leave to represent to your Majesty, the great Satisfaction we have from our late Enquiry

The Commons  
Address to the  
King.

TOME III.

S

concerning

Anno 13 W. III.  
1701.

concerning the Treaty of Partition, made in the Year 1698, (on which the Treaty of 1699 was founded) to see your Majesty's great Care of your People and this Nation, in not entering into that Negotiation without the Advice of your English Counsellors; and finding that John Lord Somers, on whose Judgment your Majesty did chiefly rely in that so important Affair, did, in concert with Edward Earl of Orford, and Charles Lord Hallifax, advise your Majesty to enter into that Treaty of so dangerous Consequence to the Trade and Welfare of this Nation; and who, to avoid the Censure which might justly be apprehended to fall on those who advised the same, endeavoured to insinuate, that your Majesty, without the Advice of your Council, entered into that Treaty, and under your sacred Name to seek Protection for what themselves had so advised: Of which Treatment of your Majesty we cannot but have a just Resentment: And that they may be no longer able to deceive your Majesty and abuse your People, we do humbly beseech your Majesty, that you will be pleased to remove John Lord Somers, Edward Earl of Orford, and Charles Lord Hallifax, from your Council and Presence for ever; as also William Earl of Portland, who transacted these Treaties, so unjust in their own Nature, and so fatal in their Consequences to this Nation, and the Peace of Europe. And we humbly crave leave upon this Occasion, to repeat our Assurances to your Majesty, that we will always stand by and support your Majesty, to the utmost of our Power, against all your Enemies both at home and abroad.

His Majesty could not but be very uneasy at this severe dealing with his Councils and his Ministers; when he knew the Error, if any, was a Mistake of Judgment only, and that rather of his own, than of any employed by him. However, he kept his Temper, and gave this gracious Answer:

King's Answer.

‘ I am willing to take all Occasions of thanking you very heartily, for the Assurances you have frequently given me, and now repeat, of standing by and supporting me against all our Enemies both at home and abroad: towards which, nothing, in my Opinion, can contribute so much as a good Correspondence between me and my People. And therefore you may depend upon it, that I will employ none in my Service, but such as shall be thought most likely to improve that mutual Trust and Confidence between us, which is so necessary in this Conjunction, both for our own Security, and the Defence and Preservation of our Allies.’

The House of Lords was alarmed at the Address of the Commons, and did apprehend it to be an ill Precedent for Persons



Persons to be censured, before they were tried. And therefore they interposed with this counter Address to his Majesty.

Anno 13 W. III.  
1701.

‘ We your Majesty’s most loyal and dutiful Subjects, the Lords Spiritual and Temporal, in Parliament assembled, beg leave to represent to your Majesty, that the House of Commons have severally impeached at the Bar of our House, William Earl of Portland, John Lord Somers, Edward Earl of Orford, and Charles Lord Hallifax, of high Crimes and Misdemeanors, and they having acquainted us, that they will in due time exhibit particular Articles against the said Lords, and make good the same; we do most humbly beseech your Majesty, that your Majesty will be pleased not to pass any Censure upon them, until they are tried upon the said Impeachments, and Judgment be given according to the Usage of Parliament, and the Laws of the Land.’

The Lords Address against these Proceedings.

In the mean time, his Majesty, on the 8th of May, sent this Message to the House of Commons by Mr. Secretary Hedges.

‘ WILLIAM R.

‘ His Majesty having lately received an Account from Mr. Stanhope, of the present Posture of Affairs in Holland, and likewise a Letter from the States-General, which is of the greatest Importance; And his Majesty, who has so perfect a Knowledge of their Country, being entirely convinced of the Hardships of their present Condition, and the great Pressures they now lie under, which are particularly expressed in the above-mentioned Letter, has thought it absolutely necessary to communicate the same to this House; that the Expectations the States have of present Assistance from his Majesty, may more fully appear. And his Majesty does not doubt, but this House will be so justly sensible of those immediate Dangers to which they stand exposed, as to take the same into their most serious and effectual Consideration; it being most evident, that the Safety of England, as well as the very Being of Holland, does very much depend upon your Resolutions in this Matter.’

A Message from the King to the Commons.

This Message was the next Day taken into the Consideration of the Commons; and they unanimously *Resolved*, That this House will effectually assist his Majesty to support his Allies, in maintaining the Liberty of Europe; and will immediately provide Succours for the States-General, according to the Treaty of the 3d of March, 1677.

Vote thereon.

The Nation now began to be in a high Ferment, and the People generally disliked the Proceedings of the Commons.

Anno 13 W. III. 1701. A bold Testimony of it was given in the County of Kent, where a Petition was drawn up in this Form.

*The humble Petition of the Gentlemen, Justices of the Peace, Grand-Jury, and other Freeholders at the General Quarter-Sessions of the Peace holden at Maidstone, the 29th of April, in the thirteenth Year of the Reign of Our Sovereign Lord William III. over England, &c.*

The Kentish  
Petition.

WE the Gentlemen, Justices of the Peace, Grand-Jury, and other Freeholders, at the General Quarter-Sessions at Maidstone, in Kent, deeply concerned at the dangerous Estate of this Kingdom, and of all Europe; and considering that the Fate of us and our Posterity depends upon the Wisdom of our Representatives in Parliament, think ourselves bound in Duty, humbly to lay before this Honourable House the Consequence, in this Conjunction, of your speedy Resolution, and most sincere Endeavour to answer the great Trust reposed in you by your Country. And in regard, that from the Experience of all Ages it is manifest, no Nation can be great or happy without Union, we hope, that no Pretence whatsoever shall be able to create a Misunderstanding among ourselves, or the least Distrust of his most sacred Majesty; whose great Actions for this Nation are writ in the Hearts of his Subjects, and can never, without the blackest Ingratitude, be forgot. We most humbly implore this honourable House to have regard to the Voice of the People, that our Religion and Safety may be effectually provided for, that your loyal Addresses may be turned into Bills of Supply, and that his most sacred Majesty (whose propitious and unblemished Reign over us we pray God long to continue) may be enabled powerfully to assist his Allies before it is too late.

And your Petitioners shall ever pray, &c.

Signed by the Deputy-Lieutenants there present, above 20 Justices of the Peace, all the Grand-Jury, and other Freeholders then there.

The Gentlemen who deliver'd it, are committed. This Petition was boldly delivered to the House on May the 8th, and Mr William Colepepper, Mr. Tho. Colepepper, Mr. David Polehill, Mr. Justinian Campney, and Mr. Will. Hamilton, being called in, owned the Petition at the Bar, and their Hands to the same: Then they withdrew, and the Petition being read, the House *Resolved*, That the said Petition was scandalous, insolent, and seditious, tending to destroy the Constitution of Parliaments, and to subvert the established Government of these Realms. And then *Ordered*, ' That all those Gentlemen should be taken into Custody, as guilty of

of promoting the said Petition' And on May the 14th, the House being informed, that Mr. Thomas Colepepper had made his Escape, and that the rest of the Persons committed, did behave themselves disorderly; the Serjeant was called in, who acquainted the House, that the said Mr. Colepepper had on Saturday last made his Escape, and that some of the others had threatned, and he was apprehensive of Force to rescue them; and prayed the Direction of the House concerning them: Whereupon, the House ordered them to be delivered Prisoners to the Gate-House; and agreed to address his Majesty, to issue his Proclamation for apprehending Mr. Colepepper, and for putting out of the Commissions of the Peace and Lieutenancy, such of the others as were in any of the said Commissions. But Mr. Colepepper made a voluntary Surrender of himself, and was confined with his Neighbours.

Anno 13 W. III.  
1701.

Not long after this, another Dart was shot, and supposed from the same Quiver, at the House; for the following Pamphlet, entitled by most People, *The \* Legion Letter*, was sent to the Speaker.

“ Mr. Speaker,

‘ THE enclosed Memorial you are charged with in the Behalf of many thousands of the good People of England.

‘ There is neither Popish, Jacobite, Seditious, Court or Party-Interest concerned in it: but Honesty and Truth. You are commanded by two hundred thousand Englishmen, to deliver it to the House of Commons, and to inform them that it is no Banter, but serious Truth; and a serious Regard to it is expected; nothing but Justice and their Duty is required; and it is required by them, who have both a Right to require, and Power to compel, viz. the People of England.

The Legion  
Letter.

‘ We could have come to the House strong enough to oblige them to hear us, but we have avoided any Tumults, not desiring to embroil, but to save our native Country.

‘ If you refuse to communicate it to them, you will find cause in a short time to repent it.’

To Robert Harley, Esq;  
Speaker to the House of Commons,

These.

The

\* Said to be written by Daniel De Foe.

Anno 13 W. III.  
1701.

' 9. Addressing the King to displace his Friends, upon bare Surmises, before the legal Trial, or any Article proved, is illegal, and inverting the Law, and making Execution go before Judgment; contrary to the true Sense of the Law, which esteems every Man a good Man, till something appears to the contrary.

' 10. Delaying Proceedings upon capital Impeachments, to blast the Reputation of the Persons, without proving the Fact, is illegal and oppressive, destructive to the Liberty of Englishmen, a Delay of Justice, and a Reproach of Parliaments.

' 11. Suffering saucy, indecent Reproaches upon his Majesty's Person, to be publicly made in your House, particularly that impudent Scandal of Parliaments John How, without shewing such Resentments as you ought to do; the said John How saying openly, That his Majesty had made a felonious Treaty to rob his Neighbours; insinuating that the Partition Treaty (which was every way as just as blowing up one Man's House to save another's) was a Combination of the King to rob the Crown of Spain of its due: This is making a Billingsgate of the House, and setting up to bully your Sovereign, contrary to the Intent and Meaning of the Freedom of Speech, which you claim as a Right; is scandalous to Parliaments, undutiful and unmannerly, and a Reproach to the whole Nation.

' 12. Your Speaker exacting the exorbitant Rate of 10l. *per diem* for the Votes, and giving the Printer Encouragement to raise it on the People, by selling them at 4d. *per* Sheet, is an illegal and arbitrary Exaction, dishonourable to the House, and burdensome to the People.

' 13. Neglecting to pay the Nation's Debts, compounding for Interest, and postponing Petitions, is illegal, dishonourable, and destructive of the public Faith.

' 14. Publicly neglecting the great Work of Reformation of Manners, though often pressed to it by the King, to the great Dishonour of God and Encouragement of Vice, is a neglect of your Duty, and an Abuse of the Trust reposed in you by God, his Majesty, and the People.

' 15. Being scandalously vicious yourselves, both in your Minds and Religion, lewd in Life, and erroneous in Doctrine, having public Blasphemers, and impudent Denyers of our Saviour's Divinity among you, and suffering them unreproved and unpunished, to the infinite regret of all good Christians, and the just Abhorrence of the whole Nation.

' Wherefore, in a sad Prospect of the impending Ruin of our native Country, while Parliaments (which ought to be the Security and Defence of our Laws and Constitution) betray their Trust, and abuse the People whom they should protect,

protect: And no other Way being left us, but the Force  
 which we are very loth to make use of, that Posterity may  
 know we did not insensibly fall under the Tyranny of a  
 prevailing Party, we do hereby claim and declare,

Anno 1<sup>st</sup> W. III.

1701.

‘ 1. That it is the undoubted Right of the People of England, in case their Representatives in Parliament do not proceed according to their Duty, and the People’s Interest, to inform them of their dislike, disown their Actions, and to direct them to such things as they think fit, either by Petition, Address, Proposal, Memorial, or any other peaceable Way.

‘ 2. That the House of Commons, separately, and otherwise than by Bill legally passed into an Act, have no legal Power to suspend, or dispense with, the Laws of the Land, any more than the King has by his Prerogative.

‘ 3. That the House of Commons have no legal Power to imprison any Person, or commit them to the Custody of Sergeants, or otherwise, (their own Members excepted) but ought to address the King to cause any Person, on good Grounds, to be apprehended; which Person so apprehended ought to have the Benefit of the *Habeas Corpus Act*, and be fairly brought to a Trial by due Course of Law.

‘ 4. That, if the House of Commons, in Breach of the Laws and Liberties of the People, do betray the Trust reposed in them, and act negligently, arbitrarily and illegally; it is the undoubted Right of the People of England to call them to an Account for the same; and by Convention, Assembly, or Force, may proceed against them as Traitors and Betrayers of their Country.

‘ These things we think proper to declare, as the undoubted Right of the People of England, whom you serve. And in pursuance of that Right avoiding the Ceremony of Petitioning our Inferiors, for such you are by your present Circumstances, (as the Person sent is less than the Sender) we do publicly protest against all your aforesaid Actions; and, in the Name of ourselves, and all the good People of England, do require and demand,

‘ 1. That all the public just Debts of the Nation be forthwith paid and discharged.

‘ 2. That all Persons illegally imprisoned, as aforesaid, be either immediately discharged, or admitted to Bail, as by Law they ought to be; and the Liberty of the Subject recognized and restored.

‘ 3. That John How aforesaid, be obliged to ask his Majesty pardon for his vile Reflections, or be immediately expelled the House.

‘ 4. That the growing Power of France be taken into Consideration, the Succession of the Emperor to the Crown

Anno 13 W. III. of Spain supported, and our Protestant Neighbours protected as the true Interest of England and the Protestant Religion requires.  
1701.

‘ 5. That the French King be obliged to quit Flanders, or that his Majesty be addressed to declare War against him.

‘ 6. That suitable Supplies be granted to his Majesty, for the putting all those necessary things in execution; and that care be taken, that such Taxes as are raised, be more equally assessed and collected, and scandalous Deficiencies prevented.

‘ 7. That the Thanks of the House may be given to those Gentlemen, who so gallantly appeared in the Behalf of their Country with the Kentish Petition, and have been so scandalously used for it.

‘ Thus, Gentlemen, you have your Duty laid before you, which ’tis hoped you will think of: but if you continue to neglect it, you may expect to be treated according to the Resentments of an injured Nation; for Englishmen are no more to be Slaves to Parliaments, than to Kings.

Our Name is Legion :

And we are Many.

‘ P.S. If you require to have this Memorial signed with our Names, it shall be done on your first Orders, and personally presented.’

Vote thereon.

The Consequence of this was, that a Complaint was made to the House, of Endeavours to raise Tumults and Seditions, in order to disturb the Public Affairs, and a Committee was appointed to draw up an Address to the King humbly to lay before him the Endeavours of several ill-dispos’d Persons to raise Tumults and Seditions in the Kingdom, and humbly to beseech his Majesty that he will provide for the public Peace and Safety.

If Mens Tongues began to be loose before, they were much more now, upon the Imprisonment of the Kentish Gentlemen: Some would have this to be the greatest Outrage upon the People’s Liberty imaginable, alledging it was their undoubted Right to petition; and at this Rate we had better fall under the Oppressions of one, than so many. What did the *Habeas Corpus Act* signify? That it looked as if the Nation were betrayed, and England bought and sold: Nay, somebody was so audacious, as to fix a Bill on the House of Commons Door, importing, *That this Nation is to be sold, enquire within*: While others, on their part said, the House of Commons was a Branch of the Government; that all Governments were absolute, in their Nature and Constitution, and so must the Commons in their respective Share of it.

To

To return to the unhappy Difference between the two Houses, in the Case of the impeached Lords; the House of Peers seemed to think, that their Members had been impeached by the Commons, without a serious Intention to prosecute the Charge against them. And therefore on May the 5th, their Lordships sent this quickening Message to the Commons, by Sir Robert Legard, and Sir Richard Holford.

Anno 13 W. III.  
1701.

Difference between the two Houses upon the Matter of Impeachment.

‘ Mr. Speaker, The Lords have commanded us to acquaint this House, that they having on the first day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, of high Crimes and Misdemeanors; and having also on the fifteenth day of the same Month, severally impeached John Lord Somers, Edward Earl of Orford, and Charles Lord Hallifax, of high Crimes and Misdemeanors: Their Lordships think themselves obliged to put this House in mind, that as yet no particular Articles have been exhibited against the said Lords; which, after Impeachments, have been so long depending, is due in justice to the Persons concerned, and agreeable to the Methods of a Parliament in such Cases.’

The Commons ashamed to be upbraided with Delay, in a Matter wherein they had appeared so forward, sent answer, that Articles against the Lords impeached were preparing, and in a short time should be sent up to the House of Lords. So on May the 9th, to begin their own way, the Commons, by Colonel Bierly, sent up Articles against Edward Earl of Orford, in Maintenance of their Impeachment.

‘ 1. That in a long and expensive War, the said Earl always preferring his private Interest to the Good of the Public, in Violation of his Duty and Trust, had procured from his Majesty one or more Grant or Grants of several Manors, Messuages, &c. and also exorbitant Sums of Money.’— To which the Earl answered, ‘ That he having for several Years rendered to his Majesty his utmost Service and Duty as a good and loyal Subject, his Majesty was graciously pleased, upon several Occasions, to take notice of the same: and out of his wonted Bounty, and his free Will, was pleased to give to the Earl two Grants, one a Reversionary Grant for Years, of some Houses; the other Grant of the Remainder of a gross Sum, amounting to about 2000 l. a Year for five Years.’

Articles of Impeachment against the Earl of Orford, together with his Replies.

‘ 2. That in breach of the Trust reposed in him, whilst he was Commander-in-Chief of the Navy Royal of England, in, or near the Streights of Gibraltar, he did receive great Sums of the public Money, which he converted to his own private Use, and unlawfully procured a Privy-Seal, to discharge him from accounting to the Public for the same.—To

Anno 13<sup>W.</sup> III.  
1701.

which he answered, by denying the said Facts, and saying, ' That he did make up, and upon Oath pass his Accounts for the Moneys imprest to him, and hath his *quietus est* in due Course of Law upon the same.'

' 3. That he did receive from the King of Spain and others, considerable Sums of Money, and great Quantities of Wine, Oil, and other Provisions for the Fleet, which he ought to have accounted for, but he converted the same to his own Use: And for securing himself from rendering any Account, he possess'd divers great Offices inconsistent, and designed as Checks one upon the other.'—To which the Earl answered, ' That whatever he received from the King of Spain, or any other for the Fleet, was duly delivered and distributed amongst the Officers and Seamen; and he denies, that he did enjoy any Offices inconsistent, or which ought to be Checks one upon the other.'

' 4. That he hath clandestinely, contrary to the Law of Nations, sold and disposed of several Vessels, taken under Pretence of Prize, without Condemnation or judicial Proceedings, and converted the Money to his own Use.'—To which he answered, by denying the Fact, and saying, ' That he did from time to time give Orders that the Prizes taken should be carefully preserved, without Embezzlement, and duly proceeded against, and the Product answered as the Law directs.'

' 5. That he, presiding in the Commission for Executing the Office of Lord High-Admiral of England, had discouraged and rejected the Request and Proposal of the Company trading to the East-Indies, for suppressing Piracies in the South-Seas; and had procured a Commission for one William Kidd, who had committed divers Piracies and Depredations on the High-Seas, being thereto encouraged thro' the Hopes of being protected by the high Station and Interest of the said Earl.'—To which he answered, ' That he did never discourage or reject the Company's Request, unless it were by telling them, that the Admiralty, by Law, could not grant the same: And as to the Matter of Kidd, his Commission was according to Law, and his Expedition intended for the public Good and Service; and if he hath committed any Piracies, is answerable for the same: he never being ordered or encouraged by the said Earl so to do.'

' 6. That while the Kingdom was under an Apprehension of an immediate Invasion from France, he, preferring his hopes of Gain to himself, to the Safety of the Public, did order Capt. Stewart, Commander of the Ship *Dutchess*, to deliver over, and put on board the said Kidd, a great Number of able Seamen, to the prejudice of the public Security, and to the endangering the said Ship the *Dutchess*, if it had been



been attacked by the Enemy.'—To which he answered, Anno 13 W.III.  
 ' That the Men taken from on board the Dutchess, were but 1701.  
 some of the very Persons that were just before taken from  
 on board of Captain Kidd, and returned by their own  
 Consent again, not being above twenty in number; and  
 that, when all Fears of an Invasion were over and at an  
 end.'

' 7. That during the War, he did, by Misrepresentations,  
 procure a Grant or Order for his Majesty's Ship the Dolphin,  
 then fitted out, manned and equipped for the Service of the  
 Public, to be employed in a private Voyage and Undertaking,  
 for the Advantage of himself and others concerned with him.'—  
 To which he answered, ' That what was done therein was done  
 after the Peace concluded, and by his Majesty's Command,  
 at the Instance and Request of other Persons, and not of  
 the said Earl, but contrary to his Opinion.'

' 8. That, during the time of his commanding the Navy  
 Royal, he did, through Neglect, and in Contempt of Orders,  
 unnecessarily hazard and expose the Navy, and lose the Op-  
 portunities of taking or destroying the French Ships, and  
 suffer them to return safe into their own Harbours.'—To  
 which he answered, ' That he is not guilty of any Neglect or  
 Omission of his Duty herein, nor did expect, in this Parti-  
 cular, to be charg'd therewith, considering his faithful  
 Services rendered against the French Fleet.'

' 9. That he did, in Concert with other false and evil Coun-  
 sellors, advise our sovereign Lord the King, in the Year  
 1698, to enter into one Treaty for dividing the Monarchy  
 and Dominions of *Spain*; in pursuance whereof, in 1699,  
 another Treaty was entered into to the like Purpose: both  
 which Treaties were prejudicial to the Interest of the Pro-  
 testant Religion, &c.'—To which he answered, ' He does  
 deny that he did advise his Majesty to enter into the Treaty  
 of Partition; but so far as he was any ways acquainted  
 therewith, he objected to, and gave his Opinion against  
 the same.'

' 10. That he was one of the Lords Justices, first Com-  
 missioner in the Admiralty, Commander in Chief of the  
 Navy, one of his Majesty's Privy-Council, and Treasurer of  
 his Majesty's Navy; or in some, or one of these Stations, du-  
 ring the time that all and every the Crimes before set forth  
 were done and committed.'—To which he answered, ' That  
 his Majesty was pleased to entrust him in the several Offices  
 and Stations, which he had discharged with Loyalty,  
 Faithfulness and Zeal to his Majesty and his People.'

On May the 19th, the Commons, by Mr. Harcourt, sent  
 up Articles of Impeachment against John Lord Somers.

Anno 13 W. III.  
1701.

Articles against  
the Lord Somers,  
with his Replies.

‘ 1st. That well knowing the most apparent evil Consequences, as well as the Injustice of the Partition of the Spanish Monarchy, he did advise his Majesty to enter into a Treaty for it ; and did so far encourage and promote the same, that the said Treaty was concluded and ratified in 1698, under the Great-Seal of England, then in Custody of the said Lord Somers.—To which his Lordship answered, in a full and plain Account of all the Steps of that Treaty, referring himself to the Letters on that Subject between his Majesty and him (before-recited) ‘ wherein, as he conceived, he had fully and faithfully discharged his Trust, and the Duty incumbent on him.’

‘ 2d, That for the more effectual carrying on the said Treaty, Commissions were prepared, amended, enlarged or altered by the said Lord Somers, without any lawful Warrant for his so doing ; whereunto, without communicating the same to the rest of the then Lords Justices of England, or advising with the Privy-Council, he did presume to affix the Great-Seal of England, with a Blank for Commissioners Names to be afterwards inserted.’

‘ 3d, That having affixed the Great-Seal without lawful Warrant, in hopes of concealing that evil and most dangerous Practice, after he had settled the said Commissions, he used his Endeavour to procure a Warrant to be transmitted to him, for affixing the Great-Seal, that it might not be known, but that he had it in due time’——To which second and third Articles he answered, ‘ That having received his Majesty’s express Commands, to send to his Majesty full Power under the Great Seal for negotiating the said Treaty, with Blanks for his Majesty’s Commissioners Names, he thought it sufficient Warrant for him so to do. And that he did afterwards desire his Majesty that a particular Warrant for signing the said Commission might be signed and returned ; not that he doubted his Majesty’s said Letter to be a sufficient Warrant, but for that such Warrant would be more proper to be produced, if Occasion should require.’

‘ 4th, That, contrary to his Duty, he affixed the Great-Seal of England to the Ratification of the said Treaty in 1698, not having communicated the same to the rest of the then Lords Justices, or advised with the Privy-Council, leaving one entire blank Sheet, and many other Blanks in the said Ratification, with an Intent to be afterwards filled up by other Persons beyond the Seas.’——To which he answered, ‘ That Mr. Secretary Vernon having prepared, by his Majesty’s Commands, the Instruments for Ratification, with Blanks therein, he did affix the Great-Seal ; which he conceives and is advised he might lawfully do, not communicating

cating the same, because he had his Majesty's Command **Anno 3 W. III.**  
that the said Treaty should be kept secret. 1701.

' 5th, That in the Year 1699, another Treaty of Partition was concluded and ratified under the Great Seal, then in the Custody of the said Lord Somers, dishonourable to his Majesty, highly injurious to the Interest of the Protestant Religion, &c. — To which he answered, ' That a Draught of the said Treaty being read over in the Presence of divers of the Lords of the Privy-Council, he, the said Lord Somers, as well as others then present, did make several Objections; but they were informed by his Majesty's Plenipotentiaries for transacting this Treaty, who were also then present, that the said Treaty was so far perfected, that nothing could be altered therein; and his Majesty afterwards, by Warrant so requiring, he did affix the Great-Seal, being, as he conceives, obliged to do it.'

' 6th, That whereas by the Laws and Usages of this Realm, all Commissions under the Great-Seal, for the making any Treaty or Alliance, ought to be enrolled, and entred on Record in the Court of Chancery; he, the said Lord Somers, not minding the Duty of his Office, did not in any manner enroll, or enter on Record, any of the said Commissions or Ratifications. — To which he answered, ' He conceives it was not incumbent upon him as Lord Chancellor, to see the Commissions or Ratifications enrolled; but the Care of enrolling the same, if necessary, doth belong to the Prothonotary of the Court of Chancery.'

' 7th, That the said Lord Somers, contrary to his Oath as Lord Chancellor of England, did pass many great, unreasonable and exorbitant Grants, under the Great-Seal, of divers Manors, Lordships, &c. belonging to the Crown of England; and did advise, promote and procure divers like Grants of the late Forfeited Estates in Ireland, in Contempt of the Advice of the Commons of England. — To which he answered, ' He doth acknowledge, he did pass several Grants, &c. but the same were regularly passed through the proper Offices, and brought with sufficient Warrants for the Great-Seal; and believes more considerable Grants have passed in like Number of Years, in most of his Predecessors times.

' 8th, That he did not only receive and enjoy the Fees, Profits and Perquisites, belonging to the Great Seal, but had received an annual Pension from the Crown of 4000 l. and had further begged and procured for his own Benefit, many great, unreasonable, and exorbitant Grants of Revenues belonging to the Crown of England. — To which he answered, ' That the annual Pension or Allowance of 4000 l. had been allowed to several of his Predecessors; but denies, he did  
' ever

Anno 13 W. III.  
1701.

ever beg, or use any Means or procure any Grant whatsoever for his own Benefit; but what his Majesty pleased to give him, proceeded from his Majesty's own Motion, and of his mere Bounty; and, as his Majesty was pleased to declare upon that Occasion, as an Evidence of the gracious Acceptation of the said Lord Somers's zealous Endeavours for his Service.

' 9th, That in order to procure a Grant of the said Fee-farm Rents, he did enter into several Treaties, and had many Communications with the Auditor of the Rates, and with the Clerk of the Trustees for the Sale of the said Rents, and contracted and agreed with them, as a Reward for their Discovery, one full fourth Part of all such Rents so discovered.'

' 10th, That, notwithstanding the said pretended Contracts, there was not any Sum of Money really paid, but the Contracts and Payments colourably and fraudulently contrived, in Deceit of his Majesty, and Elusion of the Acts of Parliament.'——To which 9th and 10th Articles he answered, ' That after his Majesty had given Directions to the Lords of the Treasury, for granting Fee-farm Rents to the Benefit of him and his Heirs; his Majesty's intended Bounty would have been lost, without Information could be gained of such particular Rents: And therefore Application was made to the said Auditor and Clerk, as the most likely to give Information therein; but they did refuse to give any Account of such Rents, unless they might have near a fourth Part for so doing; which the said Lord Somers did, as he conceives he lawfully might, comply with. And there was not any Sum of Money paid, as the Consideration of the Grants of the said Rents, but the Contracts were made, and the Payment discharged, without any Deceit of his Majesty, or Elusion of Acts of Parliament.'

' 11th, That many Rents standing in Charge for Payment of Pensions, Stipends, Salaries, Annuities, Alms, and Allowances for Schools, Churches, Bridges, &c. and many Quit-Rents of Mannors united and annexed to the Castle of Windsor, for Support of the same, and Maintenance of the Officers, Servants, and Attendants in the said Castle, were conveyed by the said Trustees, through the Direction and Power of the said Lord Somers, contrary to the true Intent and Meaning of the said Acts of Parliament, to the great Vexation and Oppression of many of his Majesty's good Subjects, and creating many new and unreasonable Charges on other Revenues of the Crown.' —To which he answered, ' That some things might be inserted by mistaken Informations, and not out of any Design; he denies that as to his Knowledge or Belief, any of the said Rents were ever united

or annexed to the Castle of Windsor, for any purpose whatsoever; or that any Oppression or Vexation hath happened; and little or no new Charge to the Crown.' Anno 13 W. III.  
1701.

' 12th, That by the Direction of the said Lord Somers, the Persons in whose Names the Purchases were made, did surrender several of the said Rents to them granted, amounting to the Yearly value of 347 l. 11 s. 3 d. on Suggestion of wrong Conveyance; and procured other Rents of the Yearly Value of 391 l. 11 s. 3 d. to be allowed by way of reprice, as if the said Rents so surrendered had been really and *bona fide* purchased.'——To which he answered, ' That the Trustees for Sale of the Fee-Farm Rents, by Warrant of the Commissioners of the Treasury, did grant divers other Rents, amounting to 391 l. in lieu and reprice of the 347 l. having appeared to be granted before, or not grantable by the said Trustees, or not leviable on Surrenders of such Rents; which he conceives might be and was lawfully done.'

' 13th, That in the Year 1695, the said Lord Somers, being then Lord-Keeper, procured a Commission to be granted to one William Kidd, a Person of evil Fame and Reputation, and since that time convicted of Piracy; and in a Grant from his Majesty, of Ships, Vessels and Goods to be taken by the said William Kidd, unto Richard Earl Bellamont, Edmund Harrison, Merchant, Samuel Newton, Gent. and others, the Name of the said Samuel Newton was used in Trust, and for the only Benefit and Advantage of the said Lord Somers.'——To which he answered, ' That the said William Kidd had from his Majesty a Commission for preventing the Piracy of others, and to apprehend certain Pirates, and bring them to a legal Trial; the granting of which Commission was then apprehended to be necessary for the Preservation of Trade and Navigation. He does admit there was a Grant to the Earl of Bellamont, Edmund Harrison, and Samuel Newton, who was named by and in Trust for the said Lord Somers, of Ships and Goods, taken by the said William Kidd, with Account to be duly made to the Use of his Majesty, of a clear tenth Parr, whereby the Public might have received Benefit, had the said Kidd faithfully discharged the Trust; which he failing to do, the Owners of the said Ship have lost all their Expences.'

' 14th, that as Lord Chancellor, he had, in several Causes depending before him, by many extraordinary Methods, and unwarrantable Practices, for several Years, delayed Proceedings in the said Causes; and, by colour of his Office, had made divers arbitrary and illegal Orders, and had, of his own Authority, reversed Judgments given in the Court of Exchequer; without calling the Barons before him: And had declared and affirmed in public Places of Judicature,

Anno 13 W. III. 1701. that particular Subjects might have Rights, and Interests, without any Remedy for Recovery of the same, unless by Petition to the Person of the King only, or to that effect: Which Position was highly dangerous to the legal Constitution of this Kingdom, and absolutely destructive to the Property of the Subject.' To which he answer'd, ' That he did not delay any Proceedings longer, or otherwise than as the Circumstances and Justice of each Cause required; nor did he ever make any arbitrary or illegal Order, or ever reverse any Judgment given in the Court of Exchequer, otherwise than it is warranted and allowed by the Law: Nor did ever deliver any Position whatsoever, dangerous to the legal Constitution, or destructive to the Property of the Subjects.'

A Copy of the Lord Somers's Answer was with great Dispatch delivered to the Commons on May the 24th. In the mean time, on the 21st, the Lords had sent down this second Message.

Second Message  
from the Lords

' Mr. Speaker, the Lords command us to acquaint this House, that their Lordships having been desired by the Earl of Orford, that a Day might be appointed for his speedy Trial, their Lordships finding no issue joined by Replication of this House, think fit to give Notice thereof to this House:

' They also commanded us to acquaint this House, that they having, on the first of April last, sent up an Impeachment to their Lordships, against William Earl of Portland, for high Crimes and Misdemeanours; and having also, on the 15th of the same Month, impeached Charles Lord Halifax, for high Crimes and Misdemeanours; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is not agreeable to the usual Methods and Proceedings of Parliaments in such Cases.'

The Commons then prepared this Replication to my Lord of Orford's Answer.

Replication of  
the Commons  
to the Earl of  
Orford.

' The Commons have considered the Answer of Edward Earl of Orford, to the Articles of Impeachment exhibited against him by the Knights, Citizens and Burgeses assembled in Parliament, and do aver their Charge of high Crimes and Misdemeanours against him to be true, and that the said Earl is guilty in such manner as he stands accused and impeached; and that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that purpose.'

And, on the 31st, they sent this Answer to the Lords:

Their Answer  
to the Lords.

' In Answer to your Lordships Message of the 21st Instant, the Commons have prepared a Replication to the Earl of Orford's Answer to the Articles of Impeachment of high Crimes and Misdemeanours, exhibited against him; and at present

present defer bringing it up to your Lordships, because, in the Trial of the several Impeachments now depending, the Commons think it most proper, from the nature of the Evidence that will be given at the said Trials, to begin with the Trial of the Impeachment of John Lord Somers, of high Crimes and Misdemeanours.

Anno 13W. III.

1701.

‘ And as to your Lordships other Message, the Commons take it to be without Precedent and unparliamentary: They, as Prosecutors, having a liberty to exhibit their Articles of Impeachment in due time, of which they, who are to prepare them, are the proper Judges; and therefore, for your Lordships to assert, that having not yet exhibited particular Articles against William Earl of Portland, and Charles Lord Hallifax, is a hardship to them, and not agreeable to the usual Methods and Proceedings in Parliament in such Cases; does, as they conceive, tend to the Breach of that good Correspondence betwixt the two Houses, which ought to be mutually preserved.’

On the same Day, 31st May, Sir John Hoskyns, and Sir Robert Legard brought this Message to the Commons.

‘ Mr. Speaker, the Lords have commanded us to acquaint this House, that their Lordships have appointed Monday the 9th Day of June next, for the Trial of Edward Earl of Orford, upon the Articles brought up against him by this House in Westminster-Hall; and that this House may reply, if they think fit.

Third Message  
from the Lords.

‘ They have also commanded us to acquaint this House, that this House having, on the first Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, for high Crimes and Misdemeanours; and having also, on the 15th Day of the same Month, impeached Charles Lord Hallifax for high Crimes and Misdemeanours; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is a hardship to the Persons concerned, and not agreeable to the usual Methods of Parliament in such Cases.’

The Commons, on the 5th of June, returned this Answer.

‘ The Commons, on Consideration of your Lordships Message to them of the 31st of May, concerning the Earl of Orford, think it their undoubted Right, when several Persons stand impeached before your Lordships, to bring to Trial such of them in the first place, as the Commons apprehend, from the Nature of the Evidence, ought first to be proceeded against, to the intent all such Offenders may in due time be brought to Justice; and that no Day ought to be appointed by your Lordships for the Trial of any Impeachment by the Commons, without some previous signifi-

Answer of the  
Commons.

Anno 13 W. III.  
1701.



cation to your Lordships from the Commons, of their being ready to proceed thereon.

‘ The Commons could not receive this Message from your Lordships, without the greatest surprize; your Lordships Proceedings in this Case, being neither warranted by Proceedings, nor (as the Commons conceive) consistent with the Methods of Justice, or with Reason: Wherefore the Commons cannot agree to the Day appointed by your Lordships, for the Trial of the Earl of Orford.

‘ As to your Lordships Message at the same time, relating to the Earl of Portland, and Charles Lord Hallifax, the Commons take the same to be without Precedent, and unparliamentary; and conceive your Lordships frequent Repetition thereof, in a short time, after the Commons had transmitted to your Lordships their Articles against two of the impeached Lords, and were daily preparing their Articles against the others, manifestly tends to the Delay of Justice in obstructing the Trials of the impeached Lords, by introducing Disputes, in Breach of that good Correspondence between the two Houses, which ought inviolably to be preserved.

In the mean time, the Lords, on the fourth, accosted them with another Message to this purpose.

Fourth Message  
from the Lords.

‘ Mr Speaker, The Lords do think fit, upon Occasion of the Message from this House of the 21<sup>st</sup> of May, to acquaint this House, that having been desired by the Lord Somers, that a Day may be appointed for his speedy Trial, and their Lordships, finding no issue joined by Replication of the House of Commons, judge it proper to give them notice thereof, that the Commons may reply if they think fit. And at the same time, their Lordships let the Commons know, that they will proceed to the Trial of any of the Impeached Lords whom the Commons shall be first ready to begin with, so as there may be no Occasion taken from thence, for any unreasonable Delay in the Prosecution of any of them: And further to acquaint them, having searched their own Journals, they do not find, that, after a general Impeachment, there has ever been so long a Delay of bringing up the particular Articles of Impeachment, sitting the Parliament: And therefore the Lords do think, they had reason to assert, that it was a hardship to the two Lords concerned (especially when their Lordships had put the House of Commons in mind of exhibiting such Articles) and not agreeable to the usual Proceedings in Parliament. And as the Lords do not controvert what Right the Commons may have, of impeaching in general terms, if they please; so the Lords, in whom the Judicature does entirely reside, think themselves obliged to assert, that the Right of limiting a convenient Time for bringing the particular Charge before them, for the avoiding Delay in Justice, is lodged in them.

‘ The



‘ The Lords hope, the Commons, on their part, will be as careful not to do any thing, that may tend to the Interruption of the good Correspondence between the two Houses, as the Lords shall ever be on their part ; and the best way to preserve that, is, for neither of the two Houses to exceed those Limits, which the Law and Custom of Parliament have already established ’

Anno 13 W. III.  
1701.

The Commons hereupon, June the sixth, desired a Conference with the Lords, upon the Subject-Matter of the said Message ; at which Mr. Harcourt delivered himself in this manner :

Conference between the two Houses open'd by Mr. Harcourt.

‘ The Commons have desired this Conference, upon your Lordships Message of the fourth of June, in order to preserve a good Correspondence with your Lordships, which will always be the Endeavour of the Commons, and is at this time particularly necessary, in order to bring the impeached Lords to a speedy Trial. And because the Messages which your Lordships have thought fit to send to the Commons, and the Answers thereunto, seem not to tend towards expediting the Trials, which the Commons so much desire, but may rather furnish matter of dispute between the two Houses ; the Commons therefore chuse to follow the Methods formerly used with good Success upon the like Occasion ; and for the more speedy and easy adjusting and preventing any differences which have already happened, or may arise, previous to, or upon those Trials, the Commons do propose to your Lordships, that a Committee of both Houses be nominated, to consider of the most proper Ways and Methods of proceeding on Impeachments, according to the usage in Parliaments in such Cases.’

The Conference being ended, the Lords, on the ninth, sent the following Message to the Commons.

‘ In Answer to the Message of the House of Commons of the fourth Instant, the Lords say, by their Message sent on the third, wherein they declare themselves ready to proceed to the Trial of any of the impeached Lords, whom the Commons shall be first ready to begin with ; they have given a full Proof of their willingness to comply with the Commons, in any thing which may appear reasonable, in order to the speedy determining of the Impeachments now depending ; and therefore, as the Lords conceive, the Commons had no Occasion to begin the Dispute on that head, so their Lordships decline entering into a Controversy, which seems to them to be of no Use at present.

Fifth Message from the Lords.

‘ The Lords think themselves obliged to assert their undoubted Right, to appoint a Day for the Trial of any Impeachment depending before them, if they see good Cause for it, without any previous signification from the Commons of their being ready to proceed ; which Right is warranted

by

Anno 13 W.III.  
1701.



by many Precedents, as well as consonant to Justice and Reason. And their Lordships, according to the Example of their Ancestors, will always use that Right, with a Regard to the equal and impartial Administration of Justice, and with a due care to prevent unreasonable Delays.

' This being the Case, the Lords cannot but wonder, that the Commons, without any Foundation for it, should make use of Expressions, which, as their Lordships conceive, have never been used before by one House of Parliament to another; and which, if the like were returned, must necessarily destroy all good Correspondence between the two Houses.

' The last Part of the Commons Message, being in effect a repetition only of their former of the 21st of May, to which the Lords already have returned a full Answer, their Lordships think it not requisite to say any more, than that they cannot apprehend with what Colour their calling upon the House of Commons, to send up Articles against two Lords, whom the Commons have so long impeached in general Terms, can be said to tend to the delay of Justice. And therefore, as the Lords think, the Commons ought to have forbore that Reflection, so their Lordships, in saying no more upon the Occasion of this Message of the Commons, think they have given a convincing Proof of their Moderation, and of their sincere Desire of preserving a good Correspondence between the two Houses; which is so necessary for the public Security, as well as doing right upon the Impeachment.'

Answer of the  
Commons.

The Commons answered them next Day to this effect:

' The Commons, in hopes of avoiding all Interruptions and Delays, in proceeding against the impeached Lords, and the many Inconveniencies which might arise thereby, having proposed to your Lordships, at a Conference, that a Committee of both Houses might be nominated, to consider of the most proper Ways and Methods of proceeding on Impeachments, think, they might justly have expected your Lordships Compliance with their said Proposition, instead of your Lordships Answer to their Message of the fourth Instant, which they Yesterday received. In which Answer of your Lordships, though many Matters of great exception are contained, a suitable Reply whereunto would inevitably destroy all good Correspondence between the two Houses; yet the Commons, from an earnest desire to preserve the same, as well as to give the most convincing Proof of their Moderation, and to shew their readiness to bring the impeached Lords to speedy Justice, at present insist only on their Proposition, of both Houses to settle and adjust the necessary Preliminaries to the Trials; particularly, whether the impeached Lords shall appear at their Trials at your Lordships Bar

Bar as Criminals? Whether, being under Accusations for the same Crimes, they are to sit as Judges on each other's Trials for those Crimes, or can Vote in their own Cases, as we find by your Lordships Journal, since their being impeached, they have been admitted to do? Which Matters, and some others, being necessary to be adjusted, the Commons cannot but insist on a Committee of both Houses to be appointed for that purpose: The departing from which, would be giving up the Rights of the Commons of England, known by unquestionable Precedents, and the Usage of Parliament, and making all Impeachments, (the greatest Bulwark of the Laws and Liberties of England) impracticable for the future.

Artic 13 W. III.  
1701.

The Lords hereupon entered into a Debate, whether they should appoint a Committee, in pursuance of the Commons desire; and having carried it in the Negative, yet desired a present Conference with them, which was managed by the Duke of Devonshire, who acquainted them:

' That the Lords have desired this Conference, upon Occasion of the last Conference; in order to preserve a good Correspondence with the House of Commons, which they shall always endeavour.

Another Conference.

' As to the late Messages between the two Houses, their Lordships are well assured, that on their Part nothing has passed, but what was agreeable to the Methods of Parliament, and proper to preserve that good Understanding between both Houses, which is necessary for the carrying on of the Public Business.

' As to the Proposal of the Commons, that a Committee of both Houses should be appointed, to consider of the Ways and Methods of Proceedings on Impeachments, their Lordships cannot agree to it.

' 1. Because they do not find that ever such a Committee was appointed, on Occasion of Impeachments for Misdemeanors; and their Lordships think themselves obliged to be extremely cautious in admitting any thing new in Matters relating to Judicature.

Reasons for not appointing a Committee.

' 2. That although a Committee of this nature was agreed to upon the Impeachments of the Earl of Danby, and the five Popish Lords for High Treason, yet it was upon Occasion of several considerable Questions and Difficulties, which did then arise. And their Lordships do not find that the Success in that Instance was such, as should encourage the pursuing the same Methods again, tho' in the like Case: The Lords observing, that after much time spent at that Committee, the Disputes were so far from being there adjusted, that they occasioned an abrupt Conclusion of a Session of Parliament.

Anno 13 W. III.  
1701.



‘ 3. Their Lordships are of Opinion, that the Methods of Proceedings on Impeachments for Misdemeanors, are so well settled by the Usage of Parliaments, that they do not foresee any Difficulties likely to happen; at least none have been yet started to them: And all the Preliminaries in the Case of Stephen Gaudert, and others (which was the last Instance of Impeachments for Misdemeanours) were easily settled and agreed to, without any such Committee.

‘ 4. The Lords cannot but observe, that this Proposal of the Commons comes so very late, that their Lordships can expect no other Fruit of such a Committee, but the preventing the Trials during this Session.

‘ The Lords assure the Commons, that, in case any Difficulties shall arise in the Progress of these Trials, (which their Lordships do not foresee) they will be ready to comply with the Commons in removing them, as far as Justice, and the Usage of Parliament will admit.

The Commons on the 11th, desired a free Conference on the subject Matter of the last; and at the same time, drew up an Answer to their Lordships other Message, on Monday, about their appointing Friday the 13th, for the Trial of the Lord Somers; which was to this Effect.

Free Con-  
ference.

‘ The Commons on Monday last (which was the 9th,) received a Message from your Lordships, that your Lordships had appointed the Trial of John Lord Somers, upon Friday next, on their Impeachment against him; in which they observe, your Lordships have not nominated any Place for his Trial, though your Lordships thought fit to make that Matter, on the last Impeachment for a Misdemeanour, the Subject of a long Debate.

‘ And they cannot but take notice, that your Lordships have taken as long a time, to give your Answer, to the Commons Desire of a Committee of both Houses, delivered at a Conference on Friday last, as you are pleased to allow the Commons to have, of the Day appointed by your Lordships for the said Trial.

‘ Your Lordships appointing so short a day, especially whilst the Proposition made to your Lordships for a Committee of both Houses was undetermined, the Commons take to be such a Hardship to them, and such an Indulgence to the Person accused, as is not to be parallel’d in any Parliamentary Proceedings.

‘ The Commons must likewise acquaint your Lordships, that their Experience of the Interruption of a former Trial on an Impeachment for Misdemeanours, for want of settling the Preliminaries between the two Houses, obliges them to insist on a Committee of both Houses, for preventing the like Interruption.

‘ And

‘ And they conceive it would be very preposterous for them to enter upon the Trial of any of those Lords, till your Lordships discover some Inclination to make the Proceedings thereupon practicable; and therefore, they think they have reason to insist upon another Day to be appointed, for the Trial of the Lord Somers. And the Commons doubt not but to satisfy your Lordships at a free Conference, of the necessity of having a Committee of both Houses, before they can proceed upon the said Trial.’

Ann<sup>o</sup> 13 W. III.  
1701.

On Thursday June the 12th, His Majesty came to the House of Peers, and gave the Royal Assent to an Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subject: An Act for preventing the Inconveniences that may happen by Privilege of Parliament: An Act for appointing Wardens and Assay-Masters, for Assaying wrought Plate in the Cities of York, Bristol, Exeter, Chester and Norwich: An Act for Preserving the Cotton-Library: An Act for Separating James Earl of Anglesey, from Katharine, Countess of Anglesey, his Wife, for the Cruelty of the said Earl: An Act to dissolve the Marriage of Ralph Bere with Elizabeth Eyre: An Act for a Court of Conscience at Norwich: An Act for Dissolving the Marriage of Sir John Dillon and Mary Boyle; and many other Private Bills: After which he made the following Speech:

Royal Assent  
given to several  
Bills.

‘ My Lords and Gentlemen,

‘ I Return you my hearty Thanks for the Care you have taken to establish the Succession to the Crown in the Protestant Line: And I must not lose this Occasion of acquainting you, that I am likewise extremely sensible of your repeated Assurances of supporting me in such Alliances, as shall be most proper for the Preservation of the Liberty of Europe, and for the Security of England and Holland. Your ready Compliance with my Desires, as to the Successors for the States-General, is also a great Satisfaction to me, as well as a great Advantage to the common Cause. And as I have nothing so much at heart, as the Preservation of the Liberty of Europe, and the Honour and Interest of England, so I make no doubt of attaining those great Ends, by the Blessing of God, and the Continuance of your cheerful Concurrence.

King's Speech

‘ My Lords and Gentlemen,

‘ The Season of the Year makes it necessary to have a speedy Recess, and the Posture of Affairs abroad does absolutely require my Presence, for the Encouragement of our Allies, and for the perfecting of such Alliances as may be most effectual for the Common Interest: And therefore I must recommend a Dispatch of the public

Ann 13 W. III. 1701. 'Business, especially of those Matters which are of the  
greatest Importance.'

The Commons were willing to interpret this Speech, as an Approbation of their Proceedings in respect of their Contest with the Lords; and therefore agreed upon this Address to his Majesty:

Address of the  
Commons.

'Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do, with all imaginable Cheerfulness, return your Majesty our most humble Thanks for your most gracious Speech from the Throne, in which your Majesty is pleased to express your royal Approbation of the Proceedings of your Commons. And we do further unanimously assure your Majesty, that we will be ready on all Occasions to assist your Majesty, in supporting such Alliances as your Majesty shall think fit to make, in conjunction with the Emperor and the States-General, for the Preservation of the Liberties of Europe, the Prosperity and Peace of England, and for reducing the exorbitant Power of France.'

When this Address was presented on Friday June the 13th, the King gave this Answer to mollify and to oblige in the wisest Manner.

King's Answer.

'Gentlemen, I thank you heartily for the unanimous Assurances you have given me of your Readiness to assist me, in supporting such Alliances as I shall make in conjunction with the Emperor and the States-General. It will be a good Encouragement to them, to find the Sense of this Kingdom so fully expressed on this Occasion, and will likewise contribute most effectually, to the obtaining those great Ends you have now mentioned, on which the Happiness of Europe does so much depend.'

But to return again to the Contests between the two Houses: The Lords on the same day the King made this Speech, had sent this Message to the Commons by Dr. Newton and Mr. Gery.

Farther Con-  
tests between  
the two Houses.

'In answer to the Message from the House of Commons of the tenth Instant, the Lords say, that although they take it to be unparliamentary in many Particulars, yet to shew their real Desire of avoiding Disputes, and removing all Pretence of delaying the Trials of the impeached Lords, they will only take notice of that Part of their Message, wherein the Commons propose some things as Difficulties in respect of the Trials; which Matters relating wholly to their Judicature, and to their Rights and Privileges, as Peers, they think fit to acquaint the Commons with the following Resolutions of the House of Lords.

' 1. That no Lord of Parliament, impeached for high Crimes and Misdemeanours, and coming to his Trial, shall, upon this Trial, be without the Bar.

' 2. That no Lord of Parliament, impeached for high Crimes and Misdemeanours, can be precluded from Voting on any Occasion, except in his own Trial.

' Their Lordships further take notice of a Mistake in Point of Fact, alledged in the Message of the Commons; it no way appearing upon their Journal, that the Lords impeached have voted in their own Case.

' The Lords being well assured, that all the Steps that have been taken by them in relation to these Impeachments, are warranted by the Practice of their Ancestors, and the Usage of Parliament, have reason to expect the Trials should proceed without Delay.

Also that they are commanded by the Lords to acquaint this House, that,

' In answer to the Message of the House of Commons yesterday, the Lords say, that they cannot give a greater Evidence of their sincere and hearty Desires, of avoiding all Differences with the House of Commons, and of Proceeding on the Trials of the Impeachments, than by not taking notice of the several just Exceptions, to which that Message is liable, both as to the Matter and the Expressions.

' The Lords have nothing farther from their thoughts, than the going about to do any thing, which might have the least Appearance of Hardship with relation to the Commons.

' But the Answer of the Lord Somers to the Articles exhibited against him, having been sent down to the Commons on the 24th of May last, and they having, by their Message of the 21st of May, signified to their Lordships, their Intention of beginning with the Trial of his Impeachment in the first place:

' The Lords, considering how far the Session is advanced, thought it reasonable to appoint the 13th Instant for the said Trial, their Lordships finding several Precedents of appointing Trials on Impeachments within a shorter time.

' The Lords also think it incumbent upon them to dispatch the Trials of all the impeached Lords, before the rising of the Parliament. This is what Justice requires, and cannot be looked upon as a Matter of Indulgence: Nevertheless, that the Commons may see how desirous their Lordships are to comply with them in any thing which may be consistent with Justice, they have appointed the Trial of the Impeachment against John Lord Somers; on Tuesday the 1st of this Instant June, at ten of the Clock in the Forenoon, in the House of Lords, which will be then sitting in Westminster-Hall.

Anno 13 W. III.  
1701.

‘ That they were commanded by the Lords to acquaint this House, that the Lords do agree to a free Conference with the Commons, as desired; and do appoint to-morrow at one o’Clock in the *Painted-Chamber*.’

Answer of the  
Commons.

The Commons, on the 13th, made this Answer to them.

‘ The House of Commons find greater Reason to insist upon their Proposal of a Committee of both Houses, from the two Messages received yesterday from your Lordships; for their Ambiguity and Uncertainty do show the Methods of former Parliaments to be the most proper Way for Dispatch of Business.

‘ The Commons have been obliged to employ that time in considering how to answer your Lordships Messages, which otherwise would have been spent in preparing for the Lord Somers’s Trial; so that the Delay must be charged where the Occasion ariseth. And the Commons, having desired a Committee of both Houses, to adjust the Preliminaries of the Trials, cannot but think it strange your Lordships should come into Resolutions upon two of those Points, while the Proposal of the House of Commons is under Debate, at Conferences between the two Houses; the Commons having other Difficulties to propose, which concern them as Prosecutors, and all future Impeachments.

‘ And though the Commons have the Subject of your Lordships Resolutions, with other things, to be debated at a Committee of both Houses; yet they cannot but observe, that your Lordships second Resolution is no direct Answer to the Commons Proposal; which was, whether Peers impeached of the same Crimes shall vote for each other upon their Trial for the same Crimes. And the Commons cannot believe, that any such Rule can be laid down in plain Words, where there is a due Regard to Justice.

‘ And as to what your Lordships observe, that there is a Mistake in Point of Fact alledged by the Commons; the House may take notice of the Caution used by your Lordships, in wording that Part of your Message; for they know your Lordships are too well acquainted with the Truth of the Fact to affirm that the impeached Lords did not vote in their own Cases; and though the appearing or not appearing upon your Lordship’s Journal does not make it more or less agreeable to the Rules of Justice, yet the Commons cannot but add this further Observation from your Lordships Journal, that the impeached Lords Presence is not only recorded when those Votes passed, but they also find some of them appointed of Committees, for preparing and drawing up the Messages and Answers to the House of Commons; which they do not think has been the best Expedient for preserving a good Correspondence between the two Houses, or adjusting  
what



what will be necessary upon these Trials : And therefore the Commons cannot think it agreeable to the Rules of Parliament for them to appear at the Trial, 'till all necessary Preliminaries are first settled with your Lordships.' Anno 13 W. III.  
1701.

Then the Commons went to the Conference with the Lords, and Mr. Harcourt reported the Matter thereof, and the Words which the Lord Haversham had spoke thereat ; which he read in his Place, and afterwards delivered in the said Report at the Clerks Table, where the same was read, and is as followeth, viz. Report of the  
Conference.

' That the Managers appointed by this House met the Lords at the free Conference, the Subject Matter whereof was opened by Mr. Harcourt, and immediately afterwards further argued by Sir Bartholomew Shower.

' It was insisted on by each of them, that the Reasons offered by their Lordships at the last Conference were not sufficient for their Lordships disagreeing to a Committee of both Houses, desired by the Commons at the first Conference.

' That, notwithstanding those Reasons, the Commons still thought a Committee of both Houses absolutely necessary, for adjusting and preventing such Differences as had happened, or might arise previous to, or upon the Trials ; and therefore insisted, that such a Committee should be appointed before the Commons could proceed on any Trial.

' 'Twas urged as one Reason for such a Committee, that many Difficulties might happen, whereby the Trials might be obstructed, if the Preliminaries should not be first adjusted : As one Instance, that Point of several Lords being under Impeachments of the same Crimes, voting on each other's Trial, was mentioned.

' The \* Lord Steward first replied, and nothing was offered by his Grace, but what was material and pertinent to the Matter in question, and agreeable to the Method of Parliament in free Conferences, That John Lord Haversham spoke immediately after ; and in his Lordship's Discourse, used these or the like Expressions.'

' One thing there is, though I cannot speak it, because I am bound up by the Orders of the House, yet I must have some Answer ; this is, as to the Lords voting in their own Case ; it requires an Answer, though I cannot go into the Debate of it. The Commons themselves have made this Precedent ; for, in these Impeachments, they have allowed Men guilty of the same Crimes to vote in their own House ; and therefore we have not made any Distinction in our House, that some should vote and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they hope Justice shall never be made use of as a Mask for any Design. And therefore give me leave to say (though I am not

*Speech of the  
Lord Haversham*

\* *Duke of Devonshire.*

Anno 13<sup>th</sup> W. III.  
1701.

to argue it) 'tis a plain Demonstration that the Commons think these Lords innocent; and I think the Proposition is undeniable; for there are several Lords in the same Crimes, in the same Facts, there is no Distinction. And the Commons leave some of these Men at the Head of Affairs, near the King's Person, to do any Mischief if they were inclined to it; and impeach others, when they are both alike guilty, and concerned in the same Facts. This is a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.

'These Expressions were instantly objected to by Sir Christopher Musgrave; and the Managers took them to be so great an Aspersion on the Honour of this House, that they thought themselves obliged in Duty immediately to withdraw from the Free Conference.'

'As the Managers were withdrawing, his Grace my Lord Steward spoke to the Effect following; That he hoped they would not think that that Lord had any Authority from the House of Lords to use any such Expression towards the Commons.'

Votes thereon.

*Resolved*, That John Lord Haversham hath, at the free Conference this Day, uttered most scandalous Reproaches, and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, and tending to the making a Breach in the good Correspondence between the Lords and Commons, and to the interrupting the public Justice of the Nation, by delaying the Proceedings on Impeachments.

*Resolved*, That John Lord Haversham be charged before the Lords, for the Words spoken by the said Lord this Day at the free Conference: And that the Lords be desired to proceed in Justice against the said Lord Haversham, and to inflict such Punishment upon the said Lord, as so high an Offence against the House of Commons does deserve.

*Ordered*, That Sir Christopher Musgrave do carry the said Charge and Resolutions to the Lords.

A Message from  
the Lords.

A Message from the Lords by Doctor Newton and Mr. Gery:

'Mr. Speaker, The Lords having been informed by their Managers, that some Interruption happened at the free Conference, which their Lordships are concerned at; because they wish that nothing should interrupt the public Business, do desire the Commons would come again presently to the said free Conference; which they do not doubt will prove the best Expedient to prevent the Inconvenience of a Misunderstanding upon what has past.'

Another.

Next Day, which was Saturday the 14th, came another Message from the Lords, importing,

'That upon Occasion of their last Message yesterday, in order

order to continue a good Correspondence between the two Houses, their Lordships did immediately appoint a Committee to state the Matter of the Free-Conference, and also to inspect Precedents of what has happened of the like Nature; and that the public Business may receive no Interruption, the Time desired by their Lordships for renewing the Free Conference being elapsed, their Lordships desire a present Free Conference in the Painted-Chamber, upon the Subject-Matter of the last Free-Conference.

Annals W. III.  
1701.

Upon which the Commons came to the following Resolution: Votes thereon.

‘ That an Answer be returned to the Lords, that the Commons are extremely desirous to preserve a good Correspondence between the two Houses, and expedite the Trials of the impeached Lords; but do conceive ’tis not consistent with the Honour of the Commons to renew the free Conference, until they have received Reparation, by their Lordship’s doing justice upon John Lord Haversham, for the Indignity he yesterday offered to the House of Commons.’

On the same Day, Saturday the 14th of June, Mr. Bruges reported, that he had carried the Articles of Impeachment against Charles Lord Halifax to the Lords; which were,

Articles against  
the Lord Halli-  
fax and his Re-  
plies.

1st, That, whereas it was the continued Sense of the Commons of England, that it was highly reasonable that the forfeited Estates of Rebels and Traitors in Ireland should be applied in Ease of his Majesty’s faithful Subjects of the Kingdom of England, the said Lord Halifax presumed to advise, pass, or direct the passing a Grant to Thomas Railton Esq; in trust for himself, of several Debts, Interests, &c. amounting to 13000 l. or thereabouts, accruing to his Majesty from Attainders, Outlawries, or other Forfeitures in Ireland. — To which he answered, ‘ That he did accept the said Grant, as it was lawful for him to do, without Breach of his Duty, and the Trust reposed in him; which Grant hath since been taken away by Act of Parliament, and he hath not made clear thereof, as yet, above 400 l.’

2dly, That he has not repaid into the Receipt of his Majesty’s Exchequer in Ireland the Sum of 1000 l. which he had actually received to his own Use, out of the Profits of the forementioned Grant, which he ought to have so repaid, by virtue of the *Act of granting an Aid to his Majesty by Sale of the Forfeited Estates in Ireland.* — To which he answered, ‘ That he gave direction, after the said Act passed, to his Agents in Ireland, to do, in relation to the Money received, as should be advised by Council there; by whom his Agents were advised, that the said Monies being received out of the mean Profits, which were remitted by that Act, were not within the first mentioned Clause in the said Act.

3dly,

Anno 13 W. III.  
1701.

‘ 3dly, That in the time of a tedious and expensive War, he did advise, procure and assent, not only to the passing divers Grants to others, but did obtain and accept of several beneficial ones for himself; which Practices were a most notorious Abuse of his Majesty’s Goodness, &c.’—To which he answered, ‘ That he served his Majesty faithfully in his Stations, and his Majesty graciously accepted of his Service; and as a Mark of his royal Favour, did make, for his Benefit, such Grants as are mentioned in the precedent and subsequent Articles, and none other. And as to other Persons, he only, in conjunction with the other Commissioners, did sign several Warrants and Dockets for such Grants, as his Majesty was pleased to direct.’

‘ 4thly, Whereas by common Law, and other Statutes, the King’s Forests should be preserved, the said Lord Hallifax, not regarding the Laws and Ordinances of this Realm, nor his Duty to his Majesty and the Public, has procured a Grant to Henry Segar, Gent. in trust for himself, of the Sum of 14,000 l. of Scrubbed-Beech, Birch, Holly &c. under Colour whereof, Sapling-Oaks, and many Tuns of well-grown Timber had been cut and fallen, and disposed of for his Benefit.’—To which he answered, ‘ That his Majesty, out of his Grace and Favour, did grant in trust for him the Sum of 2000 l. *Ann.* to be raised by the Fall of Scrubbed-Beech, Birch, &c. for the Space of seven Years, which Grant was not prejudicial to any Timber growing in the said Forest. And if any Abuse were in cutting the Wood, he conceives he is not answerable for the same, it being done by the Direction of his Majesty’s Surveyor-General, and other his Majesty’s Officers.’

‘ 5thly, That he, the said Lord Hallifax did grant, or procured to be granted, to his Brother Christopher Montague Esq; the Place and Office of Auditor of the Receipts, and Writer of the Tallies, in trust for himself; so that he, the said Lord was, in Effect, at the same time, one of the Commissioners of the Treasury, Chancellor of the Exchequer and Auditor of the Receipts and Writer of the Tallies; and enjoyed the Profits of the said several Offices, which were manifestly inconsistent, and ought to have been a Check to each other.’ To which he answered, ‘ That the Grant of the said Office was done at his Desire and Request, because he intended, in a short time after, to leave his own Employment and Places in the Treasury, and to obtain a Surrender from his said Brother of the said Office, and procure a Grant thereof to himself, which has been since done, and he conceives was lawful for him to do.’

‘ 6thly, That the said Lord Hallifax, well knowing the most apparent evil Consequences, as well as the Injustice of the Partition of the Spanish Monarchy, did yet advise his Majesty to enter into a Treaty for it, and did encourage and pro-

promote the same.' To which he answered, ' That he never did advise his Majesty to enter into or make the said Treaty, or was ever consulted upon any Clause or Article thereof: But when the said Matter was discoursed at Tunbridge-Wells, he made several Objections to the same.' Anno 13 W. III.  
1701.

On Monday, June the 16th, the Lords sent a Message to acquaint the House of Commons, ' That the Lords, taking into their Care the ordering of the Trial of John Lord Somers, on Tuesday the 17th of June Instant, at ten of the Clock in Westminster-Hall, have prepared some Notes and Rules to be observed at the said Trial, which the Lords have thought fit to communicate to this House, viz.

Rules for Trial  
of the impeached  
Lords.

' That the whole Impeachment is to be read, and then the Answer; which being done, the Lord-Keeper is to tell the Commons, that now they may go on with their Evidence.

' Then the Lord-Keeper is to declare, That now the Court is proceeding to hear the Evidence, and desire the Peers to give attention.

' If any of the Peers, or the Members of the House of Commons, that manage the Evidence, or the Lords impeached, do desire to have any Question asked, they must desire the Lord-Keeper to ask the same.

' If any Doubt doth arise at the Trial, no Debate is to be in the Court, but the Question suspended to be debated in this House.

' The Members of the House of Commons to be there before the Peers come.

' None to be covered at the Trial but the Peers.

' That such Peers at the Trial of the impeached Lords, who at the Instance of the said Lord, or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerk's Table, and the Lord-Keeper to administer the Oath, and are to deliver their Evidence in their own Places.

' Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver Evidence there.

' The impeached Lords may cross-examine Witnesses, *vis-a-vis*.

' But the Commons appointed a Committee to consider of the Reasons why they cannot proceed to the Trial of the Lord Somers. Which Reasons were the next day reported by Mr Harcourt, and were as follow :

Reasons of the  
Commons a-  
gainst proceeding  
to the Trial of  
the Lord Somers.

' The Commons, in this whole Proceeding against the impeached Lords, have acted with all imaginable Zeal to bring them to a speedy Trial; and they doubt not but it will appear, by comparing their Proceedings with all others upon the like Occasion, that the House of Commons have nothing to blame themselves for, but that they have not expressed the Resentment their Ancestors have justly shewed,

TOME III.

Y

upon

Annos W. III. upon much less Attempts which have been made upon their  
1701. Power of Impeachments.

‘ The Commons, on the 31st of May, acquainted your Lordships, that they thought it proper, from the Nature of the Evidence, to proceed in the first place upon the Trial of the Lord Somers. Upon the first intimation from your Lordships, some days afterwards, that you would proceed to the Trial of the impeached Lords, whom the Commons should be first ready to begin with, notwithstanding your Lordships had before thought fit to appoint which Impeachment should be first tried, and affix a Day for such Trial, without consulting the Commons who are the Prosecutors :

‘ The Commons determine to expedite the Trials to the utmost of their power, in hopes of attaining that end: And for the more speedy and easy adjusting and preventing any differences, which had happened, or might arise previous to, or upon these Trials, proposed to your Lordships at a Conference, as the most parliamentary and effectual Method for that purpose, and that which in no manner intrenched upon your Lordships Judicature, that a Committee of both Houses should be nominated, to consider of the most proper Ways and Methods of proceeding upon Impeachments, according to the Usage of Parliament.

‘ In the next Message to the Commons, upon Monday the 9th of June, your Lordships thought fit, without taking the least notice of this Proposition, to appoint the Friday then following for the Trial of the said Lord Somers; whereunto, as well as to many other Messages and Proceedings of your Lordships upon this Occasion, the House of Commons might have justly taken very great exceptions; yet, as an Evidence of their moderation, and to shew their readiness to bring the impeached Lords to speedy Justice, the Commons insisted only on their Proposition for a Committee of both Houses, to settle and adjust the necessary Preliminaries to the Trial; particularly, whether the impeached Lords should appear on their Trial at your Lordships Bar as Criminals? whether, being under Accusations of the same Crimes, they should sit as Judges on each other’s Trial for those Crimes, or should vote in their own Cases, as ’tis notorious they have been permitted by your Lordships to do, in many Instances which might be given; to which particulars, your Lordships have not yet given a direct Answer, though put in mind thereof by the Commons.

‘ Your Lordships at a Conference, having offered some Reasons why you could not agree to a Committee of both Houses, to adjust the necessary Preliminaries, the Commons thereupon desired a free Conference, and your Lordships agreed thereunto; at which, ’tis well known to many of your Lordships,

Lordships, who were then present, what most scandalous Reproaches, and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, were uttered by John Lord Haverham, whereby the Commons were under a necessity of withdrawing from the said free Conference; for which Offence, the Commons have, with all due Regard to your Lordships, prayed your Lordships Justice against the Lord Haverham; but have as yet received no manner of Satisfaction.

Anno 13 W. III.  
1701.

‘ The Commons restrain themselves from enumerating your Lordships very many irregular and unparliamentary Proceedings upon this Occasion; but think it is what they owe to public Justice, and all the Commons of England whom they represent, to declare some few of those Reasons, why they peremptorily refuse to proceed to the Trial of the Lord Somers on the 17th of June.

‘ 1st, Because your Lordships have not yet agreed that a Committee of both Houses should be appointed, for settling the necessary Preliminaries; a Method never until this time denied by the House of Lords, whensoever the Commons have thought it necessary to desire the same.

‘ 2dly, Should the Commons (which they never will do) be contented to give up those Rights, which have been transmitted to them from their Ancestors, and are of absolute necessity to their Proceedings on Impeachments; yet, whilst they have any Regard to public Justice, they never can appear as Prosecutors before your Lordships, till your Lordships have first given them Satisfaction, that the Lords impeached of the said Crimes, shall not sit as Judges on each other’s Trial for those Crimes.

‘ 3dly, Because the Commons have as yet received no Reparation, for the great Indignity offered to them at the free Conference by the Lord Haverham: The Commons are far from any Inclination, and cannot be supposed to be under any necessity of delaying the Trial of the Lord Somers: There is not any Article exhibited by them, in maintenance of their Impeachment against the Lord Somers, for the Proof whereof they have not full and undeniable Evidence; which they will be ready to produce, as soon as your Lordships shall have done Justice upon the Lord Haverham; and the necessary Preliminaries in order to the said Trial, shall be settled by a Committee of both Houses.

‘ The Commons think it unnecessary to observe to your Lordships, that most of the Articles whereof the Lord Somers stands impeached, will appear to your Lordships to be undoubtedly true, from Matters of Record, as well as by the Confession of the said Lord Somers, in his Answer to the said Articles; to which the Commons doubt not but your

Anno 13 W. III. Lordships will have a due regard, when his Trial shall regularly proceed.  
1701.

Answer of the  
Lords.

The Lords sent their Answer to this Message, on Friday, June the 20th in these Words:

‘ The Lords, in answer to the Message of the Commons of the 17th instant, say, the only true way of determining, which of the two Houses has acted with the greatest Sincerity, in order to bring the impeached Lords to their Trials, is to look back upon their respective Proceedings.

‘ The Lords do not well understand what the Commons mean by that Resentment which they speak of in their Message: Their Lordships own the House of Commons have a Right of Impeaching: And the Lords have undoubted Power of doing Justice upon those Impeachments, by bringing them to Trial, and condemning or acquitting the Parties in a reasonable time. This Power is derived to them from their Ancestors, which they will not suffer to be wrested from them by any Pretences whatsoever.

‘ Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the bringing on the Trials; no mention being of such a Committee, from the first of April to the sixth of June, although, during that interval, their Delays were frequently complained of by the House of Lords

‘ The manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houses yielded to by the Lords, in case of any Impeachment for high Crimes and Misdemeanours; so their Lordships do insist, that they will make no new Precedent upon this Occasion. Many Impeachments for Misdemeanours have in all times been determined without such a Committee: And if now the Commons think fit, by any unprecedented Demand, to form an excuse for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

‘ As to the Preliminaries which the Commons mention in particular, as proper to be settled at such a Committee, they have received the Resolutions of the House of Lords therein, by their Message of the 12th instant, from which (being matters entirely relating to their Judicature) their Lordships cannot depart.

‘ As to the last Pretence the Commons would make to shelter the delaying the Trials, from some Expressions which fell from the Lord Haversham at the free Conference, at which Offence was taken, their Lordships will only observe,

‘ First, That they have omitted nothing which might give the Commons all reasonable Satisfaction of their purpose to  
do



do them Justice in that matter, so far as is consistent with doing Justice to that Lord; and also to preserve all good Correspondence with them; as appears by the several steps they have taken.

Anno 13 W. III.  
1701.

‘ Secondly, That this Business has no relation to the Trial of the impeached Lords; and therefore their Lordships cannot imagine, why the Commons should make Satisfaction and Reparation against the Lord Haversham, a necessary Condition for the going on with the Trials, and at the same time, find no Difficulties in proceeding on other Business.’

In the mean time, on Tuesday June the 17th, the Lords proceeded to the Trial of John Lord Somers, in Westminster-Hall; where this Proclamation first was made: ‘ Whereas a Charge of high Crimes and Misdemeanours has been exhibited by the House of Commons, in the Name of themselves and all the Commons of England, against John Lord Somers; all Persons concerned are to take notice that he now stands upon his Trial, and they may now come forth, in order to make good the said Charge.’ Then the House adjourned to the said Hall; and being seated, after Proclamation for silence, the Articles against John Lord Somers were read, and also his Lordship’s Answer to them. Then the Lord Keeper declared the House was ready to hear the Evidence against him. The Lord Somers moved to have his Council heard. After long Debate, and hearing the Judges to several Questions asked them by the Lords, this Question was proposed; That John Lord Somers be acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all things therein contained, and that the said Impeachment be dismissed. When the Lord-Keeper had asked every Lord, whether content or not? he declared the Majority was for acquitting. Then the Lords adjourned to the House above, and made the following Order:

His Lordship  
honourably ac-  
quitted.

‘ It was considered, ordered, and adjudged by the Lords Spiritual and Temporal in Parliament assembled, that John Lord Somers shall be, and is hereby acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all things therein contained, and that the said Impeachment shall be, and is hereby dismissed.’

The Commons, to justify their refusal of appearing at the said Trial, did resolve, on June the 20th, ‘ That the Lords have refused Justice to the Commons upon the Impeachment against the Lord Somers, by denying them a Committee of both Houses, which was desired by the Commons as the proper and only Method of settling the necessary Preliminaries, in order to the proceeding to the Trial of the said Lord Somers with effect; and afterwards by proceeding to a pretended Trial of the said Lord, which could tend only to protect him from Justice, by colour of an illegal Acquittal.

Remonstrance  
of the Com-  
mons.

Against

**Ans 13 W. III.** Against which Proceedings of the Lords, the Commons do solemnly protest, as being repugnant to the Rules of Justice, and therefore null and void. That the House of Lords, by the pretended Trial of John Lord Somers, have endeavoured to overturn the Right of Impeachments, lodged in the House of Commons by the ancient Constitution of this Kingdom, for the Safety and Protection of the Commons against the Power of great Men; and have made an Invasion upon the Liberties of the Subject, by laying a Foundation of Impunity for the greatest Offenders. That all the ill Consequences, which may at this time attend the Delay of the Supplies given by the Commons, for preserving the public Peace, and maintaining the Balance of Europe, by supporting our Allies against the Power of France, are to be imputed to those, who, to procure an Indemnity for their own enormous Crimes, have used their utmost endeavours to make a Breach between the two Houses.

**Answer of the  
Lords,**

The Lords the same day sent this Answer to that Message :  
‘ The Lords do acquaint the Commons, that they might have known by the Records of the House of Lords, that the Lords had proceeded to the Trial of the Lord Somers on Tuesday last, being the Day appointed; and the Commons not appearing to maintain their Articles against the said Lord, the Lords had by judgment of their House acquitted him of the Articles of Impeachment against him, exhibited by the House of Commons, and all things therein contained, and had dismissed the said Impeachment.

‘ And the Lords had appointed Monday next for the Trial of the Earl of Orford, on which Day they would proceed on the said Trial.

‘ The Commons still pressing for a Committee of both Houses, which their Lordships could never consent to for the Reasons already given, their Lordships could infer nothing from their persisting in this Demand, but that they never designed to bring any of their Impeachments to a Trial.

‘ As to the Lord Haverham, his Answer was now before the House of Commons, and the Lords resolved to do justice in that matter.’

The same day, the Commons had a Copy given them of the Lord Haverham's Answer to the Charge against him; which being extraordinary, deserves to be inserted in this place.

**Answer of the  
Lord Haver-  
ham to a Com-  
plaint of the  
Commons.**

‘ The said Lord Haverham, saving to himself all Advantages of Exception to the said Charge, and of not being prejudiced by any want of Form in this Answer; and also saving to himself all Rights and Privileges belonging to him as one of the Peers of this Realm; for Answer to the said Charge.

Charge, saith, That on the sixth Day of June 1701, the Commons by a Message sent to the Lords, desired a Conference upon their Message to the Commons of the fourth of June: In which Conference they proposed to the Lords, That a Committee of both Houses might be nominated, to consider of the most proper Ways and Methods of Proceeding in the Impeachments of the Lords according to the Usage of Parliaments. That on the 10th of June, The Lords desired another Conference with the Commons, in which they delivered them their Reasons why they could not agree to the appointing of such a Committee; (*viz.*) First, That they could not find, that ever such a Committee was appointed on Occasion of Impeachments for Misdemeanours, and their Obligation to be curious in admitting any thing new relating to Judicature. Secondly, That although a Committee of this nature was agreed to, upon the Impeachments of the Earl of Danby, and the five Popish Lords for High-Treason; yet the Success in that Instance, was not such as should encourage the pursuing of the same Method, though in the like Case; and that, after so much time spent in the Committee, the Disputes were so far from being there adjusted, that they occasioned the abrupt Conclusion of a Session of Parliament. Thirdly, That the Methods of Proceedings for Misdemeanours are so well settled by the Usage of Parliament, that no Difficulties were likely to happen, nor none had been stated to them; and that all the Preliminaries in the Case of Stephen Gaudett, and others, (which was the last Instance of Impeachments for Misdemeanours) were easily settled and agreed to, without any such Committee. Fourthly, That the Proposal of the Commons came so very late, that no other Fruit could be expected of such a Committee, but the preventing of the Trials during the Session. Whereupon the Commons, on the 12th of June, desired of the Lords a Free Conference, on the Subject-Matter of the last Conference. That the Lords, on the 12th of June, came to two Resolutions in relation to the Lords impeached: 'First, That no Lord of Parliament, impeached for high Crimes and Misdemeanours, and coming to his Trial, shall upon his Trial, be without the Bar. Secondly, That no Lord of Parliament, impeached for high Crimes and Misdemeanours, can be precluded from Voting on any Occasion, except in his own Trial. And by Messengers of their own, the Lords acquainted the Commons with the said two Resolutions; and also that they agreed to a Free Conference with the Commons, and appointed the next day. That upon the 30th of June, Mr. Harcourt, one of the Managers, began the Free Conference on the part of the Commons, and argued upon the four Reasons given by the Lords, why they could not agree

Anno 13 WILL.  
1701.

Anno 13 W. III.  
1701.

agree to the appointing a Committee of both Houses; and principally relied upon the Instance in the Case of the Popish Lords, and insisted upon the Delay that the not agreeing to the Nomination of such a Committee would necessarily occasion, whereby the Lords Trials, and the Justice due to the Nation, would be retarded. And departing from the Subject-Matter of the said Conference (which was, whether it were requisite to appoint, or not appoint such a Committee) the said Manager discoursed upon the latter of the Resolutions of the Lords, communicated to the Commons, and said, ' That he wished the Lords had sent down their Reasons, as well as their Resolutions; which words seemed to the said Lord Haversham, to carry therein an Implication, as if the said Resolution could have no Reason to justify it. That Sir Bartholomew Shower, another Manager for the Commons, observed the same Method of Discourse; and having argued on the Lords Reasons, departed from the Subject-Matter of the Free Conference, and inveighing against the Manner of the Lords Judicature, asserted by their Resolutions, said, That it was abhorrent to Justice: which Expressions being foreign (as the said Lord Haversham apprehended) to the Subject-Matter of the said Free Conference, which was, whether such Committee of both Houses should be appointed or not; the said Lord, being appointed by the Lords for one of the Managers of the said Free-Conference on their Behalf, in Vindication of the Honour and Justice of the House of Peers, and their Judicature and Resolutions, in answer to what had been said by the Managers for the Commons, he spoke to the Effect following:

' Gentlemen, I shall begin what I have to say, as that worthy Member who opened this Conference, that there is nothing the Lords more desire than to keep a good Correspondence, which is so necessary to the Safety of the Nation, and the Dispatch of public Business; and nothing they have more carefully avoided, than what might create a Misunderstanding between the two Houses. A greater Instance of which could not be given, than the Messages my Lords returned to some the Commons had sent them up; in which they took care to express themselves so cautiously, that no Heat might arise from any Expression of theirs. And as to what the worthy Members mentioned, in relation to delay; the repeated Remembrances sent the Commons, with relation to the sending up the Articles against the impeached Lords, are a sufficient Instance how desirous they are that these Matters should proceed. And the Lords have this Satisfaction, that it is not on their part that the Trials are not in a greater Forwardness; they cannot but look on it as a great Hardship, that they should lie under long Delays on  
Impeach-

Impeachments. Persons may be incapable; Facts may be forgotten; Evidences may be laid out of the way; Witnesses may die; and many other like Accidents may happen. The Instance the worthy Members give of the Popish Lords, as it is a Crime of another Nature, and not fully to the point, so it seems to make against what it was brought for: For the worthy Members say, there was but one of the Lords brought to justice, though four more (as I take it) were accused. And can any Man believe, that the Commons have a mind to bring only one of these Lords to Trial? It is inconsistent with the Opinion that every body must have of their Justice. And as to the point of Judicature, it were very hard upon the Lords, that no Person should be brought to Trial, till the Judicature of the House be so first. The Judicature of the Lords is their Peculiar, and hath in former Ages been sacred with the Commons themselves. And this House, perhaps, hath as much reason to be jealous, and careful of it, as any other House ever had; especially when one single Precedent is so urged and insisted upon. One thing there is which a worthy Member mentioned, tho' I cannot speak to it at large, because I think myself bound up by the Resolutions of the House; yet it must have some Answer; that is, as to the Lords Voting in their own Case; it requires an Answer, though I cannot enter into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men, equally concerned in the same Facts, to vote in their own House; and we have not made the Distinction in ours, that some should vote and some not. The Lords have so high an Opinion of the House of Commons, that they believe Justice shall never be made use of as a Mask for any Design. And therefore give me leave to say, though I am not to argue it, 'tis to me a plain Demonstration, that the Commons think those Lords innocent; and I think the Proposition is undeniable: For when there are several Lords in the same Circumstances, in the same Facts, there is no Distinction; and the Commons leave some of these Men at the Head of Affairs, near the King's Person, to do any Mischief if they were inclined to it; it looks as if they thought them all innocent. This was a thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.

The said Lord being here interrupted, he desired to be heard out, and that his Words might be taken down in writing. But the Managers for the Commons broke up, and departed, refusing to hear any Explanation. Now the said Lord, as to any implicit Charge of a Design to reflect on, or dishonour the House of Commons, denies any such

Anno 13 W. III.  
1701.

Design or Intention; having, for many Years, had the Honour to sit in the House of Commons, and having ever had an honourable and respectful Sense thereof: But the said Lord was led to express himself in the Manner aforesaid, for the Reasons aforesaid, and takes himself to be justify'd therein, by the Facts and Reasons following:

‘ That the nature of that Conference was, that it should be free; the Occasion of it, because either House apprehended the other to be in an Error; and the End of it, that each side might urge such Facts as are true, and such Reasons as are forcible to convince. That one Article of the Impeachment against John Lord Somers, was, That the Treaty of Partition 1699, was ratify'd under the Great Seal, which then was in the Custody of the same Lord, then Lord-Chancellor of England; That the Commons on the first of April 1701, *Resolved*, That the Earl of Portland by negotiating and concluding the Treaty of Partition, was guilty of a high Crime and Misdemeanour; and pursuant thereto, lodged an Impeachment against him in the House of Peers; which Vote and Impeachment could not have Reference to any Treaty, other than the Treaty of Partition of 1699, the Treaty of 1698, not being before the House of Commons, till after the time of that Vote and Impeachment: and yet the Earl of Jersey, who then was Secretary of State and a Privy-Counsellor, and actually signed the said Treaty of 1699, as a Plenipotentiary with the Lord Portland, stands unimpeached, and continues at the Head of Affairs, being Lord-Chamberlain, near his Majesty's Person, and his Presence and Councils, (without complaint:) That the Earl of Orford, and the Lords Somers and Hallifax, are severally impeached for advising the Treaty of Partition of 1698, and yet Mr. Secretary Vernon, who then was Secretary of State, and a Privy-Counsellor, and acted in the promoting of the Treaty of Partition of 1698, stands unimpeached, and still continues one of the principal Secretaries of State; and Sir Joseph Williamson, who then was a Privy-Counsellor, and transacted and signed the Treaty of Partition of 1698, as a Plenipotentiary, stands unimpeached. That the Lord Hallifax is impeached, for that he, being a Commissioner of the Treasury, assented to the passing of divers Grants from the Crown to several Persons, of Lands in Ireland; and yet Sir Edward Seymour, Sir Stephen Fox, and Mr. Pelham, who being severally Lords Commissioners of the Treasury, did severally assent to the passing of divers like Grants from his Majesty, of Lands in Ireland, stand unimpeached. That in the Impeachments against the Earl of Orford and Lord Somers, one of the Articles against them is for procuring a Commission to Captain Kidd, and likewise a Grant under the Great Seal, of the Ships and Goods of certain Persons therein

these named, to certain Persons in trust for them; and yet other Lords, equally concerned in procuring the said Commission and Grant, stand unimpeached. That the said Mr. Secretary Vernon, Sir Edward Seymour, Sir Stephen Fox, and Mr. Pelham, notwithstanding their being Parties in the same Facts, charged in the said respective Impeachments, have been permitted to sit and vote in the House of Commons, touching the Impeachments and the Matters thereof: That these Facts being true and publicly known, the Consequences resulting therefrom (as the said Lord Haversham apprehended) are undeniable, *viz.* That the doing of the same thing, by two Persons in equal Circumstances, cannot be a Crime in one, and not in another. That the Commons had no reason to insist, that the Lords should not permit that in their Members, which the Commons had first permitted, and continued to permit, and so begun the first Precedent, in their own Members. That it must be thought, that the impeached Lords (notwithstanding the Facts alledged in the Impeachment) are innocent of Danger to the King, when the Lord Jersey and Mr Secretary Vernon, who were respectively concerned in the Partition-Treaties, are permitted without Complaint, to be at the Head of Affairs, and in the King's Presence, and of his Councils, as not dangerous: That the Word *innocent*, used in the Words spoken by the said Lord Haversham, can extend no further than to such Matters as were done by the impeached Lords, of the same nature with what was done by those unimpeached: All which Facts being true, and the Consequences obvious, the said Lord being ready to prove the same, he insists that the Words spoken by him at the said Free Conference, were not scandalous or reproachful, nor false, nor reflecting on the Honour or Justice of the House of Commons; but were spoken upon a just Occasion, given in Answer to several Expressions that fell from the Managers for the Commons, remote, as he conceives, from the Matter in question, and reflecting on the Honour and Justice of the House of Peers; and in Maintenance and Defence of the Lords Resolution and Judicature, and conformable to the Duty he owes to the said House. And the said Lord humbly demands the Judgment of this honourable House therein. And the said Lord Haversham denies that he spoke the Words specified in the said Charge, in such Manner and Form, as the same are therein set down. And having thus given a true Account of this Matter, and it being true and indisputable, that some Lords in this House, equally concerned in Facts, for which other Lords are impeached by the House of Commons, are still near the King's Person, in the greatest Places of Trust and Honour, and unimpeached; and also, that several Members of the House

Anno 13 W. III.  
1701.

of Commons equally concerned in the same Facts, for which some of the Lords are impeached, do however remain unimpeached; the said Lord thinks, such a Truth could never have been more properly spoken, in the Maintenance and Defence of your Lordships Judicature, and Resolutions; and insisteth, that what he said at the Free Conference, was not any scandalous Reproach, or false Expression, or any ways tending to make a Breach in the good Correspondence between the Lords and Commons, or to the Interrupting the Public Justice of the Nation, by Delaying the Proceedings on the Impeachments, as in the said Charge alledged; but agreeable to Truth, in Discharge of his Duty, and in the Defence of the undoubted Right and Judicature of this House.

HAVERSHAM.

Farther Con-  
tests betwixt  
the two Houses.

The Commons on Friday the 20th, after the sending and receiving the fore-mentioned Messages, Ordered, That no Member should presume to appear on Monday next, at the pretended Trial of the Earl of Orford, upon pain of incurring the utmost Displeasure of the House; and then adjourned to Tuesday Morning. But the Lords continued sitting, and on the 21st, Resolved, ' That unless the Commons Charge against the Lord Haversham, were presented by them with Effect before the End of that Session, the Lords would declare and adjudge him wholly innocent of the Charge.'

On Monday, June the 23d, it was Resolved by the Lords spiritual and temporal in Parliament assembled, That the Resolutions of the House of Commons, in their Votes of the 20th Instant, contained most unjust Reflections on the Honour and Justice of the House of Peers, and were contrived to cover their affected and unreasonable Delays in prosecuting the impeached Lords; and did manifestly tend to the Destruction of the Judicature of the Lords, to the rendering Trials and Impeachments impracticable for the future, and to the subverting the Constitution of the English Government; and therefore, whatever ill Consequences might arise, from the so long deferring the Supplies of this Year's Service, were to be attributed to the fatal Council of the putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

Trial of the  
Earl of Orford.

His Lordship  
honourably ac-  
quitted.

Then the Lords adjourned to Westminster-hall, and after two Proclamations made for Silence and Prosecution, the Articles of Impeachment against Edward Earl of Orford were read, and also his Lordship's Answer to the said Articles; and after taking the same Methods as in the Trial of the Lord Somers, his Lordship, by unanimous Votes, was acquitted of the Articles, and the Impeachment was dismissed.

On



On Tuesday June the 24th, being the last day of the Session of this Parliament, this Order was made by the Lords.

Anno 13<sup>W.</sup> III.  
1701.

' The House of Commons not having presented their Charge, which they brought up against John Lord Haverham, for Words spoken by him at a Free Conference the 13th Instant, the said Charge is hereby dismissed. The Earl of Portland being impeached by the House of Commons of high Crimes and Misdemeanours, the first day of April last, the Impeachment is hereby dismissed, there being no Articles exhibited against him. The House of Commons having impeached Charles Lord Halifax of high Crimes and Misdemeanours, on the 15th day of April last, and on the 14th day of this Instant June exhibited Articles against him, to which he having answered, and no further Prosecution thereupon, the said Impeachment and Articles are hereby dismissed. At the same time, their Lordships dismissed an old Impeachment against the Duke of Leeds.'

Impeachments  
dismiss'd by the  
Lords.

The Affair of the impeached Lords, had so much divided both Houses, that the Correspondence was almost broken off or interrupted with continual Disagreements. Hence the Commons having passed a Bill for appointing Commissioners to take, state, and examine the public Accounts, the Lords made some Amendments to it, which the Commons would by no means allow; and drew up these Reasons for their Disagreement, to be offered to the Lords at a Conference.

Bill for stating  
the public Ac-  
counts, amend-  
ed by the Lords.

' The Commons do disagree to the first Amendment made by the Lords, because it is notorious, that many Millions of Money have been given to his Majesty by the Commons, for the Service of the Public, which remain yet unaccounted for, to the great dissatisfaction of the good People of England, who chearfully contributed to those Supplies. And their Lordships first Amendment prevents any account being taken of those Moneys, by the Commissioners appointed by the Commons for that purpose.

The Commons  
disagree.

' The Commons do disagree to the second Amendment made by the Lords, because John Parkhurst and John Pascall, Esqs; have for several Years been Commissioners of the Prizes taken during the late War, and accountable for great Sums of Money arising thereby, which ought to be applied to the Use of the Public. That the said John Parkhurst and John Pascall were frequently pressed to account for the same, by the late Commissioners appointed by Act of Parliament; but by many Artifices and Evasions, delayed and avoided giving any such Account as was required by the said Commissioners. That the Clause to which their Lordships have disagreed by their second Amendment, requires them to account before the first of September next, but by their Lordships Amendment they are exempted from giving any such account, which is highly unreasonable.

Their Reasons.

' The

Anno 13 W. III.  
1701.



' The Commons do disagree to the third Amendment, because their Lordships have, in a Clause, directed the Commons to allow and certify a pretended Debt to Colonel Baldwin Layton; whereas the Disposition as well as granting of Money by Act of Parliament, hath ever been in the House of Commons; and this Amendment relating to the disposal of Money, does intrench upon that Right.

' The Commons do disagree to the fourth Amendment, because it is notorious, that Edward Whitaker, mentioned in the Rider left out by their Lordships, hath by colour of his Impeachment, as Solicitor to the Admiralty, received the Sum of five and twenty thousand Pounds and upwards of Public Monies, without producing any just or reasonable Vouchers for the Expence thereof; and therefore ought to be accountable for the same.

' And that by reason of their Lordships disagreeing to the several parts of this Bill, the Supplies provided by the Commons for paying the Arrears of the Army, must of necessity be ineffectual till another Session of Parliament.'

To interrupt these fatal Disputes between the two Houses, it was the greatest Wisdom of his Majesty, first to take no notice of them, and then to put a more speedy end to this Session; and therefore on the said Tuesday, June 24th, the King came to the House of Peers, and sent for the Commons to attend him; when Mr. Speaker upon presenting the Money-Bills, delivered himself to his Majesty in this Speech.

The Speaker's  
Speech to the  
King.

' Sir, it is with great Joy and Satisfaction that I attend your Majesty at this time, since your Commons have complied with all your Majesty was pleased to desire at their meeting. They have passed the Bill of Succession, which hath settled the Crown in a Protestant Line, and continued the Liberty of England, which your Majesty hath restored and preserved. They have passed a Bill for taking away those Privileges, which might have proved Burthensome and Oppressive to your Subjects. They have given your Majesty those Supplies which are more than ever were given in a time of Peace, to enable your Majesty when you are abroad, to support your Allies, procure either a lasting Peace, or to preserve the Liberties of Europe by a necessary War.'

His Majesty then gave the Royal Assent to the following Bills.

*An Aid for the Expence of the Navy, Guards and Garrisons for one Year. An Act for several Duties upon Low Wines, Coffee, Tea, Ochosolate, Spices and Pittars, and Impositions on Hawkers, Pedlars and Petty Chapmen, &c. An Act for 3700 l. Weekly, out of the Excise for the Service of his Majesty's Household, &c.*

His Majesty then express'd himself as follows:

' My

Anno R<sup>3</sup> W. III.  
1701.

‘ My Lords and Gentlemen,  
‘ **T**HE Session being now come to a Conclusion, I must  
‘ return you my hearty Thanks for the great Zeal King’s Speech  
‘ you have expressed for the Public Service, and your ready  
‘ Compliance with those things which I recommended to you  
‘ at the opening of this Parliament. And I must thank you,  
‘ Gentlemen of the House of Commons in particular, both  
‘ for your Dispatch of those necessary Supplies, which you  
‘ have granted for the Public Occasions, and for the En-  
‘ couragements you have given me, to enter into Alliances  
‘ for the Preservation of the Liberty of Europe, and the  
‘ Support of the Confederacy; in which, as it shall be my  
‘ Care, not to put the Nation to any unnecessary Expence,  
‘ so I make no doubt, that whatsoever shall be done during  
‘ your Recess, for the Advantage of the common Cause in  
‘ this matter, will have your Approbation at our meeting  
‘ again in the Winter.

‘ My Lords and Gentlemen, I shall conclude with re-  
‘ commending to you all, the Discharge of your Duties in  
‘ your respective Counties; that the Peace of the Kingdom  
‘ may be secured, by your Vigilance and Care in your se-  
‘ veral Stations.’

Then the Lord-Keeper (by his Majesty’s Command) pro-  
rogued the Parliament until Thursday the 7th day of August  
next; which was soon afterwards dissolved.

A new Parliament met the 30th of December, when the Sixth Parlia-  
ment.  
King came to the House of Peers, and sending for the Com-  
mons, the Lord-Keeper signified his Majesty’s Pleasure,  
that they should forthwith proceed to the Choice of a Speaker,  
and present him next Morning: The Competition was be-  
tween Mr. Harley and Sir Thomas Littleton, to which latter  
the King and Court inclined; but the former was elected by  
a Majority of fourteen Votes; who being the next Day pre-  
sented and approved, his Majesty made this memorable  
Speech to both Houses.

‘ My Lords and Gentlemen,  
‘ **I** Promise myself you are met together full of the just Sense The King’s last  
‘ of the common Danger of Europe, and that Resent- Speech in Par-  
‘ ment of the late Proceeding of the French King, which has liament.  
‘ been so fully and universally express’d in the loyal and sea-  
‘ sonable Addresses of my People.  
‘ The owning and setting up the pretended Prince of  
‘ Wales for King of England, is not only the highest In-  
‘ dignity offered to me and the whole Nation, but does so  
‘ nearly concern every Man, who has a regard for the Pro-  
‘ testant

Anno 13 W. III.  
1701.

‘ testant Religion, or the present and future Quiet and Happiness of your Country, that I need not press you to lay it seriously to heart, and to consider what further effectual means may be used, for securing the Succession of the Crown in the Protestant Line, and extinguishing the Hopes of all Pretenders, and their open or secret Abettors.

‘ By the French King’s placing his Grandson on the Throne of Spain, he is in a Condition to oppress the rest of Europe, unless speedy and effectual measures be taken. Under this Pretence he is become the real Master of the whole Spanish Monarchy; he has made it to be entirely depending on France, and disposes of it as of his own Dominions; and by that means he has surrounded his Neighbours in such a manner, that though the Name of Peace may be said to continue, yet they are put to the Expence and Inconveniencies of War. This must affect England in the nearest and most sensible manner, in respect to our Trade, which will soon become precarious in all the valuable Branches of it; in respect to our Peace and Safety at home, which we cannot hope should long continue; and in respect to that part which England ought to take, in the Preservation of the Liberty of Europe.

‘ In order to obviate the general Calamity, with which the rest of Christendom is threatened by this exorbitant Power of France, I have concluded several Alliances, according to the encouragement given me by both Houses of Parliament; which I will direct shall be laid before you, and which I do not doubt you will enable me to make good.

‘ There are some other Treaties still depending, that shall be likewise communicated to you as soon as they are perfected.

‘ It is fit I should tell you, the Eyes of all Europe are upon this Parliament, all matters are at a stand till your Resolutions are known, and therefore no time ought to be lost.

‘ You have yet an Opportunity by God’s Blessing, to secure to you and your Posterity the quiet Enjoyment of your Religion and Liberties, if you are not wanting to yourselves, but will exert the ancient Vigour of the English Nation: But I tell you plainly my Opinion is, if you do not lay hold on this Occasion, you have no reason to hope for another.

‘ In order to do your part, it will be necessary to have a great Strength at Sea, and to provide for the Security of our Ships in Harbour; and also, that there be such a Force at Land as is expected in proportion to the Forces of our Allies.

‘ Gentlemen

‘ Gentlemen of the House of Commons, I do recommend Anno 13 W. III.  
 ‘ these Matters to you with that concern and earnestness, 1701.  
 ‘ which their Importance requires: At the same time I can-  
 ‘ not but press you to take care of the Public Credit, which  
 ‘ cannot be preserved but by keeping sacred that Maxim,  
 ‘ that they shall never be Losers, who trust to a Parliamen-  
 ‘ tary Security.

‘ It is always with regret when I do ask Aids of my People;  
 ‘ but you will observe, that I desire nothing which relates to  
 ‘ any personal expence of mine; I am only pressing you to  
 ‘ do all you can for your own Safety and Honour, at so cri-  
 ‘ tical and dangerous a time; and am willing that what is  
 ‘ given shall be wholly appropriated to the purposes for  
 ‘ which it is intended.

‘ And since I am speaking on this Head, I think it proper  
 ‘ to put you in mind, that, during the late War, I ordered  
 ‘ the Accounts to be laid Yearly before the Parliament, and  
 ‘ also gave my Assent to several Bills for taking the Public  
 ‘ Accounts, that my Subjects might have Satisfaction how  
 ‘ the Money given for the War was applied: And I am wil-  
 ‘ ling that Matter may be put in any farther Way of Exa-  
 ‘ mination; that it may appear whether there were any mis-  
 ‘ applications and mismanagements, or whether the Debt  
 ‘ that remains upon us, has really arisen from the shortness  
 ‘ of the Supplies, or the Deficiency of the Funds.

‘ I have already told you how necessary Dispatch will be,  
 ‘ for carrying on that great Public Business, whereon our  
 ‘ Safety, and all that is valuable to us depends. I hope,  
 ‘ what time can be spared, will be employed about those  
 ‘ other very desirable things, which I have so often recom-  
 ‘ mended from the Throne; I mean, the forming some good  
 ‘ Bills for employing the Poor, for encouraging Trade, and  
 ‘ the farther suppressing of Vice.

‘ My Lords and Gentlemen, I hope you are come toge-  
 ‘ ther, determined to avoid all manner of Disputes and Dif-  
 ‘ ferences, and resolved to act with a general and hearty  
 ‘ Concurrence, for promoting the common Cause; which  
 ‘ alone can make this a happy Session.

‘ I should think it as great a Blessing as could befall Eng-  
 ‘ land, if I could observe you as much inclined to lay aside  
 ‘ those unhappy, fatal Animosities, which divide and weaken  
 ‘ you, as I am disposed to make all my Subjects safe and easy,  
 ‘ as to any, even the highest, Offences committed against  
 ‘ me.

‘ Let me conjure you to disappoint the only Hopes of our  
 ‘ Enemies, by your Unanimity. I have shewn, and will  
 ‘ always shew, how desirous I am to be the common Father  
 ‘ of all my People: Do you in like manner lay aside all

Anno 13 W.III.  
1701.

Parties and Divisions; let there be no other Distinction heard of among us for the future, but of those who are for the Protestant Religion, and the present Establishment, and of those who mean a Popish Prince and a French Government.

I will only add this, if you do in good earnest desire to see England hold the Balance of Europe, and to be indeed at the head of the Protestant Interest, it will appear by your right improving the present Opportunity.

On the 5th of January the Commons presented their Address as follows.

Address of the  
Commons.

Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons of England in Parliament assembled, do return our most humble and hearty Thanks to your Majesty, for your most gracious Speech from the Throne; and humbly crave leave to assure your Majesty, that this House will support and defend your Majesty's lawful and rightful Title to the Crown of these Realms, against the pretended Prince of Wales, and all his open and secret Abettors and Adherents, and all other your Majesty's Enemies whatsoever. And we will enable your Majesty, to shew your just Resentment of the Affront and Indignity offered to your Majesty and this Nation, by the French King, in taking upon him to declare the pretended Prince of Wales King of England, Scotland and Ireland: And we are firmly and unanimously resolved to maintain and support the Succession to the Imperial Crown of this Realm, and the Dominions and Territories thereunto belonging, in the Protestant Line, as the same is settled by an Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown; and farther provided for, by an Act of the last Parliament, entitled, *An Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subject*. And for the better effecting the same, we will, to the utmost of our power, enable your Majesty to make good all those Alliances your Majesty has made, or shall make, pursuant to the Addresses and Advice of your most dutiful and loyal Commons of the last Parliament, for the preserving the Liberties of Europe, and reducing the exorbitant Power of France.

To which his Majesty gave this Answer:

King's Answer.

Gentlemen, I give you my hearty Thanks for this Address, which I look upon as a good Omen for the Session. The Unanimity with which it passed, adds greatly to the Satisfaction I receive from it; so good a step at your first entrance upon Business, cannot but raise the hopes of all who wish well to England and to the common Cause. I can

‘ desire no more of you than to proceed as you have begun ;  
 ‘ and I depend upon it : For when I consider how chearfully  
 ‘ and univerſally you concurred in this Addreſs, I cannot  
 ‘ doubt but every one of you will ſincerely endeavour, to  
 ‘ make it effectual in all the Parts of it.’

Anno 13<sup>th</sup> W. III.  
 1701.

In the mean time, Mr. Secretary Vernon, by Command, laid before the Houſe Copies of the Treaties of the Grand Alliance: 1. A Treaty between the King of Denmark and the States-General, 15 June 1701. 2. Secret Articles of Treaty with Denmark, 15 June 1701. 3. Treaty between the Emperor, his Maſteſty, and the States-General, 7 Sept. 1701. 4. A Convention between the King of England, the King of Sweden and the States-General, 26 April 1701. 5. A Treaty between the King of England and the States-General. All which were ſo well approv’d, that the Houſe immediately reſolv’d, on the 7<sup>th</sup> of January, That a Supply be granted to his Maſteſty. And that whoſoever ſhall advance or lend unto his Maſteſty’s Exchequer, the Sum of 600,000 l. for the Service of the Fleet, ſhall be repaid the ſame with Intereſt at 6 per Cent. out of the firſt Aids to be granted this Seſſion. There was 50,000 l. added to this Vote for Guards and Garrifons. They order’d an Account of the Debts of the Nation unprovided for to be laid before them, and on Jan. 9, Reſolv’d *Nemine Contradicente*, ‘ That leave be given to bring in a Bill for the farther Security of his Maſteſty’s Perſon, and the Succeſſion of the Crown in the Proteſtant Line, and extinguifhing the Hopes of the pretended Prince of Wales, and all other Pretenders, and their open and ſecret Abettors.’ And on the next Day they farther reſolv’d, ‘ That an humble Addreſs be preſented to His Maſteſty, that he will be graciouſly pleas’d to take care that it be an Article in the ſeveral Treaties of Alliance with his Maſteſty and other Potentates, That no Peace ſhall be made with France, until his Maſteſty and the Nation have Reparation for the great Indignity offered by the French King, in owning and declaring the pretended Prince of Wales, King of England, Scotland and Ireland. To which the King gave a chearful Answer, ‘ I will take care ‘ of what you deſire.’ The Houſe agreed at the ſame time, ‘ That the Proportion of Land-Forces to act in conjunction with the Forces of the Allies for making good the Alliances, be forty Thouſand Men, and forty Thouſand more for Sea-Service. They proceeded to a Bill for the Attainder of the pretended Prince of Wales. The Lords were intent upon the ſame Meaſures, and paſſed a Bill for the Security of his Maſteſty’s Perſon and Government, and for maintaining the Succeſſion of the Crown, according to the two late Acts of Parliament, which

Treaties laid before the Houſe.

Vote of Supply.

Further Reſolutions with regard to the Proteſtant Succeſſion.

Votes for the Land and Sea-Service.

Anno 13 W. III.  
1701.

they sent down to the Commons, who, after twice reading, let it lie upon their Table, as thinking their own depending Bills more effectual; yet the chief of these Bills, that *for Security of his Majesty's Person, &c.* was likely to have miscarry'd by an Instruction to the Committee, that they take care that the Oath in the said Bill mention'd be voluntary. But this Offer being put to the Question, it pass'd in the Negative.

And on the 22d of January, they gave a much better Instruction to the same Committee, 'That they do take care to make it equally penal to compass or imagine the Death of her Royal Highness the Princess Anne of Denmark, as it is to compass or imagine the Death of the King's eldest Son and Heir, by the Statute of 25 Edward III. They also order'd a Bill to be brought in for continuing the Quaker's Bill, by which their solemn Affirmation and Declaration should be accepted instead of an Oath.

On the 3d of February, the House resolved that 350,000 l. be granted to his Majesty for Guards, and Garrisons, and Half-Pay Officers; as also that an humble Address be presented to his Majesty that he will be pleas'd to interpose with his Allies, that they may increase their Quota's of Land-Forces to be put on board the Fleet. His Majesty's Answer was, 'I will do it.' And upon their Address to employ the Half-Pay Officers in the new Levies, he was pleas'd to say, 'It was always my Intention.'

The Commons  
assert their Pri-  
vileges.

In the controverted Election at Maidston, between Thomas Blisse and Thomas Colepepper, Esqrs; the House of Commons resolved, 'That the latter had been guilty of corrupt, scandalous and indirect Practices, in endeavouring to procure himself to be elected a Burgess; and being one of the Instruments in promoting and presenting the scandalous, insolent and seditious Petition, commonly called the Kentish Petition, to the last House of Commons, was guilty of promoting a scandalous, villanous and groundless Reflection upon the said House of Commons, by aspersing the Members with receiving French Money, or being in the Interest of France; for which Offence, he should be committed to Newgate, and his Majesty's Attorney-General should prosecute him for the said Crimes.'

Under this Indignation, they resolved, on February the 26th, That, agreeable to the Opinions of a Committee appointed to consider of the Rights, Liberties and Privileges of the House of Commons, to assert that the House of Commons is not the only Representative of the Commons of England, tends to the Subversion of the Rights and Privileges of the House of Commons, and the fundamental Constitution of the Government of this Kingdom. 2d, That to assert that the House of Commons have no Power of Com-  
mitment,



mitment, but of their own Members, tends to the Subversion of the Constitution of the House of Commons. 3d, That to print or publish any Books or Libels reflecting upon the Proceedings of the House of Commons, or any Member thereof, for, or relating to his Service therein, is a high Violation of the Rights and Privileges of the House of Commons. 4th, That it is the undoubted Right of the People of England, to petition to address to the King for the calling, sitting or dissolving of Parliaments, and for the redressing of Grievances. 5th, That it is the undoubted Right of every Subject of England, under any Accusation, either by Impeachment or otherwise, to be brought to a speedy Trial, in order to be acquitted or condemned.

Anno 14 W. III.  
1701.

The 28th, the King sent the following Message to the House.

WILLIAM R.

‘ His Majesty being hinder’d by an unhappy \* Accident from coming in Person to his Parliament, is pleased to signify to the House of Commons, by Message, what he designed to have spoken to both Houses from the Throne. His Majesty, in the first Year of his Reign, did acquaint the Parliament, that Commissioners were authoris’d in Scotland to treat with such Commissioners as should be appointed in England, of proper Terms for uniting the two Kingdoms, and at the same time express’d his great Desire of such an Union. His Majesty is fully satisfy’d, that nothing can more contribute to the present and future Happiness of England and Scotland, than a firm and entire Union between them, and he cannot but hope that upon a due Consideration of our present Circumstances, there will be found a general Disposition to this Union. His Majesty would esteem it a peculiar Felicity, if, during his Reign, some happy Expedient for making both Kingdoms one, might take place; and is therefore extremely desirous that a Treaty for that Purpose might be set on foot, and does in the most earnest Manner recommend this Affair to the Consideration of the House.’

King’s Message  
to the Commons  
for an Union  
with Scotland.

The Commons appointed first one, and then another Day, to consider of this Message, but the Shortness of his Majesty’s Life prevented their coming to any Resolution.

The King seem’d in a fair way of doing well, ‘till on Sunday the first of March a Defluxion fell upon his Knee, which was a great Pain and Weakness to him, and taken for a very ill Symptom: he thought it so himself, and took it for a Warning for Dispatch of Public Affairs. Therefore the next Morning this Message was sent from the House of Peers to the House of Commons.

Mr.

\* He fell from his Horse near Hampton-Court Feb. 21, which occasioned his Death the 8th of March following.

Annos 14. W. III.  
1701.

Message from  
the Lords.

Acts pass'd by  
Commission.

The Pretender  
attainted.

Mr. Speaker, The King has granted a Commission under the Great-Seal for passing the Royal Assent to those Bills, which have been agreed to by both Houses of Parliament, and the Lords commission'd by the King do desire that this House would presently come up with their Speaker, to be present at the passing thereof.

Then the Speaker with the House went up, and the Lord-Keeper acquainted both Houses, That his Majesty by an unhappy Accident had been prevented from coming in Person, and had granted a Commission to several Peers for passing the Bills therein mentioned. The Lords so commission'd were Sir Nathan Wright Lord-Keeper, the Earl of Pembroke Lord High-Admiral, the Duke of Devonshire, the Earl of Carlisle, and the Earl of Jersey, who, March the second, the Commons being at the Lords-Bar, gave the Royal-Assent to *An Act for Attainting the Pretended Prince of Wales: An Act for punishing Mutiny and Desertion: An Act for the solemn Affirmation of the People called Quakers*, and to some private Acts. On the 7th of March, the Lord-Keeper went to Kensington with a Commission to be sign'd by his Majesty for the passing of *the Abjuration-Bill, the Malt-Tax Bill*, and what other Bills were ready for the Royal Assent. Which was done accordingly; being one of the last public Acts of his Majesty's Life.

*Certain SPEECHES of Sir CHARLES SEDLEY'S,  
on various Occasions, in, and after the Year 1699.*

*A Speech in Parliament, on the Bill for disbanding the  
Army, 1699.*

'I Hope my Behaviour in this House has put me above the Censure of One who would obstruct his Majesty's Affairs; I was as early in the Apprehensions of the Power of France as any Man: I never stuck at Money for Fleets, Armies, Alliances, or whatever Expences seem'd to have the Preservation of our new-settled Government for their End. I am still of the same Mind; but that was War, and this is Peace; and if I shall now differ from some worthy Gentlemen, who have spoke before me, they will be so just as to believe it is not about the End, but the Means we contend.

'Some may think England cannot be safe without a Standing-Army of 30,000 Men; and will tell us the King of France has 200,000 in Pay, disciplin'd Troops; that all our Neighbours are armed in another Manner than they were wont to be; that we must not imagine that we can defend ourselves with our ordinary and legal Forces.

All this is very material, and wou'd have great weight with me, if England were not an Island accessible only by Sea; and in that Case, not till they have destroy'd our Navy,  
which,

which is, or may be made superiour to any Force that can be brought against us. Anno 12 W. III.  
1700.

‘ It is very difficult to land Forces in an Enemy’s Country; the Spanish Armada was beaten at Sea, and never set foot on English Ground; his present Majesty with all the Shipping of Holland, could bring over but 14,000 or 15,000 Men, and that so publicly, that nothing but an infatuated Prince would have permitted their landing. Our Attempts upon Brest shew us, that it is easy with a small Force to prevent an Assault from t’other side of the Water. As we are capable of being attack’d in several Places, so it may be urg’d, as Reason, for several Troops more than our Purposes can bear; but if we burden the People thus far in Peace, it may tempt some to wish for War again, every Change carrying a Prospect of better Times, and none can make it worse than a Standing-Army (of any Number of Men) will at present. If we are true to ourselves, 10,000 Men are enough; and if not, 100,000 too few.’

*A Speech upon the Vote for bringing in a Bill for Dissolving the Parliament, by an Act of the Legislative Power.*

‘ **T**HAT the Bill pass’d the Lords unanimously, ought to be no Argument for us to pass it; for were any thing propos’d to their diminution, it would find as easy a Passage in this House: How fond were we of taking away their *Scandalum Magnatum*? I remember we lost a very good Bill by attempting, and they by refusing it; but they would not then, nor do they now, offer up any thing of their own for the Public Benefit; there is not one Word concerns themselves in this Popular Bill. We have sat too long; we must never hereafter sit above three Years: They would ease the People, but it must be all at the Expence of the House of Commons, not a Privilege of their own must be shaken. ’Tis urg’d, we are the People’s Embassadors, or Attorneys, as others say; and they ought to have a Power to change us, if they find we act contrary to the nature of the Trust repos’d in us, or are corrupted to a Court-Interest, that they are any ways dissatisfied with our Prudence or Integrity; and therefore be it enacted, a new Parliament shall be chosen every three Years. Truly I cannot see any Security for the People against an ill Parliament in this Act; for a corrupt House of Commons may undo the Nation in those Years, as well as in thirty: For admit any one Parliament to be so far corrupted, as to pass Laws to the Injury of Liberty or Property, they can never be repeal’d but by the Act of the King and Lords; who, when once they have thought it their Interest to procure such Laws, will never consent to the Repeal of them: For tho’ the House of Commons will be new every

Anno 12 W. III.  
1700.

every three Years, the King and the House of Lords will be still the same in Interest, if not personally: So that one ill Parliament, tho' but of three Years continuance, may prove a Disease incurable. But Men will say, 'tis better the People should chuse a new Parliament every three Years, than that the same Representatives should be continu'd upon them at the King's Pleasure, how negligently, how imprudently, how dissatisfactorily soever they perform their Duty in the House. This is not to be answer'd: But we ought to have so much Esteem for our Prince, as not to think he will long continue such a Parliament upon us, and to give him a little Latitude in the calling and dissolving Part; so as not to tie him strictly to the Letter of those Laws, which, as I told you before, never were observed by any of his Predecessors, nor rigorously insisted upon by any of ours. When he shall have made a considerable Transgression, 'twere then time enough to enter our Complaint: But, say some Gentlemen, on the other side, good Laws are never to be obtain'd, but in the Reign of a good King; therefore this is the time to press for so good a Law as this is, that may keep an ill-dispos'd Prince in order. Truly I do not see it provides against any thing, but that an ill Prince shall not enslave us by one continu'd long Parliament; but he may do it by a triennial one, whenever he and they can agree about it; nor call these Parliaments, but when the King has Business for them, and has also a strong Presumption, they will comply for the Adjourning, Proroguing, and Dissolving such Parliaments as he dislikes. Thus all will be in his power, tho' this Act pass; and even triennial Parliaments cannot give us a certain Remedy, in case of any Invasion upon our Liberty and Property; for it is the King that must appoint Time and Place. Tho' the House of Lords and Commons are essential Parts of the English Government, yet in this politic Existence they depend upon the Will and Pleasure of our Kings. The People of England are the same, their Reasons of Chusing the same, and I question not but they will send us the same Men, or the same sort of Men again. Mr. Speaker, I can by no Means approve of this Bill at this Time: But my main Exception lies against the Clause which requires the Dissolution of this present Parliament, by an Act of the Legislative Power. Never was there any such Invasion upon the Prerogative of a King, never such an Indignity offer'd to an House of Commons in being. The next House may take other Measures than we have done, and then what is got by a new Parliament? If they take others, you know not what Disorders may follow.

*Another*

*Another Speech upon the said Bill, for Dissolving the Parliament.*

Anno 12 W. III.  
1700.

‘THE long Parliament of Forty, was declar’d extinguisht by Act of Parliament, but all the World saw what they attempted, and what they executed: And I hope we shall never pass an Act that may couple us in History with that Sort of Men.

‘ Mr. Speaker, I have seen several Parliaments in this House, yet never could observe any great Change of Proceeding, till the whole Nation was alarm’d at the Duke of York’s declaring himself a Papist, the Discovery of the Popish Plot, and King Charles the Second’s being suspected for that Religion: Then there was a Change indeed; but I hope we have no Calamities of that Magnitude now to provide against: Our King is in our Interest abroad; he is an utter Enemy to France; he is a good Protestant: We are ready with our Purfes to support him in the Defence of our Liberty, Religion and Property; we are honest in the main, and I cannot see the Nation can be in better Hands; however, let us be extinguisht in the usual Way of Parliament, and not pull on ourselves a violent, and, I think, an ignominious Death, by an Act of the Legislative Power for our Extinction. The long Parliament could not be dissolv’d but by Act of Parliament; for they had obtain’d an Act for their Continuance, which could not be annull’d but by an Act for their Dissolution; and therefore they were of necessity so dealt with.—

‘ To conclude, Sir, for these and many other Reasons given me by Gentlemen, who spoke before me, I am against this Bill at this time.

‘ ’Tis said other Gentlemen have a Right and a just Expectation of Sitting in this House in their Turns, as well as we that are now here, which this Bill will put them in Possession of; but that Argument supposes this Parliament will be continu’d for ever, if this House of Commons be not extinguisht by this Law at this time, which I can no ways admit of: We are all for frequent Parliaments, as well those against the Bill, as those who are for it; but some of us had rather obtain it from some ordinary Act of the King’s Prerogative, or such Occasions, than extort them by a written Law, which may be of too stiff a Temper to bend or comply with such Emergencies of State, as may perhaps make the Continuance of the same Parliament a Session longer than the Law allows very advantageous, if not altogether necessary. I should have liked this Bill better if it had begun in our own House; then it had been a Self-denying Bill indeed; but now it looks like a Surprize upon us from the Lords, and brings us under this Dilemma, that if we pass it, we throw ourselves immediately out of this House; if we

Anno 12 W. III.  
1700.

reject this seeming popular Bill, we hazard our Elections into the next Parliament; for we are told by such as would have it pass, that the Gentlemen who are against this new Choice of the People, cannot expect to be elected by them into the next Parliament: Thus we are to overlook all Considerations of State and public Concernment, and pass this Bill in order to gratify our Corporations, that they may chuse us again. Truly, Sir, for my part, I renounce those partial Measures, and if I cannot be chosen upon the Account of general Service to the Nation, I will never creep into the Favour of any Sort of Men, and Vote against my Judgment.

*Upon the Bill relating to the Civil List.*

WE shall, I hope, return to our Vote, and make Provision by a Bill, or otherwise a Clause in this or some other, that no Member of Parliament may be concern'd in the Revenue: For it sounds, Mr. Speaker, harsh, that the same Men should be both Givers and Receivers of the Revenue. The worthy Gentleman, that spoke last, tells you we can expect nothing toward this Supply from the Revenue, for that the ordinary Revenue will not pay the Civil List by 100,000 l. I suppose he means the Civil List, as it stands now. But there was not long ago an Offer made by the Courtiers, that the Profits, Fees and Salaries of their respective Offices and Places exceeding 800 l. *per Annum* clear Money, should go toward the Charge of the War; and then I hope we may expect something. Sir Harry Vane did a thing of this kind in Cromwell's time, being then Treasurer of the Navy, he acquainted the House, that the Profits of his Office were too great, for any particular Person, during such Distress and Calamity of the Commonwealth, and desired he might have a convenient Salary, and the rest go toward the Charge of the War. Now to find a whole Set of Courtiers as generous as I had ever yet known any one Man, charm'd me exceedingly; I think I broke into some Raptures of Kindness towards the worthy Gentlemen who shew'd such Zeal for their Master's Service, and the Defence of the Nation, as to part with something of their own, as well as ours for those public Ends.

Mr. Speaker, The King and People have always the same Interest, and it is not the King's to take one Penny more from the People than will just carry on the Government; it is the People's Interest to give him full as much: But it is the Courtiers Interest to get all they can for him here, that they may obtain their Request the more easily at Whitehall: That the Interest of the King and Courtier do sometimes differ, I think I can give you an undeniable Instance: King  
Charles

Charles the Second, when he came to the Crown had 360,000*l.* *per Annum* in Land; it was certainly the Interest of the Crown he should have kept those Lands descending to him from his Ancestors, that they might have been a constant Support and Supply for such Occasions as could not wait the Delays and Method of Parliaments; it was the People's Interest that the King should have kept that Revenue, for having so much of his own, he might lie the less heavy upon them: Yet the Courtiers prevail'd, and got away that whole Revenue in a few Years, devouring not only the Income but the very Stock of their Master's Liberality; and, as I humbly conceive, contrary to the Interest of both King and People, and even of all succeeding Courtiers; whom we find since quarter'd upon other Branches of the Revenue. King James thought 500*l.* *per Annum* sufficient for the Gentlemen of his Bed-Chamber; certainly that Salary may suffice a Man that has an Estate of his own already, and is as much as any Waiting-man can pretend to for his Service.

Anno 12<sup>th</sup> W. III.  
1700.

*Upon the Bill for Ways and Means, &c.*

I Believe, Mr. Speaker, when we come to consider of it, we shall find, that it is convenient, not only to lessen the Officers of the Court, and State, in point of Profit, but in point of Number too; we have nine Commissioners of Excise, seven of the Admiralty, three of the Post-Office, six of the Customs; I know not why half may not do the Business as well. But when I consider all these, or most of them, are Members of Parliament, my Wonder is over; for tho' it may be a Dispute, whether many Heads are better than one, 'tis certainly true, that many Votes are better than one: Many of these Gentlemen have two Offices besides their Seat in Parliament, which require Attendance in several Places, and Abilities of divers Natures; but Members of Parliament, tho' well principled, have no Privileges to be fit for any thing without Practice, Study or Application.

Sir, we are call'd by the King, and sent up by the People, and ought to regard no Interests but theirs; which, as I told you before, are always the same; let us therefore proceed accordingly. The late Proposals of the Courtiers themselves, to save the King Money, was, by applying the Profits, Salaries and Fees of their Places, that exceed 800*l.* *per Annum*, to the War; thus will the Public Charge lie easier upon the People, and the present Reign be more and more endeared to them. What is necessary we shall chearfully supply, when we see all Men set their Shoulders to the Burden, and stand upon an equal Footing for our common Defence, and that what we give, is apply'd to those Uses for which we give, and the Army paid. This Offer, Sir, as I remem-

Anno 12 W.III.  
1700.

ber, began when an Observation was made by you of the long Accounts, and that a great Part of the King's Revenue remain'd in the Hands of the Receivers; to which a worthy Member answered, It could not be help'd, by reason some Receivers were Members of Parliament, and stood upon their Privileges. To which another Member answered, That we could not deprive Members of their Privilege, but that to remedy the like for the future, we were ready to pass a Vote, that no Member of Parliament should be a Receiver of the King's Revenue. This alarm'd the whole Body of Men in Office; so that some stood up, and (to prevent the House from harping any longer upon that String) said, They so little valued their own Profit, that they were willing to resign all their Fees, Salaries, and Perquisites, exceeding 300 l. *per Annum*, toward the next Year's Charge. This, if really intended, was very generous; but if it were only a Compliment, Shift or Expedient, to avoid the present Vote we were upon, That no Member of Parliament should be Receiver of the Revenue, nothing was more disingenuous; nor could a greater Abuse be offered to the House, for we proceeded so far as to vote, That Judges and some others should not be comprehended. People abroad that received our Votes will think strangely of it, if, after all those Preparations, we do nothing in it, and suffer ourselves to be thus gull'd: But I hope better of the worthy Gentlemen, and cannot but think they were in earnest with this House upon so solemn a Debate.

*Upon the Bill for Trials, &c.*

'MR. Speaker, the Trial by their Peers could never be meant Peers of the King's Appointment: I take the Clause in question to be very agreeable to the Title of your Bill; for it is entitled, *A Bill for the more equal Trial of Persons accus'd of Treason, or Misprision of Treason*. Upon which the Lords have grafted a Provision for themselves in that Case, and no other, and the Provision is, that they shall be tried out of Parliament, as they are now sitting in the Parliament: This some Gentlemen say is a weakning to the Government, which they seem to think cannot subsist, unless the Government may at any time reduce what Lords they please under the Power and Judgment of the Majority of twenty Peers, nominated by the Lord High-Steward. Which certainly is a very great Hardship upon the Peerage of England, and puts them in a worse Condition, as to their Lives and Fortunes, than the meanest Commoner of England, who may except against three Juries; whereas a Lord cannot except against one single Person, of those few that are appointed to try, tho' never so profess'd and so open an Enemy to him. Now instead of this Privilege of ours, they desire they may be



tried by the whole House, or such of them as will come to the Trial. Others again say, If this Clause pass by reason of the mutual Relations and Affinity between the Peers, they will be ready and able to save one another. To that may be answer'd, That of late the Lords do not much inter-marry, chusing rather to better their Fortunes by Marriage into the City; the best Composition, and most usual of late, being Nobility on one side, with Money on the other; nor do those sorts of Obligations last longer than the Wedding-clothes. Nor are the Lords so considerable as formerly, when three or four of them in conjunction could shake the Crown: Their Estates, and consequently Interests, are sufficiently decay'd since the Statute of Henry the Seventh gave leave to alienate their Lands: They were natural, and many of them now but artificial Lords, like the Catholic Bishops, *in partibus Infidelium*.—This Clause is likewise very pursuant to the Prince's Declaration, where nothing is more complain'd of, and abhorr'd, than the Injustice and Corruption of the Trials in King James's Reign; and I hope we shall never be tenacious of those wicked and indirect Ways of Destroying, by which we have lost many of our best Friends; the Lords have Estates to make them cautious, but not dangerous: Partiality and Compliance is ever toward the Power in being: The Reigns of Princes are recommended to Posterity by the good Laws they pass; and as we have given largely for the Supply of the Government, we may hope to obtain something for the Benefit of those whose Money we have been so liberal of. We have as yet pass'd nothing but Money-Bills, or Bills of a private Nature: 'Tis high time we should do something like a Parliament of England; let us not then here, among ourselves, stifle this our Public Debt, and consequently deprive his Majesty of the Glory of passing an Act, which most Men have in all Ages desir'd, but could never hope to obtain, but from so gracious a Prince.

Anno 12 W. III.

1700.

The Day the King died, the Princess \* Anne was proclaimed Queen of England, &c. in the usual Form.

On

\* The same Evening the new Queen made the following Speech to her Privy-Council.

MY LORDS,

I Am extremely sensible of the general Misfortune to these Kingdoms, in the unspeakable Loss of the King; and of the great Weight and Burden it brings in particular to myself; which nothing would encourage me to undergo, but the great Concern I have for the Preservation of our Religion, and the Laws and Liberties of my Country: All these being as dear to me, as they can be to any Person whatsoever. You may depend upon it that no Pains, no Diligence shall be wanting on my Part, to defend and support them; to maintain the Succession in the Protestant

Queen's Speech  
to the Council.

Lines

Anno 1 Ann.  
1701.

On the 11th of March, her Majesty went to the House of Peers, where, after she had sent for the Commons, she thus delivered herself to both Houses.

Her Majesty's  
Speech to both  
Houses.

‘ My Lords and Gentlemen,  
‘ I Cannot too much lament my own Unhappiness, in suc-  
‘ ceeding to the Crown so immediately after the Loss of a  
‘ King, who was the great Support, not only of these King-  
‘ doms, but of all Europe; I am extremely sensible of the  
‘ Weight and Difficulty it brings upon me

‘ But the true Concern I have for our Religion, for the  
‘ Laws and Liberties of England, for maintaining the Suc-  
‘ cession of the Crown in the Protestant Line, and the Go-  
‘ vernment in Church and State, as by Law established,  
‘ encourages me in this great Undertaking, which, I promise  
‘ my self, will be successful, by the Blessing of God, and  
‘ the Continuance of that Fidelity and Affection of which  
‘ you have given me so full Assurances.

‘ The present Conjuncture of Affairs requires the greatest  
‘ Application and Dispatch; and I am very glad to find in  
‘ your several Addresses, so unanimous a Concurrence in  
‘ the same Opinion with me, that too much cannot be done  
‘ for the Encouragement of our Allies, to reduce the ex-  
‘ orbitant Power of France.

‘ I think it very necessary, at this time, to desire you to  
‘ consider of proper Methods for attaining an Union between  
‘ England and Scotland, which has been so lately recom-  
‘ mended to you as a Matter that very nearly concerns the  
‘ Peace and Security of both Kingdoms.

‘ Gentlemen of the House of Commons,  
‘ I need not put you in mind that the Revenue for defray-  
‘ ing the Expences of the civil Government is expired: I  
‘ rely intirely upon your Affection for the supplying of it in  
‘ such a manner as shall be most suitable for the Honour and  
‘ Dignity of the Crown.

‘ My Lords and Gentlemen,  
‘ It shall be my constant Endeavour to make you the best  
‘ return for that Duty and Affection which you have expressed

to  
‘ Line, and the Government in Church and State, as it is by Law estab-  
‘ lished. I think it proper, upon this Occasion of my first speaking to you,  
‘ to declare my own Opinion of the Importance of carrying on all the Prepa-  
‘ rations we are making to oppose the great Power of France. And I shall  
‘ lose no Time in giving our Allies all Assurances, that nothing shall be  
‘ wanting on my Part, to pursue the Interest of England, together with  
‘ theirs, for the Support of the Common Cause.

‘ In order to these Ends, I shall be always ready to ask the Advice of  
‘ my Council, and of both Houses of Parliament; and desirous to countenance  
‘ and employ all those who shall heartily concur and join with me in support-  
‘ ing and maintaining the Present Establishment, against all Enemies and  
‘ Opposers whatsoever.’

‘ to me, by a careful and diligent Administration for the  
 ‘ good of my Subjects: and as I know mine own Heart to  
 ‘ be entirely English, I can very sincerely assure you, there  
 ‘ is not any thing you can expect or desire from me, which  
 ‘ I shall not be ready to do, for the Happiness and  
 ‘ Prosperity of England; and you shall always find me a  
 ‘ strict and religious Observer of my Word.

Anno 1 Ann.

1702.

The Commons having, by such Members of their House as were of the Privy-Council, returned their humble Thanks to the Queen for her gracious Speech, she gave the Message a very gracious Reception, and was pleased to command Sir Charles Hedges to assure them, ‘ That nothing should  
 ‘ be wanting, that might contribute to their Safety and Welfare.’

In the mean time, the House, in pursuance of their Sunday’s Resolution, having prepared their Address, and agreed to all the Points of it, went in a Body to St. James’s, and there presented the same to her Majesty, as follows :

‘ Most gracious Sovereign, We your Majesty’s most dutiful and loyal Subjects, the Commons in Parliament assembled, having a deep Sense of the great Loss the Nation has sustained, by the Death of our late Sovereign Lord King William the Third, of glorious Memory, who, under God, was our Deliverer from Popery and Slavery, humbly crave leave to condole with your Majesty, and express our Sorrow upon this sad Occasion.

Commons Address to the Queen.

‘ Your Majesty’s Accession to the Throne (which we most heartily congratulate) and your Zeal for our Religion, and the Government, as by Law established, gives us a certain Prospect of future Happiness, moderates our Grief, and engages us unanimously to assure your Majesty, that we will, to the utmost, assist and support your Majesty on the Throne where God has placed you, against the pretended Prince of Wales, and all your Enemies. And since nothing can conduce more to the Honour and Safety of your Majesty and your Kingdoms, than the maintaining inviolably such Alliances as have been made, or that your Majesty shall think fit to make with the Emperor, the States-General of the United Provinces, and other Potentates, for preserving the Liberties of Europe, and reducing the exorbitant Power of *France*; we do assure your Majesty, that we are firmly resolved, to the utmost of our power, to enable your Majesty to prosecute the glorious Design. And that all your Subjects may rest in a full Assurance of Happiness under your Majesty’s Reign, we will maintain the Succession of the Crown in the Protestant Line, according to the Limitation in the several Acts of Settlement, and effectually provide for, and make good the public Credit of the Nation.

The

Anno 1 Anno  
1702

Queen's An-  
swer.

Royal Assent  
given to several  
Acts.

Queen gives  
100,000l. to-  
wards the War.

The Speaker, on the 10th, having reported, that he had the day before, with the House, attended her Majesty with this Address; and that the great Croud occasioning much Noise, he had, to avoid any mistake, desired a Copy of the Queen's Answer, and that her goodness was such, that she sent it to him of her own Hand-Writing, as follows:

' Gentlemen, I return you my hearty Thanks for the kind Assurances you give me in this Address. They cannot be any way more agreeably confirmed to me, than by your giving dispatch to all your Preparations for the Public Service, and the Support of our Allies.'

On the 30th of March, her Majesty repair'd to the House of Peers, and gave the Royal Assent to, *An Act for the better Support of her Majesty's Household, and of the Honour and Dignity of the Crown. An Act for taking and stating the Public Accounts, &c.*

After which she return'd them her kind and hearty Thanks, for continuing to her, for her Life, the same Revenue they had granted to the King; which, she was pleased to say, she would take care should be managed to the best Advantage; and while her Subjects remained under the Burthen of such heavy Taxes, she would streighten her self in her own Expences, rather than not contribute all she could to their Ease and Relief; with a just regard to the Support of the Honour and Dignity of the Crown.

The next Paragraph of her Speech was extremely Popular: ' It is probable the Revenue may fall short of what it has produced. However, I will give Directions, that one hundred thousand Pounds be apply'd to the Public Service in this Year, out of the Revenue you have so unanimously given me.'

The House of Commons, in their Address of Thanks for this Speech, particularly took notice of her Majesty's unparalleled Grace and Goodness, in contributing out of her own Revenue, to the Ease and Relief of her Subjects. And the Lords express'd their Sense of it, in their Address, with equal Zeal and Gratitude. Her Majesty told them in her Answer, ' That their Approbation of what she did, would always be a great Satisfaction to her'

May 4. War was \* declared against France, and on the same

\* The Causes express'd in the Declaration were, That the late King William had, by the repeated Advice of Parliament, entered into Alliances with the Emperor, States-General, and other Potentates, for preserving the Liberty and Balance of Europe, and reducing the exorbitant Power of France; because of the French King's unjustly taking and keeping Possession of great part of the Spanish Dominions, exercising an absolute Authority over all that Monarchy; seizing Milan, and the Spanish Netherlands, by his Armies; making himself Master of Cadix, of the Entrance into the Mediterranean, and of the Ports in the Spanish West-Indies; de-  
signing

same Day the House presented an Address to the Queen on this Occasion, which was as follows: Anno x Ann.  
1702.

‘ Most gracious Sovereign, We, your Majesty’s most dutiful and loyal Subjects, the Commons of England, in Parliament assembled, being highly sensible of your Majesty’s great and tender Care for the Safety and Welfare of your People, do, with one Voice, return your Majesty our most humble Thanks, for your gracious Condescension in communicating to us your Royal Intentions of declaring War, in conjunction with your Majesty’s Allies, against the French King and his Grandson; and we do heartily assure your Majesty, that we will, to the utmost, enable your Majesty to carry on the said War.’ Commons Address to the Queen.

To which, the next Day, the Speaker reported back to the House her Majesty’s gracious Answer, as follows:

‘ Gentlemen, I am extremely pleased with the assurances of your Resolution to assist and support me in this War. I make no doubt, but your Unanimity upon this Occasion, will have a very good effect, for the Encouragement of our Allies.’ Queen’s Answer.

And an Address was, likewise, presented by both Houses, entreating her Majesty to use her Interest with her Allies, that all Intercourse for the future, might be cut off between their Subjects and those of France; to which her Majesty was pleased to return the following Answer. An Address of both Houses to put a stop to all Intercourse between the Allies and France.

‘ My Lords and Gentlemen, I shall propose to the Allies to join with me in prohibiting all Intercourse and Commerce with France and Spain, according to your Desire. And am too much concern’d for the Public Welfare, to omit any necessary Cautions for the Protection of our Trade.’

May the 6th, the Queen came to the House of Peers, and gave the Royal Assent to the following Acts. Royal Assent given to several Acts. *An Act for laying a Duty upon Land. An Act for appointing Commissioners to treat of an Union with Scotland. An Act to encourage the Greenland Trade. An Act for making good the Deficiencies, and the Public Credit.* And to a great Number of private Acts.

And the 25th, Her Majesty came again to the House, and gave

TOME III.

C c

*signing to invade the Liberty of Europe, and to obstruct the Freedom of Navigation. And whereas, instead of giving just Satisfaction, he has added the Indignity and Affront of declaring the pretended Prince of Wales, King of Great-Britain and Ireland, and has influenc’d Spain to concur in the same: Therefore for maintaining the public Faith of Treaties, for vindicating the Honour of the Crown, and for the preventing the Mischiefs which all Europe is threatn’d with, Her Majesty declared War against France and Spain, by Sea and Land; and forbid all Communication and Correspondence with France or Spain, or their Subjects; but promis’d Protection to the Persons and Estates of the Subjects of France and Spain, in her Majesty’s Dominions, who shall demean themselves dutifully.*

Anno i Ann.  
1702.

gave the Royal Assent to these following, viz. *An Act for continuing in Prison ——— Counter, and others, concern'd in the horrid Conspiracy against his late Majesty. An Act to oblige Jews to maintain and provide for their Protestant Children. An Act for the Relief of the Protestant Purchasers of the forfeited Estates in Ireland. An Act for enlarging the Time for taking the Oath of \* Abjuration, &c.*

Her Majesty then put an end to the Session with the following Speech.

Queen's Speech  
in Parliament.

' My Lords and Gentlemen,

' I cannot conclude this Session without repeating my hearty Thanks to you all, for your great Care of the Public, and the many Marks you have given of your Duty and Affection to me.

' And I must thank you, Gentlemen of the House of Commons, in particular, both for the Supplies you have given to support me in this necessary War, and the Provisions you have made for the Debts contracted in the former: Your great Justice in making good those Deficiencies will be a lasting Honour and Credit to the Nation: I wish the difficulties, they have brought upon us, may be a warning to prevent such Inconveniencies for the future.

' I must recommend to you all, in your several Counties, the Preservation of the Public Peace, and a due Execution of the Laws.

' I

*In the said Act was the following Clause.*

\* *That if any Person or Persons, at any time after the first Day of March 1702, shall endeavour to deprive or hinder any Person who shall be the next in Succession to the Crown for the time being, according to the Limitations in an Act entitled, An Act for declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown; and according to one other Act, entitled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, from succeeding after the Decease of her Majesty to the Imperial Crown of this Realm, and the Dominions and Territories thereunto belonging, according to the Limitations in the beforemention'd Acts; that is to say, such Issue of her Majesty's Body, as shall from time to time be next in Succession to the Crown, if it shall please God Almighty to bless her Majesty with Issue; and during the time her Majesty shall have no Issue, the Princess Sophia, Electress and Duchess Dowager of Hanover, and after the Decease of the said Princess Sophia, the next in Succession to the Crown for the time being, according to the Limitation of the said Acts; and the same maliciously, advisedly and directly, shall attempt by any Overt-Act or Deed; every such Offence shall be adjudg'd High Treason, and the Offender or Offenders therein, their Assistors, Procurers, and Comforters, knowing the said Offence to be done, being thereof convicted or attainted according to the Laws and Statutes of this Realm, shall be deemed and adjudged Traytors, and shall suffer Pains of Death, and all Losses and Forfeitures as in Cases of High Treason.*

‘ I shall always wish that no differences of Opinion among those that are equally affected to my Service may be the Occasion of Heats and Animosities among themselves. I shall be very careful to preserve and maintain the Act of Toleration, and to set the minds of all my People at quiet; my own Principles must always keep me entirely firm to the Interests and Religion of the Church of England, and will incline me to countenance those who have the truest Zeal to support it.

Anno 1 Ann.  
1702.

And then the Lord-Keeper, by her Majesty's Command, prorogued the Parliament till the seventh Day of July next. It was afterwards dissolv'd.

A new Parliament being met the 20th of October, and the Commons having chosen Robert Harley, Esq; for their Speaker; the Queen made the following Speech to both Houses

First Parlia-  
ment of Queen  
Anne.

‘ My Lords and Gentlemen,  
‘ **I**T is with great Satisfaction I meet this Parliament, which I have summoned to assist me in carrying on the just and necessary War, in which we are engaged; I have called you together as early as was consistent with your convenience in coming out of your several Counties; and I assure myself of such Evidences of your Affection to me, and of such Zeal for our common Cause, as will not only give Spirit and Forwardness to our own Preparations, but such Example and Encouragement to our Allies, as, by God's Blessing, cannot fail of a good effect, for the Advantage of the whole Confederacy.

Queen's Speech  
to both Houses.

‘ I have met with so many Expressions of Joy and Satisfaction in all the Counties, through which I have had Occasion to pass, that I cannot but look upon them as true measures of the Duty and Affection of all my Subjects.

‘ Gentlemen of the House of Commons, I must desire you to grant me such Supplies, as will enable me to comply with our particular Treaties and Engagements already made, and such others as may be necessary for the Encouragement of our Allies, and the prosecuting the War, where it shall most sensibly affect our Enemies, and be most effectual for disappointing the boundless Ambition of France.

‘ And that my Subjects may the more chearfully bear the necessary Taxes, I desire you to inspect the Accounts, of the Public Receipts and Payments; and if there have been any Abuses or Mismanagements, I hope you will detect them, that the Offenders may be punished, and others be deterred by such like Examples from the like Practices.

Anno 1 Ann.  
1702.

‘ I must observe to you with some Concern, that the Funds given by the last Parliament have in some measure fallen short of the Sums proposed to be raised by them; and tho’ I have already paid and applied to the Public Service the hundred thousand Pounds, which I promised to the last Parliament, yet it has not supplied that Deficiency.

‘ My Lords and Gentlemen, I cannot without much trouble take notice to you of the disappointment we have had at Cadiz: I have not yet had a particular Account of that Enterprize, nor of all the difficulties our Forces have met with there; but I have had such a Representation of Disorders and Abuses committed at Port St. Mary’s, as hath obliged me to give directions for the strictest Examination of that matter.

‘ I am earnestly desirous, for all our sakes, that this may prove a short Session; however, I hope you will find time to consider of some better and more effectual Method to prevent the Exportation of Wool, and to improve that Manufacture, which is of great Consequence to the whole Kingdom: on my part nothing shall be omitted for its Encouragement.

‘ I am firmly persuaded, that the Love and good Affection of my Subjects is the surest Pledge of their Duty and Obedience and the truest and justest Support of the Throne; and as I am resolved to defend and maintain the Church as by Law established, and to protect you in the full Enjoyment of all your Rights and Liberties, so I rely upon your Care of me; my Interests and your’s are inseparable; and my Endeavours shall never be wanting to make you all Safe and Happy.’

This Speech having been read and reported to the House, they soon after agreed on the following Address.

The Commons  
Address,

Most gracious Sovereign, We your Majesty’s most dutiful and loyal Subjects, the Commons in Parliament assembled, do beg leave to lay before your Majesty our most humble and hearty Thanks for your most gracious Speech from the Throne, which gives us such Instances of your Majesty’s tender Concern for your People, and of your entire Confidence in their Affections, as must engage them to make your Majesty the utmost Returns of Duty and Gratitude.

‘ It is great Condescension in your Majesty to take notice, in so public a manner, of the Expressions of Joy and Satisfaction, with which your Majesty was received in all the Counties through which you had Occasion lately to pass. All your Subjects have already received so many Benefits under the Influence of your Majesty’s happy Government, that



that your Majesty must have met with the like, in any other part of your Dominions that you had honoured with your royal Presence.

Anno 1 Ann.

1702.

' The late disappointment at Cadiz does the more affect us, because it gives your Majesty so much trouble; but this Misfortune cannot make us forget, that the Protection and Security of our Trade, the vigorous Support of your Majesty's Allies, and the wonderful Progress of your Majesty's Arms under the Conduct of the Earl of Marlborough, have signally \* retrieved the Antient Honour and Glory of the English Nation.

' After your Majesty's repeated Assurances, we neither doubt of the full Enjoyment of all our Rights and Liberties, nor of your Majesty's defending and maintaining the Church as by Law established; your Majesty has been always a most illustrious Ornament to this Church, and have been exposed to great hazards for it; and therefore we promise ourselves, that in your Majesty's Reign, we shall see it perfectly restored to its due Rights and Privileges, and secured in the same to Posterity; which is only to be done by divesting those Men of the Power who have shewn they want not the Will to destroy it.

' The Prospect of these Blessings, and your Majesty's desire to have the Accounts of the Public Receipts and Payments inspected, and to have any Abuses and Mismanagements thereof punished, will very much endear your Majesty to your People; and encourage us most chearfully to assist your Majesty with those Supplies that may effectually enable your Majesty to make good such Alliances, as shall be necessary to prosecute the War where it shall most sensibly affect your Enemies, and thereby disappoint the boundless Ambition of France.

' Your Majesty may safely rely upon the Care of your faithful Commons: The value you are pleased to set upon the Love and Affection of your Subjects, is the highest Obligation that can be laid on them, to give your Majesty pledges thereof in their Duty and Obedience. They are and shall always be sensible, that your Majesty's Interest and their's are inseparable; and as they gratefully acknowledge your Majesty's great Designs to make them safe and happy, so their Prayers and sincerest Endeavours shall never be wanting to make your Majesty's Reign more prosperous and more glorious than any of your Majesty's Royal Predecessors.'

To

*\* When the Address was reported, the Word maintained was offered as an Amendment instead of retrieved: But after a vehement Debate, a Motion being made that the Word retrieved do stand as Part of the Address, it was carried in the Affirmative, Yeas 180. Noes 80.*

Anno 1 Ann.  
1702.

Queen's An-  
swer.

Sir John  
Packington's  
Complaint a-  
gainst the Bi-  
shop of Wor-  
cester.

To which, as the Speaker signified to the House, her Majesty at the same time, returned her Answer, as follows:

'Gentlemen, I thank you very kindly for the many  
'Marks of your Duty and Affection expressed in this Ad-  
'dress.

'Nothing can be a greater Satisfaction to me than an en-  
tire Confidence between me and my Subjects.'

November 18, Sir John Packington exhibited a Complaint against the Bishop of Worcester, and Mr. Lloyd his Son, which he reduced to the following Heads.

I. 'That soon after the last Parliament rose, the Bishop of Worcester took upon him to send to me to desist from standing to be elected Knight for that County, and to threaten me, that if I would not desist, he should think himself obliged to speak against me to his Clergy.

II. 'He sent some Letters himself, and his Secretary sent others, to several of his Clergy, with Directions to make what Interest they could against me in their several Parishes, and where they could not prevail with such who voted singly for me in the last Election, to give a Vote for one or both the other Candidates, they should desire them to stay at home; and in order to this, his Lordship sent them Copies of the Poll of their respective Parishes.

III. 'He aspersed me to his Clergy, branding me and my Ancestors with several Vices; and at his Confirmation and Visitations solicited his Clergy to vote against me, representing me as very unfit to serve in Parliament, and threatening them with his Displeasure, if they did not vote against me.

IV 'He aspersed me and my Ancestors to several of the Laity, who were his Tenants, and threatened them, that if they would not vote against me, they should never renew any Estate under him, and that he would set such Marks upon them, that his Successors should not suffer them nor their Children to renew any more.

V. 'Mr. Lloyd, the Bishop's Son, aspersed me, and gave scandalous Characters of me to several Freeholders, whom he solicited to vote against me, and told them I voted for bringing in a French Government.

VI. 'The Bishop's Secretary aspersed me to several Freeholders in the like manner, representing me as unfit to sit in the House, threatening them with the Bishop's Displeasure; and said, They might as well vote for the Prince of Wales as for me.'

All these Particulars were supported by Evidence at the Bar of the House, and by the following Letters under the Bishop's own Hand.

Hartlebury,

Hartlebury, July 29, 1702,

Anno 1 Anno  
1702.

S I R,

I Think I have more Reason to hope for something of Consideration from you, than from most others of the Clergy of this Diocese, and something also more from the Freeholders in your Parish, than in most other Parts of the Country; and therefore I thought I had reason to take it ill of your Neighbours, that they should give their Votes as they did, for the chusing of Sir J. Packington to be Knight of the Shire, when, in order to that very Election, he had publish'd two Libels, full of horrible Lyes, against myself, and several others of the Bishops, that had never given him the least Provocation. This grieved me much, but yet I had wherewith to comfort myself, in believing that those Libels might not have come to their Knowledge; tho' as I since understand great Care was taken by Sir John's Agents to publish them all over your Neighbourhood. But now since, I understand there is a third Libel come abroad, which is written against me in particular. The declar'd Cause of it is not only my opposing Sir J. P's Election, which, after my coming into the Country, and finding his Libels publish'd among my Tenants by his Servants, I sent him word I thought myself obliged to do, unless he would be pleas'd to desist from standing, as I earnestly desired him to do more than once: But this Author hath found, that I was the Writer of a Printed Half-Sheet, called *The Character of a Churchman*, and that this was written against Sir J. P. for hindering his Election; and for this he scourges me most unmercifully, with such a Tongue, as that St. James describes. For that *Character of a Churchman*, I do declare to you in the Presence of God, That I neither writ it nor know the Author of it; but I certainly know, That Sir J. P. is not once mention'd in it, nor had I at the time when that was printed any Breach with Sir J. P. nor Occasion to do this with respect to the Election, for it was printed before I came to London, and that was before the Dissolution of the former Parliament, which if I had foreseen, I had certainly staid longer in the Country. After all this, it is true that I sent a great number of those Half-Sheets into the Country, as I did of such other small Things, upon several Accounts. They were sent chiefly on the Account of our unhappy Differences in Convocation, and for promoting the most pious Designs of Reformation. On this last Account it was that I sent this *Character of a Churchman*, without making any Reflection upon any particular Person. I did indeed know, that the Devil would be mad at me for it, and now I have found the Effects of his Wrath: He hath set a Son of his to write against me, which I thank God is the worst he can do. This

Account

Anno 1 Ann.  
1702.

Account I have given you of this third Libel, in hopes it may have some Effect upon you and your Neighbour Mr. Hodge, to whom I desire you to shew what I have written. I hope you will both of you consider, whether any such Promise as that you have made to that Gentleman, to make him your Representative in Parliament, can oblige you to any thing else but Repentance of your having made such a Promise, and to bring forth Fruits meet for Repentance. For my part, I leave this upon your Souls, desiring you both to do in this Matter as you think you can best answer it to God at the great Day, which I doubt not you believe, and expect as well as I. I pray God direct you. I am,

Your Faithful Friend, and Diocesan,

W Worcester.

S I R,

July 27, 1702.

YOU cannot but have heard, and probably have seen how the Bishops of this Church in general, and 5 or 6 of them in particular, have been abused with impudent Lyes in two Libels that were published by Sir John Packington almost a Year since, in order to his last Election. At that time I had not given him the least Provocation; and for the other abused Bishops, few of them knew his Face. Since that time, finding at my Return from London, where I was all the while, he was libelling me in the Country, that he had published these Libels, some of them with his own Hands, and the rest by his Agents, I could not but think myself obliged by all honest ways to oppose his Election, if he would stand; which I sent to him 3 times to let him know, and to desire he would forbear.

Hereupon there comes out a third Libel against me, which I have only seen, but could not get a Copy of it. I never saw any thing wrote with such a furious Rage of railing, and scoffing, and lying; which, I thank God, can do me no hurt, nor will it do him Service, if I may so call it, in promoting his Election, which I think would be the greatest hurt that could happen to him.

It is for the preventing of this that I writ to my Friends, earnestly to desire them to get what Votes they can for Mr. Bromley and Mr. Walsb; and to keep away as many as they can of them that will vote for Sir John Packington.

Your Diligence in this Matter will lay a very great Obligation upon, Sir,

Your faithful Friend, and Diocesan,

W Worcester.

Upon a full Hearing of the whole Matter, the House came to the following Resolutions:

*Resolved,*

*Resolved Nemine Contradicente*, That Sir John Pakington has by Evidence fully made out the Charge which he exhibited against the Lord Bishop of Worcester. Anno 1 Ann.  
1702. 8 3

*Resolved Nemine Contradicente*, That Sir John Pakington has by Evidence fully made out the Charge against Mr. Lloyd, the said Lord Bishop's Son.

*Resolved*, That it appears to this House, That the Proceedings of William Lord Bishop of Worcester, his Son, and his Agents, in order to the hindering the Election of a Member for the County of Worcester, has been malicious, unchristian, and arbitrary, in high Violation of the Liberties and Privileges of the Commons of England.

*Resolved*, That an humble Address be presented to her Majesty, That she will be graciously pleased to remove William Lord Bishop of Worcester from being Lord Almoner to her Majesty.

*Ordered*, That the said Resolution and Address be presented to her Majesty by such Members of this House as are of her Majesty's most Honourable Privy-Council.

*Ordered*, That the further Consideration of the Matter relating to the Lord Bishop of Worcester, be adjourned till this day sevenight.

*Ordered*, That Mr. Attorney-General do prosecute Mr. Lloyd, the Lord Bishop of Worcester's Son, for the said Offences, after his Privilege as a Member of the Lower House of Convocation is out.

Novemb. 20, Mr. Comptroller reported to the House, That their Resolution and Address to her Majesty for the removing William Lord Bishop of Worcester, from being Lord Almoner to her Majesty, had been presented to her Majesty; and that her Majesty was pleased to give this most gracious Answer.

' I am very sorry that there is Occasion for this Address  
' against the Bishop of Worcester: I shall order and di-  
' rect, that he shall no longer continue to supply the Place  
' of Almoner, but I will put another in his room to perform  
' that Office.'

*Resolved*, That the most humble Thanks of this House be returned to her Majesty, for her Majesty's most gracious Answer to their Address relating to William Lord Bishop of Worcester.

*Ordered*, That Mr. Comptroller of her Majesty's Household, do return the said most humble Thanks of this House to her Majesty.

On the 21st, the Speaker acquainted the House, that there had been with him that Morning, the Prolocutor of the lower House of Convocation, and also the Dean of Canterbury,

Anno 1 Ann.  
1702.

An Order of  
the lower  
House of Con-  
vocation.

Arch-Deacon Ottley, and Mr. Moor, and had brought him the following Order:

Novemb. 20. *Ordered*, ' That the Prolocutor, the Dean of Canterbury, Arch-Deacon Ottley, and Mr. Moor, do attend Mr. Speaker of the honourable House of Commons, and return our most humble Thanks to him, and to that honourable House, for the great Favour to the Church and Convocation, which they had on all Occasions been pleased to express; and particularly for that late Regard which they of themselves, without Suggestion, were pleased to have to the Privilege of this House, in the Case of one of our Members, who had the Misfortune to fall under their Displeasure.'

Upon this, the House passed a Resolution, that they would, upon all Occasions, assert the just Rights of the lower House of Convocation.

On the 10th of December the following Message was brought to the House by Mr. Secretary Hedges, signed by the Queen herself.

' ANNE R.

Queen's Mes-  
sage relating to  
the Earl of  
Marlborough.

' The Earl of Marlborough's Services to her Majesty, and to the Public, have been so eminent, both in his Command of the Army, and in his having established an entire Confidence and good Correspondence between her Majesty and the States-General, that she has thought fit to grant the Title of a Duke of this Kingdom to him, and to the Heirs male of his Body, and also a Pension of 5000*l. per Annum*, upon the Revenue of the Post-Office, for the Support of this Honour, during her Majesty's natural Life. If it had been in her Majesty's power, she would have granted the same term in the Pension as in the Honour; and she hopes you will think it so reasonable in this Case, as to find some proper Methods of doing it.'

The Commons, after the reading of the Message, seemed for some time to be in a maze, and kept so long silent, that (it was said) the Speaker stood up, and looked round, to see if any body would speak to it: And at length Mr. S ——— having broke the Ice, the Debate ran very high upon the Occasion; and amongst others, common Fame gave out, that an old Member should say, ' That though he had accepted of an Employment at Court, yet, he never did it with a Design that his Mouth should be sewed up in that House, when any thing was offered that he thought detrimental to his Country.' And the House at length having wisely weighed this important Affair, instead of complying with the Message, on the 21st, presented the following Address to her Majesty in relation to it.

Commons Ad-  
dressed thereon.

' Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects the Commons in Parliament assembled,  
humbly

humbly beg leave to declare our unanimous Satisfaction in the just Esteem your Majesty has been pleased to express of the eminent Services performed by the Duke of Marlborough, who has not only, by his Conduct of the Army, retrieved the ancient Honour and Glory of the English Nation, but by his Negotiation established an entire Confidence and good Correspondence between your Majesty, and the States-General, and therein vindicated the Gentlemen of England, who had, by the vile Practices of designing Men, been traduced, and industriously represented as false to your Majesty's Allies, because they were true to the Interest of their Country.

Anno 1 Ann.  
1702.

' It is to their unexpressible Grief, that your Majesty's most dutiful Commons find any Instances, where they are unable to comply with what your Majesty proposes to them; but they beg leave humbly to lay before your Majesty the Apprehensions they have of making a Precedent for the future Alienations of the Revenue of the Crown, which has been so much reduced by the exorbitant Grants of the last Reign, and which has been so lately settled and secured by your Majesty's unparallel'd Grace and Goodness.

' We are infinitely pleased to observe by your Majesty's late gracious Acceptance of the Duke of Marlborough's Services, that the only way to obtain your Majesty's Favour, is to deserve well from the Public; and we beg leave to assure your Majesty, that whenever you shall think fit to reward such Merit, it will be to the entire Satisfaction of your People.'

To which her Majesty returned the following Answer:

' I shall always think myself much concerned to reward those who deserve well of me, and of the Public: On this account, I bestowed some Favours on the Duke of Marlborough, and I am glad to find you think they are well placed.'

Queen's Answer.

There had been a Bill brought in early this Session by the Commons, for preventing Occasional Conformity; and though there was a good deal of Opposition made to the Bill by some Gentlemen of that House, yet it was carried there by a great Majority; and on the 2d of December, sent to the Lords for their Concurrence. The Lords were so little fond of this Bill, that apprehending it, or some other Bill they did not wholly like, might one time or other be tacked to a Money-Bill by the Commons, they passed a Vote, That it would be an Infringement of the Privilege of their House. When the Bill came to be considered by the Lords, they were pleased to make several Amendments to it, which occasioned several Conferences between the two Houses; as follow after the Bill, which it is thought expedient to annex, as necessary for the right understanding the Matter in question.

The Controversy between the two Houses relating to the Bill of Occasional Conformity.

# *The A C T for preventing* **Occasional Conformity.**

## **The BILL and AMENDMENTS.**

*The Commons  
Agreement and  
Disagreement,  
to the Amend-  
ments made by  
the Lords to the  
Bill for Pre-  
venting Occa-  
sional Confor-  
mity, with the  
Commons A-  
mendments to  
the Lords A-  
mendments*

The Amendments made  
by the Lords to the  
Bill for preventing Oc-  
casional Conformity.

*Decemb. 2, 1702.*

Agreed to by  
the Com-  
mons.

Disagreed to  
by the Com-  
mons.

Disagreed to  
by the Com-  
mons.

As nothing is more contrary to the Profession of the Christian Religion; and particularly to the Doctrine of the Church of England, than Persecution for Conscience only; in due consideration whereof, an Act passed in the first Year of the Reign of the late King William and Queen Mary, intituled, *An Act for exempting their Majesties Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws*; which Act ought inviolably to be observed, and Ease given to all Consciences truly scrupulous; nevertheless, whereas the Laws do provide that every Person to be admitted into any Office or Employment should be conformable to the Church, as it is by Law established, by enacting, that every such Person, so to be admitted, should receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England; yet several Persons dissenting from the Church, as it is by Law establish-  
ed, do join with the Members

Line 9. After [*Mary*]  
add [*of glorious Memory*]

l. 16. After [*Scrupulous*]  
add [*but*]

l. 17. Leave out from  
[*whereas*] to [*several*] in  
the 27th line.

thereof



Disagreed to  
by the Com-  
mons.

thereof in receiving the Sacrament of the Lords Supper, to qualify themselves to have and enjoy such Offices and Employments, and do afterwards resort to Conventicles or Meetings for the exercise of Religion in other manner than according to the Liturgy and Practice of the Church of England, which is contrary to the Intent and Meaning of the Laws already made: Be it therefore enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by Authority of the same, that if any Person or Persons after the first Day of March, which shall be in the Year of our Lord, one thousand seven hundred and two, either Peers or Commoners, who have or shall have any Office or Offices, civil or military, or receive any Pay, Salary, Fee, or Wages, by reason of any Patent or Grant from her Majesty, or shall have any Command or Place of Trust from or under her Majesty, or from any of her Majesty's Predecessors, or by her or their Authority, or by Authority derived from her or them, within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, or in her Majesty's Navy, or in the several Islands of Jersey and Guernsey, or shall be admitted into any Service or Employment in her Majesty's Household or Family; or if any Mayor, Alderman, Recorder, Bayliff, Town Clerk, Common-Council-Man, or other Person bearing any Office of Magistracy or Place of Trust, or other Employment relating to or concerning the Government of the respective

1. 3. Leave out [*such*]

Disagreed to  
by the Com-  
mons.

1. 41. leave out from [*Family*] to [*shall*] in the 10th line in the next page.

Cities,

- Cities, [Corporations], Boroughs, Cinque-Ports, and their Members, and other Port-Towns within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, who by the Laws are obliged to receive the Sacrament of the Lord's-Supper, according to the Rites and Usage of the Church of England, shall at any time after their Admission into their respective Offices or Employments, or after having such Grant, as aforesaid, during his or their Continuance in such Office or Offices, Employment or Employments, or the Enjoyment of any Profit or Advantage from the same, shall resort to or be present at any Conventicle, Assembly or Meeting, under Colour or Pretence of any Exercise of Religion, in other Manner than according to the Liturgy and Practice of the Church of England, in any Place within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, at which Conventicle, Assembly or Meeting, there shall be five Persons or more assembled together, over and besides those of the same Household, if it be in any House where there is a Family inhabiting, or if it be in an House or Place where there is no Family inhabiting, then where any five Persons or more are so assembled, as aforesaid, shall forfeit the Sum of one
- Agreed to by the Com.
- I. 17. Leave out [shall] and read [knowingly and willingly]
- Agreed to by the Commons
- I. 38. After [aforesaid] add [or at any Meeting where her Liturgy is used, and where her Majesty and the Princess Sophia shall not be prayed for in express Words, according to the Liturgy of the Church of England.]
- with the Amendments following, viz.
1. After the word [or] add [shall knowingly and willingly be present.]
- After the word [any] add [such].
- After the word [Meeting] leave out [where] and insert [in such House or Place, as aforesaid, although]
- After [Liturgy] leave out [is] and insert [be there]
- After [used] leave out [and where] and insert [in case]
1. To which Amendments of the Commons (to the Lords Amendment) as entered on the other side, the Lords agreed, with the Addition following:
2. After the words [prayed for] in the Commons Amendment, add [in pursuance]

Disagreed to by the Commons. hundred Pounds, and five Pounds for every day, that any such Person or Persons shall continue in the Execution of such Office or Employment, after he or they shall have resorted to or been present at any such Conventicle, Assembly or Meeting as aforesaid, to be recovered by him or them that shall sue for the same, by any Action of Debt, Bill, Plaint or Information; in any of her Majesty's Courts at Westminster, wherein no Effoign, Protection or Wager of Law shall be allowed, and no more than one Imparlance.

And be it further enacted, that every Person convicted in any Action to be brought, as aforesaid, or upon any Information, Presentment or Indictment in any of her Majesty's Courts at Westminster, or at the Assizes, shall be disabled from thenceforth to hold such Office or Offices, Employment or Employments, or to receive any Profit or Advantage by reason of them, or of any Grant, as aforesaid, and shall be adjudged incapable to bear any Office or Employment whatsoever, within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed.

Disagreed to by the Commons. Clause [A] Provided always, and be it further enacted by the Authority aforesaid, that if any Person or Persons who shall have been convicted, as aforesaid, and thereby made

L. 1. Leave out [One hundred Pounds, and five Pounds for every Day that such Person or Persons shall continue in the Execution of such Office or Employment] and instead thereof insert [twenty Pounds, to be divided into three Parts, whereof one third Part to the Queen, one other to the Poor of the Parish where the Offence shall be committed, and one third Part to the Informer.]

Line 28. leave out from [aforesaid] to the End of the Bill.

And add the Clauses A, B, C, D, E.

[A] Provided, that no Person shall suffer any Punishment for any Offence committed against this Act, unless Oath be made of such Offence before some Judge or Justice of the Peace (who is hereby empowered and required to take the said Oath) within ten Days after the said Offence committed, and unless the said

After [Majesty] add [whom God long preserve, Catherine the Queen Dowager]

After [Sophia] add [or such others as shall from time to time be lawfully appointed to be prayed for]

After [be] add [there]

2. To which Addition of the Lords (to the Amendments made by the Commons to the Lords Amendment) as entered on the other side, the Commons agreed.

pursuance of an Act passed in the first Year of King William and Queen Mary, intituled, An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown; and the Act passed in the twelfth and thirteenth of King William the Third, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject.] inca-

Clause [ B ]  
disagreed to  
by the Com-  
mons.

incapable to hold any Office or Employment, shall, after such Conviction, conform to the Church of *England* for the Space of one Year, without having been present at any Conventicle, Assembly or Meeting, as aforesaid, and receive the Sacrament of the Lord's Supper at least three times in the Year; every such Person or Persons shall be capable of a Grant of any Office or Employment, or of being elected into or holding of any the Offices or Employments aforesaid.

Provided also, and be it enacted, that every Person so convicted, and afterwards conforming in Manner, as aforesaid, shall at the next Term after his Admission into any such Office or Employment, make Oath in Writing, in any of her Majesty's Courts at Westminster, in public and open Court, between the Hours of nine of the Clock and twelve in the Forenoon, or at the next Quarter-Sessions for that County or Place where he shall reside, that he has conformed to the Church of *England* for the Space of one Year before such his Admission, without having been present at any Conventicle, Assembly or Meeting, as aforesaid, and that he has received the Sacrament of the Lord's Supper at least three times in the Year, which Oath shall be there enrolled and kept upon record.

Clause [ C ]  
disagreed to  
by the Com-  
mons.

Provided also, and be it further enacted by the Authority aforesaid, that if any Person after such his Admission, as aforesaid, into any Office or Employment, shall a second time offend, in manner aforesaid, and shall be thereof lawfully convicted, he shall for such Offence incur double the Penalties before-

Clause [ D ]  
disagreed to  
by the Com-  
mons.

men-  
read, in such Sort or Manner, as the same have been heretofore preached or read; this Act, or any thing therein contained to the contrary, in any wise notwithstanding.

Offender be prosecuted for the same within 3 Months after the said Offence committed; nor shall any Person be convicted for any such Offence, unless upon the Oath of two credible Witnesses at the least.

[B] *Provided, always, and be it enacted, that from and after the said first day of March, no Protestant Dissenter shall be compelled or compellable to take, serve, hold or bear any Office or Place whatsoever, for the taking, serving or holding whereof he cannot be duly qualify'd by Law, without receiving the Holy Sacrament according to the Usage of the Church of England, and also making and subscribing the Declaration mentioned in the Statute, made 25 Car. 2. entitled, An Act for preventing Dangers which may happen from Popish Recusants, any Statute, Law, Usage, or other thing to the contrary notwithstanding.*

[C] *Provided nevertheless, that this Act shall not extend to the University Churches in the Universities of this Realm, or either of them, when, or at such times as any Sermon or Lecture is preached or read in the same Churches, or any of them, for, or as the public University Sermon or Lecture, but that the same Sermons and Lectures may be preached or*

Clause [ E ]  
disagreed to  
by the Com-  
mons.

mentioned, to be recovered in man-  
ner, as aforesaid, and shall forfeit  
such Office or Employment, and shall  
not be capable of having any Office  
or Employment, until he shall have  
conformed for the Space of three  
Years, in manner aforesaid, whereof  
Oath shall be made in Writing in  
one of her Majesty's Courts at  
Westminster, or at the Quarter-  
Sessions of the County where he  
resides.

[D] *Provided, that no Person shall incur any the Penalties in this Act, by resorting to, or being present at the religious Exercises used in the Dutch and French Languages in Churches established in this Realm, in the Reigns of King Edward the Sixth, or of Queen Elizabeth, or of any other King or Queen of this Realm.*

[E] *Provided always, and be it enacted by the Authority aforesaid, that nothing in this Act shall extend, or be construed to extend to any Governor or Governors of any Hospital or Hospitals, or to any Assistants of any Corporation or Corporations, Work-house or Work-houses, constituted, erected or employed for the Relief, and setting of the Poor on Work, and for punishing of Vagrants and Beggars; all which said Persons, and every of them, shall be, and are hereby exempted from all the Penalties mentioned in this Act, and are hereby adjudged and declared not to be subject or liable to any of the Penalties or Forfeitures mentioned in one Act of Parliament made in the 25th Year of the Reign of King Charles the Second, For preventing Dangers which may happen from Popish Recusants, for or by reason of any of the aforesaid Offices or Employments.*

December 17. The Managers appointed by the two Houses had their first Conference, as follows.

To the first Amendment the Commons do agree.

First Con-  
ference.

To the second and third Amendments, line 10, and 11, the Commons disagree.

First, because that the Recital, that every Person to be admitted into any Office or Employment, should be conformable to the Church, as it is by Law established, is confined to such Laws as enact, that every such Person shall receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England.

Secondly, because the Corporation and the Test-Acts, which have been frequently evaded, and are by this Bill intended to be made effectual, do provide, that all Persons to be admitted into any Office or Employment, in pursuance of those Acts, should receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England; and all Persons under such Obligation to receive the Sacrament, the Commons conceive are obliged to be conformable to the Church, as it is by Law established.

To the fourth Amendment, Line the 20th, the Commons disagree, because it depends upon the former.

To the fifth Amendment, second Skin, Line the fourth, the Commons disagree, because your Lordships admit this

COME III.

E c

Bill

Anno 1 Ann.  
1702.



Bill to be reasonable as to the Officers and Persons described in the former Part of this Clause, and the Commons see no Reason why this Bill should not equally extend to the Persons and Officers described in the latter Part thereof, left out by your Lordships in this Amendment.

Secondly, your Lordships leaving out, in this Amendment, these Words, (*viz.*) [*Who by the Laws are obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England,*] may countenance an Opinion, that the Persons described in the Words left out by your Lordships, are not obliged to receive the Sacrament.

Thirdly, those Words do equally refer to the Persons described in the former Part of this Clause, to which your Lordships have agreed, as to the Persons described in your Lordships Amendment, and the Commons take it to be very evident, that every Person described in this Clause, as sent up to your Lordships, is obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England.

To the sixth Amendment, line the 20th, the Commons do agree.

To the 7th Amendment, line the 30th, the Commons have agreed, with some Amendments.

To the eighth Amendment, line 34, the Commons have disagreed, because (tho' many other Reasons might be offered, from which the Commons can never depart, yet, at this time, they think it sufficient to say) that the Penalties, left out by your Lordships in this Amendment, are reasonable, and no more than what is necessary to make this Bill effectual.

To the ninth Amendment, third Skin, line the ninth, the Commons disagree, because they think the Penalty of Incapacity, as qualified by the subsequent Proviso, is a proper Punishment for this Offence; and the Commons conceive it necessary to encrease the Penalty upon a second Offence, as has been practised in many other Cases.

To Clause (A.) the Commons agree.

To Clause (B.) the Commons disagree, because, as this Bill takes away no one Privilege that the Dissenters have by Law, so the Commons cannot think it fit to give them any new Privilege by it.

To Clause (C.) the Commons disagree, because the Commons conceive there is no Occasion for it.

To Clause (D.) the Commons disagree, because the Commons think it necessary that the Bill should equally extend to all Persons, before recited, as obliged to receive the Sacrament, and see no Reason for the Distinction made thereby.

To

To Clause (E.) the Commons disagree, because, if such Persons are obliged to receive the Sacrament, there is no Reason to exempt them out of this Bill, and if they are not obliged, the Clause is unnecessary.

Anno 1 Anno  
1702. 3

To these Reasons of the Commons the Lords reply'd, at a second Conference, Jan. 9, as follows.

The Lords insist on the second and third Amendment in the Preamble of the Bill.

Because these Words left out of this Amendment are introductive to the Clause left out by their Lordships in the fifth Amendment. Besides, as the Law now stands, there are many Offices and Employments, to which Persons may be admitted, without being under an Obligation to receive the Sacrament on that account; and therefore they cannot agree to let a Clause stand, wherein a Matter of Fact is positively affirm'd, which they take to be otherwise.

The Lords insist on the fourth Amendment, because it depends on the former.

The Lords insist on their fifth Amendment, because the Act of the 25th of King Charles the Second, called the Test-Act, which has been found by Experience to have been an effectual Security against Popery, (and which their Lordships are willing to enforce yet further by this Bill, as to the Dissenters) is known to every body, and it is generally understood to what Employments it does extend; and therefore their Lordships think it reasonable to rest there, and not to subject Men to the Penalties of this Bill, upon general or uncertain Words.

1. The Lords do not go about to take away the Force of the Corporation Act, or to lessen any Security the Church of England has by it, but cannot agree to extend the Penalties of this Bill, to the general Words of that Act, which, by Construction hereafter, may serve Purposes which are not owned at present to be the Intent of this Bill.

The Lords insist on their eighth Amendment, which relates to the Punishments as they stood, when the Bill was sent up from the House of Commons.

Whatever Regard their Lordships may have to Reasons which the House of Commons are resolved never to depart from, they hope it will not seem strange, that they are not convinced by such Reasons as are not thought fit to be offered.

But, in justification of their Amendment, their Lordships think fit to say, that as they have an undoubted Right to begin Bills with Pecuniary Penalties, and to alter and distribute pecuniary Penalties in Bills sent up to them by the House of Commons (which Right their Ancestors have always enjoyed; and from which their Lordships can never

depart)

Anno 1 Ann.  
1702.

depart) so they are convinced there never was a more just Occasion of making use of that Right, than in the present, Case.

2. They conceive the Penalty of one hundred Pounds and five Pounds a Day for every Day after the Offence committed, to be excessive; and the whole being given to the Informer, would prove a dangerous Temptation to Perjury, and a pernicious Encouragement to Informers, the most odious sort of Persons, which would be a Blemish on the best Reign.

Their Lordships have given a sufficient Proof of their Willingness, to make this Bill as effectual as will consist with Reason, by agreeing to such a pecuniary Penalty (besides the Loss of Office) as may be a proper Encouragement to Informers to swear the Truth, tho' not perhaps a sufficient Temptation to go further.

As to the ninth Amendment, the Commons say they disagree, because they think Incapacity a proper Punishment for this Offence. The Lords insist upon their Amendment, because they think directly the contrary.

Their Lordships observe, that, as the Law now stands, any Person having an Office may be present at Mass, upon much easier Terms than he might be present at a Conventicle, if the Lords should depart from this Amendment.

3. The Lords think, that an English Man cannot be reduced to a more unhappy Condition than to be put by Law under an Incapacity of serving his Prince and Country, and therefore nothing but a Crime of the most detestable Nature, ought to put him under such a Disability; they who think the being present at a Meeting to be so high a Crime, can hardly think, that a Toleration of such Meetings ought to continue long; and yet the Bill says, the Act of Toleration ought to be kept inviolable.

The Lords do not think it at all necessary to make any increase of Punishment for a second Offence, because the first Offence is made Forfeiture of Office; and when the Office is gone, the Person may go to a Meeting without Breach of any Law, while the Act of Toleration continues; and if he shall afterwards get another Office, he will forfeit the same, and incur the Penalties in this Act, if he shall ever after be present at a Conventicle, which their Lordships think sufficient Punishment for a second Offence.

2d Skin, 33d line. The Lords agree to the Commons Amendments to their Lordships Amendment, with the Addition of the Words following, after the Words [prayed for] viz In pursuance of the Act passed in the first Year of King William and Queen Mary, entituled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of*  
the



the Crown; and the Act passed in the 12th and 13th of King Anno 1 Ann. William the third, entituled, *An Act for the further Limita-  
tion of the Crown, and better securing the Rights and Liberties of  
the Subject.* 1702.

The Lords insist on the Clause (B.) Because to leave Protestant Dissenters subject to Penalties, if they do not accept of Offices, and at the same time to restrain them, if they accept of them upon the Penalties of this Bill, from doing what they think themselves obliged to, in Conscience, is Persecution for Conscience, and does not agree with what is set forth in the Preamble of the Bill.

The Lords insist on the Clause (C.) Because they see no Reason why being present at Sermons or Lectures, preached or read in the Universities, and established by ancient and very good Intentions, should subject Men to the Danger of incurring the Penalties of this Law; and the same Clause was thought necessary in the Act of Uniformity.

The Lords insist on the Clause (D.) Because the foreign, Reformed Churches allowed, or to be allowed, were, by the Act of Uniformity, exempted from the Penalties of that Law; and other foreign Protestants, who have been forced out of their own Country, by a cruel Persecution, having settled here in England, by Encouragement from Parliament, as well as from the Crown, it would have a strange Appearance, if it should be thought so high an Offence for any of her Majesty's Subjects in Office, but once to be present at their Way of Worship: This would give such a Discountenance to those of the same Religion abroad, as would no way suit with her Majesty's Character of Head of the Protestant Interest in Europe.

The Lords insist on the Clause (E.) Because the Persons concerned in it have no Profit, nor any Trust but what relates to the Poor; and without this Clause, Charitable Foundations, as Hospitals, public Work-houses, and the like, would meet with Discouragements, and the Number of them might be lessened.

The 16th, The Committee of both Houses met at the free Conference, which was manag'd for the Lords, by the Duke of Devonshire, the Earl of Peterborough, the Lord Bishop of Salisbury, the Lord Somers, and the Lord Hallifax.

And for the Commons, by Mr. Bromley, Mr. St. John, Mr. Finch, Mr. Solicitor-General, and Sir Thomas Powis.

Who acquainted the Managers for the Lords, that the Commons had agreed to the Addition of the Words their Lordships had made to the Commons Amendments to the Lords Amendment in the 2d Skin, l. 33. but insisted on their Disagreement to the Lords other Amendments, and to their  
Lords

Ann 1 Ann.  
1762.

Lordships Clauses marked B, C, D, and E, and therefore had desired this free Conference with the Lords, in order to preserve a good Correspondence between the two Houses.

‘ That the Interests of the Church and State were not to be supported without it; and that the Commons might omit nothing to maintain a good Correspondence, they had taken this Way, which had been practised with so good Success by their Ancestors.

‘ That the Intent of this Bill for preventing Occasional Conformity, is only to restrain, to put a Stop to a very scandalous Practice, which is a Reproach to Religion, gives Offence to all good Christians, and to the best among the Dissenters themselves.

‘ That this Bill enacts nothing new; that it is intended to make the Laws in being more effectual.

‘ That those Laws were thought sufficient to secure our Establishment; but since the Iniquity of Men had found out Ways to evade and elude them, the Commons would never doubt but the Lords would let these Men see, they would not be wanting on their part, to maintain and support it; that this Bill appears to the Commons, absolutely necessary for the preventing those Mischiefs which must prove destructive to the Church, and the Monarchy.

‘ That the Commons were incapable of having any Designs they were ashamed to own: That they designed nothing but the Preservation of the Church of England, and the Monarchy, and doubted not to meet with a ready Concurrence from the Lords in their Designs.

‘ That an Established Religion, and a National Church, are absolutely necessary, when so many ill Men pretend to Inspiration, and when there are so many weak Men to follow them.

‘ That if a national Church be necessary, the only effectual way to preserve it, is, by keeping the Civil Power in the Hands of those whose Practices and Principles are conformable to it.

‘ That when the Corporation-Act was made, the Parliament had fresh in their Minds the Confusions and Calamities, that had been brought upon the Nation, by such as pretended to be at the same time in the true Interest of Religion and their Country: That the Parliament by that Act, and afterwards by the Test Act, thought they had secured our Establishment both in Church and State, and that they had provided a sufficient Barrier to defeat and disappoint any Attempts against them, by enacting, that all in Offices should receive the Sacrament of the Lord's-Supper, according to the Rites and Usage of the Church of England; and never imagined a Set of Men would, at any time, rise up, whose Con-

sciences

sciences were too tender to obey the Laws, but hardned enough to break through any.

‘ That as upon the Revolution, the last Reign began with an Act in favour of the Dissenters, so the Commons do desire, in the Beginning of her Majesty’s auspicious Reign, an Act may pass in favour of the Church of *England*, that the Laws which have been invaded may now be effectually enforced; and that those Men may be kept out of Offices, who have shewn they never wanted the Will, when they had the Power, to destroy the Church.

‘ That nothing had been more misrepresented, than this Bill.

‘ That this Bill does not intrench on the Act of Toleration, and in no respect affects what is enacted by it.

‘ That this Bill takes not from the Dissenters any one Privilege they have by Law.

‘ That this Bill gives not any one Privilege to the Church of England, which is not (at least) intended her by the Laws as they now stand.’

Their Managers then acquainted the Lords, that the Commons insisted on their Disagreement to the second and third Amendments made by the Lords in the Preamble of the Bill, and on their Disagreement to the fourth Amendment; and argued,

‘ That a Preamble is to declare the Occasion of making a Law; it makes no Law; and if it be proper to the enacting Clause, ’tis a proper Preamble.

‘ That the Propositions advanced in this Preamble are these, that whatever Persons are enacted to qualify themselves, the Laws intend should be conformable to the Church.

‘ That if the Laws provide, they shall receive the Sacrament, and by that intend a Conformity; then whosoever breaks the Intention of the Laws, breaks the Law, or at least evades the Law, and it is fit to secure us against such Practices.

‘ That if it be fit the Corporation Clause should stand in the Body, the Lords Reasons for the Amendments in the Preamble will not be of weight

‘ That the Preamble mentions such Persons and such Offices, which must be the Persons and the Offices the Act relates to, and can be no other.

‘ That the word *Enacting* can only be understood of the Laws that do so enact, and being relative, is still more plain and necessary.

‘ That however, if the Lords had pleased, they might, by a very little Amendment, have obviated the Objection they make to these Words, by changing *every Person* into *several Persons*;

Anno 1<sup>o</sup> Ann.  
1702.

Anno 1 Ann.

1702.

*Persons*; which would have reconciled them to the most rigid Construction.

‘ Then their Managers acquainted the Lords, that they insisted on their Disagreeing to the fifth Amendment, and argued,

‘ That the Words in the Test Act are more general and uncertain than those in the Corporation Act, which their Managers cited and compared.

‘ That the Words in the Corporation Act have been there more than forty Years, without any Inconveniency from them, or any Complaint against them for their being too general and uncertain.

‘ That the Inducements for passing the Corporation Act, according to the Preamble, were, that a Succession in Corporations might be perpetuated in the Hands of Persons well affected to the King and the established Government, and for the Preservation of the public Peace both in Church and State.

‘ That these were the Purposes the Commons designed in the passing this Law.

‘ That these Purposes the Commons know the Lords will own with them, are very proper to be attained, and that the Commons can at no time disown them, because they can at no time have any other.

‘ That the Lords agree this Bill should relate to Officers in the Test Act, because the Law intends those Officers should be conformable; and if the Intention of that Law be the Reason to provide against such Evaders of it, the like Intention in the Corporation Act, will serve for a Reason to provide against the Evaders of the Corporation Act.

‘ That by Occasional Conformity the Dissenters may let themselves into the Government of all the Corporations, and 'tis obvious how far that would influence the Government of the Kingdom.

‘ That to separate from a Church which has nothing in it against a Man's Conscience to conform to, is Schism.

‘ That Schism is certainly a spiritual Sin, without the super-adding of a temporal Law to make it an Offence.

‘ That Occasional Conformity declares a Man's Conscience will let him conform, and in such a Man, Non-conformity is a wilful Sin; and why should occasional Conformity be allowed in Corporations, when the Lords agree, that out of Corporations it ought to be allowed?

‘ That if it be reasonable, as the Lords allow it is, that he who hath an Office out of a Corporation, tho' it entitles him perhaps to very little Profits or Trust, should be conformable; it is certainly much more reasonable, that another who is trusted with Magistracy and Power in a Corporation, and

and has thereby a greater Influence, should be conformable.' Anno 1 Ann.  
1702.

The Managers for the Commons insisted on their Disagreeing to the Lords eighth Amendment, and argued,

' That if the Lords were pleased to consider how much greater the Penalties and other penal Laws were, in many Instances, than in this Bill, they presumed the Lords would not think those in this Bill, excessive.

' That in laying Penalties, the Commons shall always endeavour to make them such as shall neither tempt to Perjury, nor totally discourage Informations and Prosecutions, which they thought this Amendment of the Lords would do, should the Commons agree to it.

' Their Managers insisted on their Disagreement to the Lords ninth Amendment, and argued,

' That the Punishment of Incapacity, the Recapacitating and the Increase of Punishment for a second Offence, are warranted by many Precedents of the like nature in other penal Laws.

' That an Incapacity, as qualify'd by the subsequent Proviso, is a very proper Punishment; that a second Offence is a Relapse and an Apostacy, which are Circumstances that aggravate and make it more heinous than the first Offence, and therefore deserve an Increase of Punishment.

' That he is indeed reduced to a very unhappy Condition, who is made incapable of serving his Prince and Country; but in the present Case, our Prince and Country would be in a more unhappy Condition, to be served by such, whose Principles are inconsistent with the Good and Welfare of our Establishment.

' That the Commons could never imagine the Lords could infer from this Incapacity, the taking away the Toleration.

' That the Toleration was intended only for the Ease of tender and scrupulous Consciences, and not to give a Licence for Occasional Conformity.

' That Conforming and Non-conforming are Contradictions; nothing but a firm Persuasion that our Terms of Communion are sinful and unlawful can justify the one, and that plainly condemns the other.'

' For their insisting on their Disagreeing to the Clauses marked B, C, D, and E, their Managers offered these Reasons:

' That the Exempting Protestant Dissenters from serving Offices, would rather establish Occasional Non-conformity than prevent Occasional Conformity, and therefore increase, not cure, the Evil the Bill was intended to remedy.

ANNO 1 ANNO.  
1702.

‘ That the Act of Uniformity, which established the Liturgy and Practice of the Church of England, has provided for the Sermons or Lectures preached or read in the Universities.

‘ That those Sermons and Lectures having been in such manner provided for, it was not thought necessary when the Act passed in the 16th, and in the 22d Car. II. to prevent and suppress seditious Conventicles (in both which Acts Conventicles are described, as in this Bill) to have any particular Exceptions for them, and yet they were never by any Constructions taken to be Conventicles.

‘ That the allowing an Exemption to such as should be present at the Exercises in the foreign Reformed Churches, would be to open a Door for the evading this Law.

‘ That the Places of Governours of some Hospitals are very considerable Preferments, and given as such to the Clergy of the Church of England, and the Commons can never consent by any Law, to let in the Dissenters to the Enjoyment of them.

‘ The Managers for the Lords did maintain the Alterations made in the Bill, and the Clauses added to it.

‘ The Substance of what was said by their Managers was, that the Lords were as desirous as the Commons to preserve a good Correspondence betwixt the two Houses.

‘ That by their agreeing so far as they have done to this Bill, they have gone a great way for the preventing the Evil this Bill is intended to remedy, and own it to be a Scandal to Religion, that Persons should conform only for a Place.

‘ That the Lords do not take going to a Meeting to be *malum in se*, for that the Dissenters are Protestants, and differ from the Church of England only in some little Forms, and therefore the Lords think loss of Office a sufficient Punishment, without an Incapacity.

‘ That it can never be thought those of the better sort will be guilty of this Offence; if they are, they lose their Offices, and loss of Office is a severe Penalty in inferior Officers of the Customs, and Excise, and who have little else to subsist on; in short, they will be undone by the loss of their Office; and this the Lords think severe enough, without carrying it much further. This is yet more considerable in Patent-Places, which by a common custom are bought and sold, and are of the nature of Freeholds.

‘ That Incapacity is too great a Penalty, and that it is hard to imagine any Offence, that is not capital, can deserve it.

‘ That there is no more reason to punish this Offence with Incapacity, than to make it Felony.

‘ That the Dissenters are not obnoxious to the Government, as when the Corporation-Act was made.

‘ That

‘ That the most considerable Persons of the Dissenters are well affected to the Constitution, and are hearty Enemies to the Queen’s and Kingdom’s Enemies. Anno 1 Ann.  
1702.

‘ That in some Corporations the Lords take the Election of Members to serve in Parliament, to be only in such as are concerned in the Government of them, as at Buckingham, &c. and the Lords would not by this Bill deprive Men of their Birthrights.

‘ That the Lords do not think fit to bring any greater Hardships upon the Dissenters, since great Advantages have accrued from the Act of Toleration.

‘ That the Dissenters had formerly been seditious, and had appeared in open Rebellion, they then declared both against Church and State.

‘ But of late, in the greatest Extremity of the Church, they joined with her; when the Bishops were in the Tower, the Dissenters shewed they had no prejudice to the Church, and so they have continued to behave themselves.’

‘ That the Lords did equally desire a good Correspondence betwixt the two Houses, and were so satisfied of the necessity of Union at this time, that they thought all measures fatal that might create any Divisions amongst Protestants at home, or give any check to the necessary Union amongst our Allies abroad, of the reformed Religion.

‘ For which Reasons, in a time of War, they thought Alteration unnecessary, and dangerous, and were unwilling to bring any real hardships upon the Dissenters at this time, or give them any Cause of Jealousies or Fears.

‘ That the Toleration hath had such visible and good effects, hath contributed so much to the Security and Reputation of the Church of England, and produced so good a Temper amongst the Dissenters, that the Lords are unwilling to give the least discredit to that Act; being sensible that Liberty of Conscience, and gentle Measures, are most proper, and have been found most effectual towards encreasing the Church and diminishing the number of Dissenters.

‘ That the Lords apprehend, that some parts of this Bill by them amended, have an air of severity improper for this Season; that though there may be some things to be found fault with, yet a proper time ought to be taken to apply remedies; that the attempting too hasty Cures, have often proved fatal.

‘ That the Lords could not conceive, the Interest of the Church and State were not to be supported without this Bill; since in case of such Danger, and necessity, this Remedy must have been proposed before now, by some of those worthy Members of the Church of England, who in so many Parliaments since the Toleration, have shown so much Zeal for the national Church and Government.

ANNO 1 ANN.

1702.



‘ That the Lords think they have sufficiently shewn their dislike to the Practice of Occasional Conformity, on which they inflict no less a Punishment than loss of Place, and have consented likewise to a reasonable Fine to be laid on those who are proved guilty of this Crime.

‘ The Lords cannot but conceive, that if this Bill did enact nothing new, there would not be such a Contest about it; that it is plain, tho’ Occasional Conformity ought always to have been esteemed a Crime, yet that the Practice was new, and the Punishment provided by this Law new likewise; the Lords therefore consent to a Punishment, but would proportion the Penalty to the Offence.

‘ That the Commons give up this Argument, when they propose for new invented Crimes, new invented Punishments.

‘ That as the Commons need not to be ashamed of Designs so laudable as the Preservation of the Church of England, and Monarchy, so the Lords conclude their Desires of securing the Toleration-Act, the Peace and Quiet of the Kingdom at home, and the Interest of the Nation abroad, will meet with a fair Construction; especially when they hope the Church is so well secured by her Doctrine, by the good Laws of the Realm, and the Protection of so pious a Queen, assisted by a Parliament so well affected to the Church and State.

‘ That the Lords not only allow the necessity of an established Religion, and a national Church, but being likewise of that national Church, they can never be wanting to those Measures they think proper to secure it. And tho’ by the first appearance, the Members of the House of Commons may seem, upon this Occasion, the most zealous Champions for the national Establishment, yet the Lords think the only Contest between them is, which shall most befriend and take care of the Church; the one would procure a hasty-settled Submission, not so much to be depended upon; the other would obtain for her a more gradual but a safer Advantage over those that dissent from her, the same End being designed by both, and only some difference in the Means to attain it.

‘ That the Lords do not well understand the Inference, that as upon the Revolution the last Reign began with an Act in favour of the Dissenters, so the Commons do desire in the beginning of her Majesty’s Reign, an Act may pass in favour of the Church. The Lords conceive, that both Reigns began upon the same bottom and foundation; and that as in this Reign her Majesty hath been pleased to give gracious Assurances as to Liberty of Conscience, so in the last, the Church ever met with Protection and Support.

‘ That the Interest of the Prince is to support the Church against her Enemies; that it is hard, as well as untrue, to  
say



say of the Dissenters they never wanted the Will, when they had the Power to destroy the Church and State; since in the last and greatest Danger the Church was exposed to, they joined with her with all imaginable Zeal and Sincerity against the Papists, their common Enemies, shewing no prejudice to the Church, but the utmost Respect to her Bishops, when sent to the Tower; and that ever since they have continued to shew all the Signs of Friendship and Submission, to the Government of Church and State.

Anno 1 Ann.  
1702.

‘ That in truth, formerly the Dissenters had been seditious, and in Arms and Opposition to the State and Church; but it was the effect of Persecution, and that even then, they were open and avowed Enemies; but that Toleration and Tenderneſs had never missed of procuring Peace and Union, as Persecution had never failed producing the contrary effects.

‘ That the Lords cannot think the Dissenters can properly be called Schismatics, at least those that differ in no essential point; that such an Opinion allowed, would bring a heavy Charge upon the Church of England, who by a Law have tolerated such a Schism, that Connivance hath been used to Schismatics: that public allowance was never given to such, and the Churchmen having Allowed Communion with the reformed Churches abroad, professing Calvinism, it must follow, they hold them not guilty of Schism, or could not allow Communion with them.

‘ That this Bill inflicts a second Punishment on those who fled from France for their Religion; That they sought a very improper refuge amongst those that must think them guilty of Schism, and must use them accordingly; That this may be used as an Argument to justify even the Persecution in France: Why may not the Roman Catholics with Reason banish those, that even Protestants can hardly endure amongst them, and for whose Doctrine and Practice they shew such an Aversion, that a Man must forfeit his Place, and undergo a hard Penalty but for entering once into their Congregation?

‘ That the Lords cannot depart from the Clause relating to the Dutch and Walloon Churches so long established amongst us, lest it should give great Disgust and Offence to our Allies abroad; and at the same time forfeit the greatest Character can be given a Church, that of Tenderneſs and Charity to Fellow-Christians; the contrary Practice being what is so much abhorred amongst Roman Catholics.

‘ That tho’ the Lords allow, that no Man hath a Place by Birthright, or but few such Examples in our Government; yet that giving a Vote for a Representative in Parliament, is the essential Privilege whereby every Englishman preserves his Property; and that whatsoever deprives him of such Vote, deprives him of his Birthright.

‘ The

Anno 1 Ann.  
1702.

‘ The Lords are of Opinion, the Dissenters should have Liberty of Conscience, but agree to the further Measures proposed by the Commons, to allow neither Dissenters, nor Occasional Conformists any share in the Government ; but they take this to be the great Security for the established Religion, that all who sit in the House of Commons must be Churchmen, and the difference between a Churchman chose by Churchmen and chose by Dissenters is only this, that the former will be for using severer, the other gentler means, for bringing the Dissenters into the Church.

‘ That the disagreeing to the Clause relating to Work-Houses where the Poor were employed and relieved, seems very hard, since it could never be conceived, that the distribution of some presbyterian Bread to the Poor, and dissenting Water-gruel to the Sick, could ever bring any Prejudice to the Church of England ; especially by such as having no Authority in the Government, or profit by the Administration of such Charities, gave them indifferently to those of all Persuasions.

‘ Allow them Charity to cover their Sins, which God allows and commands.

‘ That the Lords conceived the Act of Toleration had visibly proved to the Advantage of the Church, that even the Practice of Occasional Conformity in a few, as it had done great Prejudice to the Dissenters, so had it added to the Reputation and Authority of the Church ; the Dissenters having determined the point against themselves by this Practice, for if they can conform for a Place, much more ought they to do so in compliance with the Law, and for the sake of Unity.

‘ But one or two Instances of this in so long a time.

‘ That the Lords are of Opinion the Dissenters are coming into the Church, and that nothing but terrifying Measures and Severity can prevent the happy Union.

‘ The main Design of this Bill, is to secure the Church of England, and in this the Lords do perfectly agree with the Commons, both sides of the House join in it with equal Zeal ; and the main point of this Bill being the excluding all Persons from Employments of Trust, who join themselves to any other Bodies for religious Worship, besides the Church of England, the Lords do agree entirely with them likewise in this ; all the difference is, what further Penalties should be laid, besides the forfeiture of the Employment, on Persons so offending.

‘ The Lords look on the fixing of Qualifications for Places of Trust to be a thing entirely lodged with the Legislature, that without giving any reason for it, upon any Apprehension of Danger, how remote soever, every Government may  
put

put such Rules, Restraints, or Conditions, on all who serve in any Place of Trust, as they shall see cause for; but Penalties and Punishments are of another nature.

Annos 1 Ann.  
1702.

' Draco's Laws, by reason of their extreme severity, are said to have been writ in Blood; if Petty Larceny were made capital, there would be just Occasion for censure.

' There ought to be a Proportion observed between the Offence and the Punishment; and Offences of a lower nature ought not to be punished more severely than Offences of a higher nature.

' Popery has been ever look'd on as that which we ought to apprehend and fear the most, and guard chiefly against, it being our most inveterate, most restless, and most formidable Enemy; and therefore there has been always a great difference put between Papist and Protestant Dissenters, how bad and dangerous soever they may be.

' There has been a Spirit of Moderation eminently conspicuous in the whole Progress of our Legislation, with relation to that Religion, suitable both to the natural Gentleness of this Government, and to the Charity which our Religion teaches.

' In the first beginning of our Reformation under Edward the sixth, the Act of Uniformity was conceived in terms suitable to that Moderation.

(2 & 3 Edw. 6. cap. 1.) Any Clergyman that should use any other manner of Mass, wilfully standing in the same, or that should preach against the Book of Common Prayer, for the first Offence was only to forfeit one Year's Profits of any one of his spiritual Preferments, with six months Imprisonment: Here was a mild Punishment, even of a Clergyman offending; and yet that was not inflicted, unless he continued obstinate.

' By the same Act, if any of the Laity should procure or compel any to use any other Form of Worship in a Cathedral or Parish-Church; even for so public an Affront to the established Religion, he was only to be fined in 10l. or to suffer three Months Imprisonment.

' With this gentleness was our Reformation at first set up; and tho' perhaps, it may be suggested, that by this mildness Papists were so favourably used, that they had it soon in their power to lay that Work in the Dust, and to burn those who had used them so mercifully: Yet when things were happily re-established by Queen Elizabeth, tho' the Penalties were a little heightened, still the Moderation of that time was eminent.

' A Clergyman that before, for his first Offence, had, forfeited one Year's Profits, of any one Preferment, did by the Act of the Queen forfeit one Year of all his Preferments, and the Procurers or Compellers of using another Form of Worship,

Anno 1 Ann.  
1702.

Worship, even in a Cathedral, were fined in an hundred Marks.

‘ With such gentle Methods was our Reformation at first established: And when the many Conspiracies against the Life of that Queen forced the Government to greater Severities, yet in the Statute of the twenty third of the Queen, the hearing of Mass was indeed made more Penal, one hundred Marks was set for the Fine, with a Year’s Imprisonment; but with this temper, that if the Person accused did before Judgment submit and conform, he was to be discharged: this is the highest severity to which our Laws have carried the hearing of Mass, and here is an easy way provided to escape it. It need not be observed that the Penalty of this Bill goes higher, and is not easily avoided.

‘ A Papist Convict, as soon as he conforms himself, and receives the Sacrament, is immediately cleared; no Incapacity lies upon him: But this Act carries that matter further, to a Year’s Incapacity. A Papist that shall relapse, and fall under a second Conviction, is only convicted over again, without any Aggravation of the Censure; which by this Bill is much heightened upon a second Offence: so that the Penalties of this Bill are higher than any the Law has laid on Papists, for assisting at the solemnest Acts of their Religion. It is true, if a Papist shall hear Mass with five Persons more than those of his own Family, he falls under the Penalties of this Bill; but all that have been abroad, and are acquainted with the Methods of that Religion, even where it acts in a full freedom, know that the practice of solitary Masses amongst them is so common, that no Man of that Church is in danger of falling under any Penalty for having any number about him in the Acts of their Worship.

‘ When the first Act against Conventicles past, which is the Foundation of a great part of this Bill, the Fines set were six Months Imprisonment, to be redeemable by five Pounds, for the first Offence; a Year’s Imprisonment, to be redeemable by ten Pounds, for the second Offence; and Banishment, for the third Offence.

‘ The Lords disliking that Severity, added a Clause for redeeming that by an hundred Pounds, and appropriated the Fine; the Severity of these Pains did not agree with the Temper of Englishmen, and the Act was not much executed. Some Years after that, a gentler Act was made, the Fines were then set at five Shillings and ten Shillings for the first and second Offence: but no Man could be fined above ten Pounds for any Offence against that Act, except the Master of the House where the Conventicle was held, who was to be fined in twenty Pounds.

‘ The Severity of this was intended to force the Dissenters to petition for the Toleration, that was then designed, and followed

followed not long after; this Act was executed in Starling's Mayoralty with the greatest Severity, at the time that Madame was at Dover. Soon after, that Prosecution was slackened; but, after the attempt made for the Exclusion, these Laws were again executed for some Years, with great Severity by a Popish Management. After they had set the Church against the Dissenters, then, according to their wonted Acts, they studied to set the Dissenters as much against the Church.

Anno 1 Ann.

1702.

' When, by such Methods, we were reduced to the last extremities, then was the late King invited to come and deliver us; and after he had secured our Religion, our Laws, and our Liberties, he, by the Act of Toleration, which he passed; quieted those Heats that had almost consumed us: Whatever some may think, he will be still reckoned amongst the greatest of our Kings; to him we owed a long continuance of a flourishing Time, even during a great War, and it is to him that we owe the great happiness of her Majesty's being now on the Throne.

' The Church has no reason to complain of the Effects of the Toleration; for as the numbers of those who divide from us do visibly abate all over the Nation, so the Heat and Fermentation which was raised by those Divisions is almost entirely laid, and we cannot but look on that as a happy Step towards the healing of our Wounds.

' But what may we not look for under the Reign of such a Queen! whose Example, whose Virtues, and Zeal give us reason to hope for a happy State of matters in the Church, if undue Severities do not again raise new flames, and set a new edge on Men's Spirits, which may blast those Hopes, and defeat the Success that we might otherwise expect under such an auspicious Reign?

' Before the Act of Toleration passed, while Conventicles were illegal and criminal Assemblies, yet even then a Man in Office, that was present at them, was only liable to a Fine of ten Pounds: Whereas by this Bill, he is liable to a Fine of an hundred Pounds for being present at them, though they have now an Impunity by Law: It does not seem very fit, that the same Action shall be made ten times more Penal after such an Impunity is granted, than it was before the passing that Law, while such Assemblies were illegal.

' This is yet more extraordinary, with relation to the Churches of the foreign Protestants, that were taken care of even in the Act of Uniformity, so that these are illegal Assemblies, not only tolerated, but allowed: Now how unlimited soever the Legislature is, as to the Qualifications necessary for all that hold any Place of Trust, yet it seems contrary to all known Rules, to lay a very heavy Penalty on any Action that is allowed by Law.

Anno 1 Ann.

1702.



‘ A known Maxim, with relation to the Laws that are highly penal, is, that the Words expressing the Crime, ought to be clear, and of a determinate Sense; not liable to Constructions and Stretches: Since the greatness of the Penalty may prove an inducement to make those Stretches, and to carry them far beyond what is intended. The Crime so penal by this Bill, is to be in a Meeting with five more than the Family, under the pretence of religious Worship, other than according to the Liturgy and Practice of the Church of England. Now we know indeed what the Liturgy is, but it is not so easy to tell what the Importance of the word Practice may be, or how far that may be carried; whether it is the Practice of Cathedral or Parochial Churches, and whether Practice shall govern the Liturgy, as in the not saying the second Service at the Altar, or Christning after the second Lesson? and whether all Family-Prayer, if not by the Form of the Liturgy, is not condemned? Though many Books for Family-Prayers have been much recommended, and commonly made use of.

‘ In the Country, few Persons of Condition are so retired, as not to have often five more than their Family within their Houses; must these be excluded from Family-Prayer, if it is not according to the Liturgy? and may not even the Liturgy-Prayers, without Psalms and Lessons, be likewise included within these words, or at least be carried to that by vexatious Informers, and be so given by easy Juries, and partial Judges? It therefore seems ensnaring and unbecoming so mild a Government, as ours happily is, especially when it is in such hands, to lay so heavy a Penalty upon an Offence so dubiously expressed.

‘ But as the Penalty seems excessive, and the words are of uncertain Signification, so the Lords do not approve of the Application of the Sums to be raised by this Bill, that they should all go to the Informer. The ancient Method was, to give them to the Crown, and to leave the encouraging informers to the Crown: It was one of those Trusts that were lodged with the Sovereign; and so the Laws were to be executed severely or more remissly as the public Occasions required; but by this Bill all is given to the Informer, one hundred Pounds for the Offence, and five Pounds a Day for three Months, both which may amount to five hundred and fifty Pounds.

‘ For though an Oath must be made within ten Days, yet this not being to be done in open Court, the Party may not hear of it; and if he knows it to be false, he may have no regard to it, so he may let it run to the term limited by the Bill.

‘ This Nation has been greaning long under false swearing

ing, that has been in every corner; all sides have had their share in it. Till God pours out another Spirit upon us, one of our chief Securities against false Witnessing, is, that such an Infamy follows it, especially when Servants swear against their Masters, that a small matter cannot tempt even a bad Man, to so base a Practice: But if so great a Sum were to be the Reward of such Villany, it is hard to tell where it would stop.

Adno 1 Ann.

1702.

‘ A couple of bad Servants, dismiss for ill practices, might be tempted, by Interest as well as Revenge, to lay a probable Story, and to carry it through by bold swearing; a great deal of this sort was but too much practised among us twenty Years ago; and it is to be feared, that such a Bill as this would set the same things again on foot.

‘ Those who acquaint themselves with the Roman Historians, see in them what a sort of People the Delatores were; the encouraging them, especially Servants against their Masters, was reckoned among the greatest Reproaches of the worst Emperors: But tho’ Domitian made much use of such vermin, it is set out with great Pomp and in very lively Expressions, as the glory of Trajan’s Reign, that he freed Rome from that Plague, and banished all those infamous Betrayers of their Masters. It is to be hoped, that a Reign which God delights to honour, shall have no such blemish cast on it: And that no Encouragement shall be given to false Accusations and Perjury, which the Lords apprehend might follow, if so great a Reward were offered as this Bill proposes: They think the Reward they offer is enough to encourage honest and well-minded Men to discover what they may know: And do not think fit to lay before them Temptations, that may be too strong in so corrupt an Age.

‘ As for this Occasional Conformity, the Lords do not go about to excuse, or to defend it; but they who have observed the Progress of these matters, and have born a large share in these Controversies, must acquaint the Commons, that it is no new Practice invented to evade the Law: It has been both the Principle and Practice of some of the most eminent among the Dissenters ever since St. Bartholomew’s, in the Year 1662. It is known, that Baxter and Bates did still maintain it, and that several Books have been writ about it: And as the fiercest of the Dissenters, who intended to keep up a Wall of Partition between them and the Church, have opposed it much; so that Party of Dissenters that came nearest the Church, and of whom the greatest numbers have come over to it, were those that pleaded for it. Nor is it a certain Inference, that because a Man receives the Sacrament in the Church, he can therefore conform in every other particular; the Office of the Communion, is certainly one of

Anno 1 Ann.  
1702.

the brightest and best composed of any that ever was in the Church of God: The little exceptions that lay to the Posture, were so fully cleared by the Rubric that is added, that it is indeed a wonder how any Person should except to any thing in the whole Office. But it does not necessarily follow, that therefore every Man who is satisfied with this, should be likewise satisfied with every other part of Conformity. There was a very learned and famous Man that lived at Salisbury, Mr. Tombs, who was a very zealous Conformist in all points but one, Infant-Baptism; so that the receiving the Sacrament, does not necessarily import an entire Conformity in every other particular; no more than a Man who can subscribe to the two first Articles of our Religion, that are indeed the main ones, and contain the Doctrine of the Trinity, and the Incarnation and Satisfaction of Christ, is by that concluded to assent to the rest of the thirty-nine; the Dissenters agree to the first, but refuse some of the last: This is likewise to be remembered, that, after St. Bartholomew, in 1662, Occasional Conformity was a step that carried many much farther from Occasional; it grew to a constant Conformity, if not in the Persons themselves, yet in their Children; so the Lords now see some descended from Occasional Conformists, espouse the Cause of the Church with much Zeal.

‘ For these Reasons the Lords do conceive the Penalties in this Bill to be excessive, and unreasonable.

‘ As to the Amendment in the Preamble, the Lords have reason to insist on it, because the Words left out by them relate to another Clause, which they think ought not to stand in the Bill.

‘ But that is not all; the Words, left out in this Amendment, contain a Proposition, which they cannot assent to as true: For, as the Law stands, any Person to be admitted to any Office, is not obliged to be conformable or receive the Sacrament; Officers of Inheritance, Forest Officers, Non-commission Officers in the Fleet, and many others, are under no such Obligation.

‘ The Managers of the House of Commons themselves, seem to admit the Words too general to be maintained in strictness, and therefore they have laboured to qualify them by Construction; that is an Expedient which must be resorted to, when untrue or improper Words happen to be found in a Law already made; but when a Law is making, it has not been usual to contend for keeping in Words which are plainly liable to exception, especially in a Case where the Clause is unnecessary, and the Preamble sufficiently expresses the Design of the Law without it.

‘ The Lords insist on their Amendment, which leaves out the Words relating to the Corporation-Act.

‘ They say it cannot be disputed but that the Test-Act extends



tends to all the considerable Offices and Employments, in which the Security of the Government may be concerned. Anno 1 Ann.  
1702.

‘ That Law was made when the Kingdom was under a just apprehension of Danger to the Church; and the Expedient agreed upon as most likely to secure her, was, the placing all the considerable Offices in the Hands of her Members; so that the Design of the Test-Act is the same with that of this Bill.

‘ Experience has justified the Measures taken by that Law, and there has been no Complaint, that it was not extensive enough as to the several sorts of Offices.

‘ To encounter a Practice which is supposed may be made use of to elude the true Design of the Test-Act, the Commons have proposed by this Bill to restrain absolutely Persons in Office from going to Meetings, and the Lords agree with them so far as relates to all manner of Offices comprehended in the Test-Act, which the Lords think is the right measure to go by.

‘ All Offices which relate to Magistracy (as well within Corporations as without) are manifestly comprehended in the Test-Act; and therefore the Lords have wondered to hear the Managers of the House of Commons argue, that it is of consequence to secure the Magistracy of the Corporations in the hands of Church-men, or to affirm, that if this Amendment was agreed to, Dissenters may let themselves into the Government of Corporations; since it is directly otherwise.

‘ The Corporation-Act was made, when the Kingdom was just delivered from a long Usurpation, and was principally founded on Reasons peculiar to that time.

‘ Indeed nothing but so extraordinary a Juncture could have excused the placing such extravagant Powers in the Hands of the Commissioners appointed by that Act.

‘ Part of that Act has been repealed, and there was no great regard had to it, at the time when a more effectual Security was given to the Church by the Test. The Lords go not about to weaken the Force of the Corporation-Act, but think it not reasonable to extend the Penalties of this Bill to the general and uncertain Words of that Law.

‘ The Managers of the Commons say, the Words of the Test-Act are as general as those of the Corporation-Act; if so, we seem to be contending about nothing; since, how general soever the Words of the Test-Act are, the Lords have agreed they shall stand in the Bill.

‘ The Words in the Test-Act are universally understood; no doubt remains to what Offices and Persons it extends; it is not so as to the Corporation-Act; the uncertainty of the Words in that Law, determines the Lords to think they ought not to be the Description of the Persons to whom the Bill should reach. ‘ They

Anno 1 Ann.  
1702.

‘ They think themselves obliged to be more cautious in this matter, because the Bill now depending does not only concern those who shall for the future come into Offices, but such as are at present possessed of them.

‘ In Corporations there are many Offices of a private and inferior nature; some have been obtained by Purchase, some by long Services; and Men have attained to others in course; some of these are Freeholders, many of them the whole Subsistence of Families, and perhaps have been enjoyed many Years, under an obedience to all such terms as the Law now in being has prescribed. And the Lords think it hard to disturb Men in their Freeholds and Possessions by new Laws, unless the case be such, that the Security of the Government does appear to be manifestly concerned. Where that does appear, the Lords can satisfy themselves in dispensing with private Considerations (as is seen by what they have agreed to in this Bill,) but they can not go farther.

‘ The Lords look on the Penalties in this Bill, as it was framed by the House of Commons, to be very excessive, and such as bear no proportion to the Offence, and therefore they cannot agree to them.

‘ The Practice of Occasional Conformity is not new, it is almost of the same date with the Act of Uniformity; it has been a known Dispute among the Dissenters, and vindicated in print by some of them, and practised by many of them, who had no thoughts of Offices, and has been a means of bringing several Persons entirely from Meetings. The Objection to their Practice by those of the Church of England, has been but of late.

‘ The Lords do not go about to justify Men who can come so far towards uniting with the Church, and yet will stop there, any more than they do to justify any other of the points upon which the Dissenters continue their Separation.

‘ And since there is reason to apprehend, that such a liberty as this may be perverted to the eluding the Law, the Lords have agreed to restrain it.

‘ They are willing to make it impossible for such Men to keep in Offices, because Hypocrites would make use of such a liberty; but they are not willing to ruin Persons utterly, on account of a Practice, that many well-meaning Men have been and may be led into, and which they think tends naturally to bring them over entirely to the Church.

‘ The Penalty of 100l. and 5l. a Day, and that whole Sum given to the Informer, the Lords think a dangerous temptation to Perjury.

‘ Our Law has branded Informers with the hardest Character; troublesome Persons, who grievously charge, vex and disturb the Commons, this is the Description the Law has given of them.

Judges

' Judges must encourage these sort of Men according to the Terms of the Laws when made; but Legislators when they are considering of Laws to be made, must speak of these Men as they are.

Anno 1 Ann.  
1702.

' So great a Temptation will make the Innocent almost as insecure as the Guilty.

' Experience shewed this in the Instances of some of the most active Informers in prosecuting Dissenters on the Acts against Conventicles; who were convicted of Perjuries against many Persons, though there the Temptation was nothing comparable to what it would be, if these Penalties should stand.

' And though the Commons have yielded to the Lords Amendments, that two Witnesses shall be necessary, and that the time of Prosecution shall not be left indefinite; yet that will not be sufficient, for both those things were provided for in the Conventicle-Act.

' And though the Commons have also yielded to shorten the time for the Prosecution, yet the Penalty may still amount to a very great Sum; for the five Pounds a Day, may go on for three Months.

' The Punishment of a total Incapacity, is the heaviest, next the loss of Life; and yet it is to be inflicted for the first Offence.

' The word Employment is more general than any Word the Test-Act has; such Punishment ought only to be for a Crime of the highest nature; and yet going to a Meeting is no Crime, as the Law now stands, nor will it be a Crime in any Man who is not in Office, when the Bill is passed into a Law.

' The Lords agree to that part of the Penalty which answers the visible Design of the Bill, by making the going to a Conventicle to be Forfeiture of Office. To go further, to ruin Men's Estates, to make them infamous, (for what can be more infamous than such a Disability) they think is to exceed all Bounds.

' The Managers for the Commons say, there are greater Penalties in other Laws; it does not appear by any Instances which have been given. These Penalties are much heavier than in most of the Laws about Religion. But if that were true, what is to be inferred from thence, if the Crimes be not the same in the heinousness of their natures? Justice and good Policy require there should be some Proportion between the Offence and the Punishment.

' The Lords have quite another Consideration of the Penalties in this Bill, and those of the Test-Act.

' In the present Case, an innocent Man has only a sort of negative Proof to defend him from false Witnesses, who may  
choose

Anno 1 Ann.  
1702.

chuse to assign such a Time and Place for the Fact, as they know the party can be least likely to defend himself.

‘ Whereas in the Case of the Test-Act, the Man who resolves to obey the Law, which is to subscribe the Declaration, and receive the Sacrament, has not only the Liberty to chuse his own Witnesses of his receiving the Sacrament, and Attestation of the Minister who officiates; but the whole is put upon Record: So that when a Man has complied with the Law, he is beyond all Possibility of suffering by a false Accusation.

‘ There seems to be no Occasion here to increase the Punishment upon a second Offence, for it does depend upon the former, as in most cases, where the Penalty is increased for the second Offence; for when the Office is gone, the Person is under no legal Restraint from going to Conventicles.

‘ If he obtains a new Office, he brings himself at the same time under the reach of this Law, upon a new Account; and if he offends again, he will lose that Office, besides incurring the pecuniary Penalty.

‘ The Proviso, which is to qualify the Incapacity, is made so very hard, that it is a new Instance of the great Severity of the Bill. A Man to set himself right again, must take more public Shame to himself, than the severest Laws against Papists require, to discharge all the Penalties and Incapacities, of a Popish Recusant convict, as appears plainly by perusing the several Acts relating to that Matter; and the Lords will always be tender of putting greater Hardships on protestant-Dissenters than Papists.

‘ That no Comparison ought to be made between the Penalties the Law had laid upon Papists for holding of Offices of Trust, without taking the Test and receiving the Sacrament, and the Penalties to be laid upon Occasional Conformity, for holding their Offices after they have been at a Conventicle.

‘ This Difference of Punishment, that ought to be observed between these two, is not upon the account that the Errors of the one are much greater than the Errors of the other, how true soever that is; but because the one depend upon a foreign Power, and are subject to it: So the Nation is really in danger if such Men should hold Employments, who must be looked on as public Enemies, and as Persons who receive Directions from an Authority that we are sure is ever contriving our Ruin; but no such Danger can be apprehended from Men who have no other Strength than what they have among ourselves, which we are sure can no way be compared to the Strength of the Established Church.

‘ As to the Occasional Conformity, it will appear no such formidable Thing, if we consider what the Sense both of the

the Church of England, and of the Church of Rome was, Anno 1 Ann.  
of this Matter, upon other Occasions.

1702.

‘ In the Beginning of Queen Elizabeth’s Reign, the Reformation and the Liturgy were put on a foot, to bring over the whole Nation, that had then a Leaven of Popery, to concur in it; it had this Effect, all the Papists of England came to Church, and were Occasional Conformists: Yet the Church of England was not uneasy at this; they complained of no Danger from it. But who was sensible of it? It was the Pope, and he was in the right, as to his own Interest; for he saw what in time that Occasional Conformity would grow to, and therefore he put a Stop to it, and by a Bull condemned it. And indeed the Church of Rome has shewed by the Methods of all their Missions, that they apprehend no Danger, but great Advantage, from any Step of the Occasional Conformity of Protestants. They accept of any thing, and encourage every thing of that kind; and we have all seen, by the fatal Effects of their Practice, that they are in the right, and gain their Ends by it.

‘ As for the Clauses about the foreign Protestants, there is great reason to give them all just Encouragement; for as they have brought among us many new Manufactures, so they have carried them so far, that of late Years we have exported to the Value of a Million of Woollen Manufactures, more than was done in King Charles’s Reign, before they came among us; and the putting them under Apprehensions or Discouragements, may be a Means to drive them to a Country where they are sure of an entire Liberty.

‘ The Book that goes under the Name of Mr. De Wit shews, that the Dutch reckon that the Woollen Manufactures can never have such a Settlement among us as with them, because they who must work them, cannot have so entire a Liberty of Conscience here as there: We have felt the happy Effects of the Liberty granted them in the last Reign, and it is to be hoped, that nothing will be done in this to impeach that, or to raise Apprehensions and Fears in the Minds of Men that are so useful to us, in the most important Article of our Trade.

‘ As to the Clause concerning Universities, we are not to consider the Danger they may be in under our present Circumstances, but what may happen in another State of things. It is not so long, since we saw what Advantages were like to be taken against those Learned Bodies, if there had been such a Law to furnish those that were troubling them without any Reason or Pretence, with the Handle that this Bill might have given them without this Clause; and therefore the Lords think they are too much indebted to those great

Anno 1 Ann.  
1702.



Foundations, not to take care of them, and think themselves bound to secure them, even from remote and possible Dangers; besides that, the Vice-Chancellor and Heads of Houses, being Men often of great Dignities and Preferments, may by a severe Prosecution be ruined, unless secured by a Clause.

‘ As for the Clause concerning those Societies that are engaged in taking care of the Poor; the Nation, and this City in particular, has seen such good Effects of their Care and Industry, that it cannot seem reasonable to put any Discouragement upon them. How many poor Children do they take care of? They are by their means clothed and taught, and bound out to Trades; and if some mislead People join their Assistance and Charity to so great a Work, shall they be hindered from it, or punished for it, if they have been so far mistaken as to be at a Conventicle? But this Clause has no relation to endowed Hospitals which are under peculiar Statutes, and to which none of these People have any Access: The Law has taken care of these, and secured them; and this Clause relates only to free and voluntary Societies, for such Charities, which the Lords do not think fit to put any Restraints upon, or to bar any from coming into them.’

‘ The Managers for the Commons, by way of Reply to these Arguments urged by the Lords, said,

‘ That several of the Lords Arguments were against the Bill.

‘ That the Lords had agreed to the greater Part of this Bill, and therefore should confine themselves and speak only to their own Amendments.

‘ That no time could be more seasonable for this Bill, than the present; because the Church was now in no danger of Popery, or of Fanaticism: But good Laws are to be made for Posterity, and may be obtained most easily in the best Reigns.

‘ That the Right of Election of Members to serve in Parliament, is in those that are concerned in the Government of Corporations, and if they should by this Bill be turned out of their Employments, and consequently lose their Votes in the Elections; yet it cannot be said they lose their Birth-rights, because no Man is born a Magistrate.

‘ That the Commons Penalty bears a just Proportion to the Offence, and that all above one hundred Pounds is for an obstinate persisting in the Crime.

‘ That the Offender cannot be guilty through Inadvertency, he must offend knowingly and willingly.

‘ That the Test-Act gives five hundred Pounds, a much greater Penalty than that in this Act, to the Informer; besides that Act brings the Offender under very great Disabilities.

‘ That

‘ That an innocent Man is no more secure under the Test-Act, than under this Bill; the Question must be always upon his Acting or not Acting, which does not depend upon the Record; and a very violent Prosecution has been known within a few Years against an Alderman of Worcester, a constant Conformist, only upon a Nicety, and where there has been no Fault in the Party. Anno 1 Ann.  
1702.

‘ That the Trial must be by a Jury, not in a summary Way before a Justice of the Peace, as in some of our penal Laws.

‘ That it was very plain, good Protestants might be affected by Prosecutions upon the Test-Act.’

‘ Then their Managers left the Bill with the Lords, and said, they hoped the Lords would not let the Public lose the Benefit of so good a Law.

‘ The Result of all was, that both Houses adher’d, and so the Bill was lost.’

During this Interval the House *Resolv’d Nem. Con.* to give their Thanks to the Duke of Ormond, Sir George Rooke, and the Earl of Marlborough. Which was done accordingly: To the Lords Ormond and Marlborough, by a Committee appointed for that Purpose; and to Sir George Rooke from the Chair, he being in his Place. The Answer of the Duke of Ormond was to this purpose: The Thanks  
of the House  
given to the  
Duke of Or-  
mond, Lord  
Marlborough,  
and Sir George  
Rooke.

‘ That it was the greatest Honour which could be given a Subject. That as for his part, he had done nothing, but what was his Duty: That all the Troops under his Command behav’d themselves very gallantly; and he desir’d to express his utmost Thanks for the Honour the House had done him.’

The Earl of Marlborough express’d himself on the same Occasion as follows:

‘ That nothing could add to the Satisfaction he took in the Queen’s most gracious Service, but the obliging and favourable Sense which that House was pleased to express of them, (his Endeavours perhaps) of which Honour, no Man could be more truly sensible than himself. That, our Success was chiefly to be imputed to God’s Blessing upon her Majesty’s happy Conduct, and the great Bravery of her own Troops, and those of her Allies

The Speaker’s Speech to Sir George Rooke, and his Reply are as follow:

‘ Sir George Rooke, you are now return’d to this House, after a most glorious Expedition; her Majesty began her Reign with a Declaration that her Heart was entirely English, and Heaven hath made her triumph over the Enemies of England: For this, Thanks have been returned, in a most solemn manner, to Almighty God; there remains yet a Debt The Speaker  
gives the  
Thanks of the  
House to Sir  
George Rooke.

Anno 1 Ann.  
1702.

of Gratitude to those who have been the Instruments of so wonderful a Victory, (the Duke of Ormond, and yourself, who had the Command of the Sea and Land-Forces.) In former times, Admirals and Generals have had Success against France and Spain alone, but this Action at Vigo hath been a Victory over them confederated together: You have not only spoiled the Enemy, but you have enrich'd your own Country; common Victories bring Terror to the Conquer'd, but you brought Destruction upon them, and additional Strength to England: France had endeavour'd to support its Ambition by the Riches of India; your Success, Sir, hath only left them the Burden of Spain, and stript them of the Assistance of it; the Wealth of Spain and Ships of France, are by this Victory brought over to our juster Cause. This is an Action so glorious in the Performance, and so extensive in its Consequence, that as all Times will preserve the Memory of it, so every day will inform us of the Benefit.

'No doubt, Sir, but in France you are written in remarkable Characters in the Black List of those who have taken French Gold; and 'tis Justice done to the Duke of Ormond, and your Merit, that you should stand recorded in the Registers of this House, as the sole Instruments of this glorious Victory; therefore the House came to the following Resolution.'

*Resolved, Nemine Contradicente,* That the Thanks of this House be given to the Duke of Ormond, and Sir George Rooke, for the great and signal Service performed for the Nation at Sea and Land: 'Which Thanks I now return you.'

To which Sir George Rooke answered in the following Terms:

Sir George's  
Answer.

'Mr. Speaker, I am now under a great Difficulty how to express myself upon this very great Occasion; I think myself very happy, that in Zeal and Duty to your Service, it hath been my good Fortune to be the Instrument of that which may deserve your Notice, and much more the Return of your Thanks. I am extremely sensible of this great Honour, and shall take all the Care I can to preserve it to my Grave, and convey it to my Posterity without Spot or Blemish, by a constant Affection and zealous Perseverance in the Queen's and your Service. Sir, No Man hath the Command of Fortune, but every Man hath Virtue at his Will; and though I may not always be successful in your Service, as upon this Expedition, yet I may presume to assure you, I shall never be the more faulty.

'I must repeat my Inability to express myself on this Occasion; but as I have a due Sense of the Honour this House hath been pleased to do me, so I shall always retain a due

and



and grateful Memory of it: And though my Duty and Allegiance are strong Obligations upon me to do my best in the Service of my Country, yet I shall always take this as a particular Tie upon me to do Right and Justice to your Service upon all Occasions.'

Anno 1 Ann.  
1702.

During this Interval, likewise, Mr. Colepepper, who delivered the famous Kentish Petition, and was under Prosecution for the same, petitioned the House, that Proceedings might be stopp'd; upon which he was call'd before the House, and being ask'd, whether he was sorry for the several scandalous, and seditious Practices by him acted against the Honour and Privileges of that House, against the Peace of the Kingdom in general, and the Quiet of his own Country in particular: He reply'd, he was sorry. Upon which, a Resolution pass'd to address the Queen to stop Proceedings, according to the Prayer of the said Petition.

Mr Colepepper's  
Petition.

About the same time the Queen went to the House of Lords, and gave the Royal Assent to *An Act for granting to her Majesty a Land-Tax*: And the Question being put the same day in the House of Commons, whether Prince George's Servants should be capacitated to sit in Parliament, it was carry'd in the Affirmative by a great Majority. Then Sir Edward Seymour mov'd for bringing in a Bill, *For Resuming all Grants made in King William's Reign*; which being carried by a Majority of one hundred and eighty Voices against seventy eight, Mr. Walpole mov'd, That all the Grants made in the Reign of the late King James should be resum'd likewise, which pass'd in the Negative. Sir John Holland made a Motion for bringing in a Bill, *For the more free and impartial Proceedings in Parliament, by providing that no Person whatsoever in Office or Employment should be capable of sitting in Parliament*, which pass'd also in the Negative. But in Lieu of it, a Bill was brought in, and carry'd, *For the more free and impartial Proceedings in Parliament, by Providing, that no Person shall be chosen a Member, but such as have a sufficient Real Estate*.

The Land-Tax  
Bill pass'd.

Motions for re-  
suming Grants.

A Place-Bill  
mov'd for, and  
over-rul'd.

In the Beginning of January, Her Majesty sent the following Message to the House:

- That her Majesty having received several Letters from the
- States-General, as also several Memoirs from their Amba-
- sadors, setting forth the great Apprehensions they lie under
- from the extraordinary Preparations of France, &c. and
- the Necessity of making an Augmentation of the Forces of
- England and Holland, as the only Means to prevent the
- Ruin that threaten'd them, was pleas'd to propose some Ex-
- pedients to the States-General, which she hoped might
- have been of some Advantage to the common Interest, &c.
- But those Expedients not having produced the Effects she
- hoped

The Queen's  
Message to the  
Commons.

Anno 1 Ann.  
1702.



‘ hoped for, and the States-General having renew’d their Applications to Her Majesty, with more Earnestness than before, to assist them, in this time of their Danger, with an Augmentation of her Forces; Her Majesty had commanded the said several Letters, &c. to be transmitted to them, that they might the better judge of the Danger which threaten’d them.

‘ To which was added, That Her Majesty conceived this Matter to be of great Consequence, as to acquaint them with the present State of it, that she might have their Advice upon it; not doubting but that they would take such Measures upon this Occasion, as may be for Her Majesty’s Honour and Service, the Safety of her Kingdom, and the necessary Support of her Allies.

In Compliance with this Message, the Commons presented the following Address.

Commons Address to the Queen.

‘ Most gracious Sovereign, We your Majesty’s most dutiful and loyal Subjects, the Commons in Parliament assembled, do beg leave to return your Majesty our humble Thanks for your Majesty’s most gracious Condescension, in communicating to your Commons the several Memorials, Transactions and Letters that have pass’d between your Majesty and the States-General, for the Augmentation of your Majesty’s Forces, which are to act in Conjunction with the Forces of the States-General; by all which, your Commons are entirely convinced of your Majesty’s great Tenderness for your Subjects, in not laying a greater Burthen upon them than the Necessity of Affairs does absolutely require.

‘ And your Commons do humbly assure your Majesty, that in case your Majesty shall think it necessary to enter into any further Negotiation for encreasing the Forces, which are to act in Conjunction with the Forces of the States-General (for whose Interest and Preservation we shall always have the greatest Regard) your Commons will enable your Majesty to make good the same.

‘ And your Commons do further crave leave humbly to beseech your Majesty, that you will be pleased to insist upon it with the States-General, that there be an immediate Stop of all Posts, and of all Letters, Bills, and all other Correspondence, Trade and Commerce with France and Spain, which your Commons are humbly of Opinion is so absolutely necessary for carrying on the just and necessary War, wherein your Majesty is engaged, to the interrupting the Trade of your Enemies, and reducing them to the greatest Streights; that your Commons do humbly desire, that England may not be charged with the Pay of such additional Troops, but from the Day when such Stop shall be made by the States-General.

To this Address of the Commons, her Majesty was pleased to make the following Answer :

‘ Gen-

‘ Gentlemen, It is with great Satisfaction that I receive  
 ‘ this Address, which enables me to join with the States-  
 ‘ General in augmenting our Forces, according to their  
 ‘ Desire: I make no doubt but the Condition you mentioned  
 ‘ will be approved, since it is absolutely necessary for the  
 ‘ Good of the whole Alliance; and I shall this Night send  
 ‘ Directions to my Minister in Holland to concur with the  
 ‘ States in providing the Troops accordingly’.

Ann. 1 Ann.  
1702.

Queen's Answer.

Among the most material Transactions of this Session we must range what follow'd in the House, after the Commissioners for public Accounts had delivered in their Report: For they having made very severe Observations on the Conduct of the Earl of Ranelagh, as Pay-Master of the Army, and his Lordship's Answer not being deemed satisfactory, they first resolv'd, That his Lordship had given great and unnecessary Delays in his Proceedings before the Commissioners; and, after both Parties had been heard, *Nem. con.* that it appear'd to them, that the seven Commissioners had had very good Grounds for making their Observations in their Narrative or Representation laid before the House; That all Money issued to the Pay-Master General of the Army, ought to be applied to the Use of the Army and Forces only, and to no other Purpose whatever. That all Privy-Seals, Orders of the Treasury and other Warrants to the Pay-Master of the Army, to apply the Money in his Hands, to other than the Use of the Army and Forces, were illegal and void. That all Privy-Seals, or Warrants to the Auditors of the Imprest to pass Accounts without proper Vouchers, or to make any Allowances, other than according to the Law and Course of the Exchequer, were illegal and void. That the Seven Commissioners had made good their Allegations, &c. And lastly, That it appeared to the House, that the Pay-Master had misapplied several Sums of the public Money.

Proceedings a-  
gainst the Lord  
Ranelagh.

The Consequence of all which was, that the said Earl lost his Place, and was expell'd the House.

They likewise resolv'd further on the said Report, That Charles Lord Hallifax, Auditor of the Receipt of the Exchequer, had neglected his Duty, and was guilty of a Breach of Trust, in not transmitting the Imprest Rolls half-yearly to the King's Remembrancer, &c. and that an Address be presented to her Majesty, that she would be pleas'd to give Directions to the Attorney-General to prosecute him for the said Offence. Which said Address being presented accordingly, the Queen said in Answer, ‘ I will send to the Attorney-General, and give him my Directions pursuant to this Address.’

And Lord Hallifax.

The Course of these Proceedings drew the following Message from the Lords:

Message from  
the Lords there-  
on.

‘ That the Lords have appointed a Committee to consider  
 of

Anno 1 Ann.  
1702.

of the Observations in the Book of Accounts laid before them by the Commissioners of Accounts, the 15th of January, and also those deliver'd the 2d Instant from the said Commissioners: That the Committee met yesterday Morning, and have proceeded upon the first Observation, and the additional Observations relating to the Auditor of the Receipt of the Exchequer. And those Commissioners being Members of this House, the Lords do desire, that this House will give leave that those Commissioners, or some of them, should attend the said Committee to-morrow, at ten of the Clock in the Forenoon.

Upon this, the Commons appointed a Committee to inspect the Lords Journals, the principal Part of whose Reports, as delivered by Col. Granville, is contained in the following Transcripts therefrom.

Report from the  
Lords Journals.

Feb. 5. His Grace the Duke of Somerset reported from the Lords Committees, appointed to consider of the Observations delivered into this House from the Commissioners of Accounts, That the said Commissioners had not attended the Committee; but upon Consideration of the whole Matter, the Committee had order'd him to report as followeth:

'The Committee appointed to consider of the Observations in the Book of Accounts delivered into this House the 15th Day of January last, and the 2d of this Instant February, have made some Progress in considering the said Observations; and do humbly take leave to acquaint the House, that they have examined into the first of those Observations; and also the further Observation delivered into this House the 2d Instant, relating to the transmitting the Ordinary Imprest Rolls to the Queen's Remembrancer. They have inspected several of the original Imprest-Rolls, delivered into the House by Mr. Barker, Deputy to Her Majesty's Remembrancer. They also examined divers Officers of the Exchequer and others, upon Oath; and do find, that by the ancient and uninterrupted Course of the Exchequer, two Imprest Rolls are to be made out for each Year; the one comprehending all Sums Imprest from the End of Trinity-Term to the End of Hillary-Term; the other containing all such Sums from that time to the End of Trinity-Term. Which Rolls are commonly call'd Half-Yearly Rolls, tho' improperly. They find, that by the ancient Course of the Exchequer, these Imprest Rolls being made out by the Auditor of the Receipt, are to be delivered by him to the Clerk of the Pells; whose Duty it is to examine and sign them; and this being done, the Clerk of the Pells delivers them to the Remembrancer.

This Usage was by degrees discontinued, in the Reign of King Charles the Second; and the Remembrancer, or his Agent, used to come to the Office of the Auditor of the Receipt

ceipt, and take away the Imprest Rolls from thence immediately. But in the time when the Earl of Rochester was Treasurer, the ancient Usage was restored, and he did order that the Imprest Rolls should be carefully examined and signed by the Clerk of the Pells, before they should be transmitted to the Remembrancer. And accordingly, since that time, the ancient Custom has been observed, as well before as since the Act of Parliament made in the eighth and ninth Year of his late Majesty, for the better Observation of the Course anciently used in the Receipt of the Exchequer; (that is to say) the said Half-Yearly Rolls, when made out and signed by the Auditor, have been by him transmitted to the Clerk of the Pells: And when the Clerk of the Pells has examined and signed them, he or his Deputy has delivered them to the Remembrancer. And this appears by the Remembrancer's Indorsement upon the Rolls.

Anno 1 Ann.  
1702.

The Committee finds, That Charles Lord Hallifax has been Auditor of the Receipt, from the End of November, 1699; since which time, six Imprest Rolls have been transmitted to the Remembrancer, and there is a seventh Roll now under Examination of the Office of the Pells; and no other Roll can be prepared 'till after the 12th of this Instant February.

Upon the whole Matter, the Committee are humbly of Opinion, that Charles Lord Hallifax, Auditor of the Receipt of the Exchequer, hath performed the Duty of his Office in transmitting the Ordinary Imprest Rolls to the Queen's Remembrancer; according to the ancient Custom of the Exchequer, and the Direction of the Act 8th and 9th *Gulielmi Tertii Regis*; intituled, *An Act for the better Observation of the Course anciently used in the Receipt of the Exchequer*: And that he hath not been guilty of any Neglect or Breach of Trust upon that account.

Which Report being read; as also the Examinations taken upon Oath by the Committee; as also the Dates and Indorsements of the several Imprest Rolls, delivered by Mr. Barker, Deputy to the Queen's Remembrancer: It was proposed to agree with the Opinion of the Committee in this Report.

Then the Question was put, Whether this House will agree to the Opinion of the Committee in this Report?

It was resolved in the Affirmative.

It is resolved and declared by the Lords Spiritual and Temporal in Parliament assembled, That Charles Lord Hallifax, Auditor of the Receipt of the Exchequer, hath performed the Duty of his Office, in transmitting the Ordinary Imprest Rolls to the Queen's Remembrancer, according to the ancient Customs of the Exchequer, and the Direction of the

Anno 1 Ann.  
1702.

Act 8th and 9th *Gulielmi Tertii Regis*; entitled, *An Act for the better Observation of the Course anciently used in the Receipt of the Exchequer*: and that he hath not been guilty of any Neglect or Breach of Trust upon that account.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Proceedings of the House, and of the Committee, appointed to consider of the Observations in the Book of Accounts, delivered into this House the 15th of January last, and the 2d Day of this Instant February; and the Resolution of this House thereupon, shall be forthwith printed and published.

The Result of this Report was, that one Conference was desired with the Lords by the Commons, and a second with the Commons by the Lords; which last was afterwards reported to the House as follows.

Conference  
thereon.

' Sir Joseph Tredenham reports, That they had attended the said Conference, and that the Lord Rochester managed the Conference on the part of the Lords, and acquainted them, that the Lords had desired this Conference, for the Continuance of the good Correspondence between the two Houses: And that the Lords were not satisfied with the Reasons given by this House touching the Amendments to the Bill, entitled, *An additional Act for appointing and enabling Commissioners to examine, take and state the public Accounts of the Kingdom*; and that they do insist on all their Amendments to the Bill: And that in answer to their Reasons given by this House against the said Amendments, the Lords gave the Reasons following, *viz.*

' To the first and second Reasons offered by the Commons, the Lords answer, that the Commissioners named by the Commons having already made some Progress in the stating the Accounts, the naming of some new ones can be of no Prejudice to the perfecting that Work, the nature of taking and stating Accounts being such, that new Men being joined with others, may be very capable of going on with the Remainder of that Work.

' The Lords do agree, that in the Act passed in the nineteenth of King Charles the Second, for taking Accounts, the Commissioners thereby constituted were named by the Commons; and the Lords did agree to it, both because they approved of the Number and Quality of the Persons, and because they, being not Members of the House of Commons, might always be sent for at the Pleasure of the Lords, to explain any Matters relating to those Accounts. But the Lords having now had Experience by the last Act, which constituted no Commissioners but only such as were of the House of Commons, that their Lordships cannot have those Commissioners at any time before them, to answer such  
Questions,

Questions, or explain such Doubts, as their Lordships may have Occasion to enquire into; or even to intimate such Points as seem to have been omitted, either in the Accounts or the Observations made thereupon; is one very great Reason why the Lords have found it necessary to name such, in this Bill, as their Lordships may from time to time receive Informations from; without which, their Lordships examining into the Accounts will prove defective and dilatory.

Anno 1 Ann.  
1702.

‘ To the third and fourth Reasons, their Lordships reply, that they are unwilling to enter into a Dispute with the Commons, what is the proper Work of either House, in relation to the granting Supplies to the Crown, or taking or examining the Accounts thereof; because they would avoid any Controversies of that kind with the House of Commons, especially at this time, having by Experience found that such Debates have frequently been attended with ill Consequences to the Public. But upon this Occasion their Lordships conceive ’tis very plain, that since this Bill provides that the Accounts shall be laid before the Lords, it must be likewise owned, that it is the proper Work of this House to examine them; and by no means can their Lordships acquiesce in the Reason given by the House of Commons, that they being the Representatives of all the Commons, no Commoner can be named, but by them; because that would, by the same Parity of Reason, deprive their Lordships of the Power of assigning Council to any Man impeached by the House of Commons, which in Cases of Misdemeanor they have always done; and by the late Bill for regulating Trials in Cases of Treason, it was agreed by both Houses, that Council should be allowed in Cases of Treason, even upon Impeachments; which Council must have been assigned by the Lords, and out of the Commoners.

‘ Lastly, the House of Lords cannot allow the Disposition as well as granting of Money, by Act of Parliament, to have been solely in the House of Commons: And much less can their Lordships consent, that the Lords have not always had a Right of naming any Persons to be employed in the public Service by Act of Parliament, and assigning them such Salary for their pains, out of the Exchequer, as should be agreed on in that Act of Parliament. And for these Reasons their Lordships do insist on all their Amendments to the said Bill.’

And after Consideration had of the said Report, it was Resolved, That this House doth insist upon their Disagreement with the Lords in the Amendments to the said Bill.

*Resolved*, That a free Conference be desired with the Lords upon the Subject-Matter of the last Conference.

A free Conference was accordingly held, and after that

Anno 1 Ann.  
1702.

Two free Con-  
ferences re-  
ported.

a second at the Request of the Lords, a joint Report of which is as follows.

‘ Sir Joseph Tredenham (according to the Order of the Day) reports the two last free Conferences with the Lords, as followeth.

‘ That the Conference was begun by the Managers for the Commons, who acquainted their Lordships, that the Commons had desired this free Conference, to preserve that good Correspondence which had hitherto continued between the two Houses.

‘ That they had solemnly and deliberately considered their Lordships Amendments to a Bill from the Commons, entitled, *An Act for appointing Commissioners to examine and state the public Accounts of the Kingdom*, and the Reasons which induced their Lordships to insist on those Amendments, but had not found them sufficient to convince them; and they still disagree with the Lords in those Amendments; and insist on that Disagreement.

‘ That the particular Knowledge the Commons had of the Commissioners named in the Bill, recommended them to their Nomination; and the Progress those Commissioners have already made, in stating those Accounts, hath justified the Commons good Opinion of their Abilities and Integrity.

‘ That to add new Commissioners, must of necessity delay the perfecting this Work, and would hazard the rendring the Bill (which continues only for a Year) ineffectual; for the Commissioners proposed in their Lordships Amendments, will find themselves by their Oath, and to answer their Lordships Expectations, obliged to inform themselves, as well of what hath already undergone the Scrutiny of the present Commissioners, as in those Particulars which shall hereafter become the Subject of their Enquiry, and that such Retrospect cannot be consistent with the Dispatch the Bill requires.

‘ That in answer to their Lordships Argument, derived from the Quality of the Commissioners named in the Bill, it was demanded, whether their Lordships could have any Assurance, that the Commissioners they proposed will not be elected in the Vacancy of this, nor in any succeeding Parliament, wherein these Accounts may be required? Should that happen, their Lordships Amendments would not be useful to attain the End intended.

‘ That the Commons could not determine how far the Quality of the Commissioners named in the Act of Accounts, made in 19 Car. II prevailed with their Lordships in agreeing thereto. There was indeed no Member of the Commons of that Committee which met at Brook-House with great Reputation; but how little they effected, how soon they were dissolved, and how the Fruits of their Labours became abortive, is fresh in Memory.

‘ That



‘ That from thenceforth the Commons, with better Success, reposed Trusts of this nature in their own Members: Of such were the Committee for disbanding the Army, constituted 31 Car. II. Such are the Commissioners in the Act whereunto this Bill relates. It might with as good Logic be argued, that their Lordships agreed to those last recited Acts, because the Commissioners therein named were then Members of the House of Commons; as that their Lordships were induced to an Agreement with the Commons in the Nomination of the Commissioners of Brook-House, because they were not of the House of Commons. But upon this Variety in the Precedents, it may be more reasonably inferred, that their Lordships have from time to time agreed to the Commissioners named by the Commons without respect to their Quality, and because the Right of such Nomination is in the Commons only.

‘ That the Measures by which both Houses are to govern themselves, are derived either from Precedent or Reason; their Lordships had not offered any Precedent in justification of insisting on these Amendments. If there be any Force in the Argument their Lordships derive from the Clause in this Bill, which provides, that the Accounts shall be laid before the King, and both Houses of Parliament; it extends as well to vest a Right in their Majesties to nominate such Commissioners, as in their Lordships, for it equally relates to both.

‘ That the Title and Design of the Bill, is to appoint Commissioners to examine, take and state the public Accounts of the Kingdom, which, during the Session of Parliament, is the proper Work of the House of Commons; and no Inference can be more natural, than that it is in the Commons only to name Commissioners for the Exercise of that Authority, which is an Essential Part of their Constitution.

‘ That they desired to know the End their Lordships would propose to themselves by such Enquiry, should any Misapplication of Money, or Default of Distribution, appear in these Accounts; their Lordships cannot take Cognizance thereof originally, nor otherwise even in their judicial Capacity, than at the Complaint of the Commons; should a Failure or Want of Money appear, it is not in the Lords to redress it, for the Grant of all Aids is in the Commons only.

‘ That such Enquiry can only be of use to the Commons to direct their future Supplies; and herein the last Commission proved useful this Session, the Commons supplying the Defects of the Fund upon the Expences in the Excise. If there be a Redundancy, the Commons only can apply it to the Charge of the ensuing Year: If there be discovered Misapplications, or undue Preferences, the Commons only

can

Anno 1 Ann.  
1702.

can frame the Accusations, and lay them before their Lordships for Judgment.

‘ That the Managers added, that tho’ this Bill be thought so useful at this time, as cannot be sufficiently express’d; yet nothing can be of greater Importance to the Public, than the maintaining the just and distinct Rights and Privileges, which each Estate of this Kingdom enjoys according to our Constitution: The Lords have many high Privileges to recommend their Lordships to the Favour of their Prince, and to support their Figure in the Government; but the Commons have little besides this one, of giving Money, and granting Aids. This is their undoubted and inherent Right, and therefore every thing that intrenches on that, the Commons may be allowed to be extremely jealous of.

‘ That the Liberty of naming Commissioners to take Account of the Public Money is a necessary Dependence of this Right, is evident, if their Lordships will consider, that when any Aids are given, the Commons only do judge of the Necessities of the Crown, which cannot otherwise be made manifest to them, than by enquiring how the Money which hath been granted, and Revenue of the Crown is expended and applied. If the several Branches of the public Revenues are rightly considered, it will be found there is some particular Use to which they were originally assigned. There are some necessary Charges incumbent on the King in the Administration of the Government, which these Supplies are to defray; there is no Fund set aside for Contingencies, no Provision made for Casual and Incident Charges, but all extraordinary Expences require an extraordinary Supply: and when the Commons do think fit to erect such a Commission, the Expence made in the Execution of it must soon or late be drawn from the Purse of the People. And since the Burden must inevitably light upon their Shoulders, they only can be Judges of the Weight which is fit to be imposed, and to assign the Quantum of the Charge, which in this Case is proportionable to the Numbers of the Commissioners: so that this doth not only relate to this undoubted Right of the Commons, but doth finally end in raising of Money itself; which being a Privilege derived to them from their Ancestors, and continued by the uninterrupted Practice of all Ages, ’tis a Right the Commons cannot depart from, but must for ever assert, support and maintain.

‘ For that altho’ the Lords, in the Preamble of the third Reason, seem to wave the Dispute; yet having in their last Reason disallow’d the Right of the Commons, in granting, limiting, and disposing public Aids, the Commons think it of highest concern that this Affair, being the main Hinge of the Controversy, should be cleared and settled.

‘ That

‘ That the ancient manner of giving Aids was by Indenture, to which Conditions were sometimes annexed; the Lords only gave their Consent, without making any Alteration: And this was the continued Practice, until the latter end of Henry the Fifth, and in some Instances until Henry the Seventh.

Anno 1 Ann.  
1702.

‘ That in the famous Record, called, the Indempnity of the Lords and Commons, settled by the King, Lords and Commons, on a most solemn Debate in 9 Hen. IV. it is declared, that all Grants and Aids are made by the Commons, and only assented to by the Lords.

‘ That the modern Practice is to omit the Lords out of the granting, and name them Parties only to the enacting Clause of Aids granted to the Crown; to which their Lordships have always concurred, and on Conferences departed from their Attempts of petty Alterations, in Acts relating thereunto.

‘ That if then all Aids be by the Grant of the Commons, it follows that the Limitation, Disposition, and manner of Account, must likewise belong only to them.

‘ And that altho’ the Account then stated was ordered by 19 Car. II. and the Act to which this Bill relates, to be brought before their Majesties and both Houses of Parliament, this was a voluntary Act, and no Concession of the Commons; for when their Lordships insisted upon it as of Right, in 31 Car. II. it was denied; and their Lordships, after several Conferences thereupon, withdrew their Amendment to that Bill.

‘ That the Lords who appeared as Managers, and spoke at this Conference, were the Duke of Devonshire, the Earl of Nottingham, and the Earl of Rochester.

‘ That the Substance of what was delivered by the Lords was to this effect; That their Lordships are willing at all times to meet with the Commons at Conferences and free Conferences, with an equal Desire to continue a good Correspondence between both Houses; and have often condescended in some things, rather than to go on with further Debates: For tho’ Conferences are the best way of reconciling any Difference between the two Houses, yet they are Marks to the World that there is such a Difference; and the Lords, even in this Case, would have condescended to depart from their Amendments, if they had not judged them to be of such Consequence, that they could not do it.

‘ That they took notice that it had been said, That Debates of this kind ought to be grounded either upon Reason or Precedent; and they would endeavour to proceed upon both.

‘ That in the Act 31 Car. II. for Disbanding the Army, there

Anno 1 Ann.  
1702.

there was no Direction to give any Account to either House; and in the Act in the Year 1677. for the Building of Ships, there was no Account to be given to the House of Lords: So that these Precedents, which the Gentlemen of the House of Commons insisted upon, are not very applicable in the Matter of Debate, for in the last Act, and the Bill now depending, there is a Clause, That an Account shall be given to both Houses.

‘ That the Lords had experienced by the last Act, That the Enquiry their Lordships are directed to take by this Act is defective and dilatory, for want of Commissioners that can attend them; and are able to explain such things as they may have Occasion to enquire into: And it cannot be imagined, that ever they can have that Satisfaction by writing to them, which they may arrive at by personal Examination.

‘ That it is very true, that in the Act of 19 Car. II. for taking the public Accounts, there were no Commissioners named by the Lords; but ’tis as true those Commissioners were not Members of the House of Commons; and they had no reason to disagree in that Matter, because this Objection did not lie against them.

‘ That their Lordships declined all Arguments concerning the Rights of the Commons in Granting, Limiting, and Disposing public Aids, and therefore forbore to answer any Arguments of that kind; for that the Business now depending relates only to the taking Accounts, and directing such Part of the Revenue as is not appropriated to the Payment of Salaries to such Persons as are employed therein, which their Lordships take to be quite another thing.

‘ That the Commons urge it with great Weight, if their Lordships could shew no Precedent for doing this: But if there be any such Precedent, their Lordships did hope the Commons would allow them for Reasons; for it is not to be supposed these Precedents were made without Reason.

‘ That the Commons insist they are the Representative of all the Commons of England; and that the Lords can name no Commoner a Commissioner, nor appoint Money to such Persons for these Services. It appears by the Journals of the Lords, and ’tis to be supposed in those of the Commons likewise, That in the Poll-Bill, August 1660, the Lords named Commissioners for the Cinque-Ports, and expunged some in Kent and Suffex; to all which the Commons agreed: In an Act 31 Car. II. for Disbanding the Forces, the Lords added Bennet Lord Sherrard, and the Commons agreed to it.

‘ That in an Act made 12 Car. II. for speedy Disbanding the Army, the Lords named Commissioners that were Peers, who were to be joined with Commissioners named by the Commons; and afterwards, in an Additional Act for Disbanding

banding the Remainder of the Army, John Walker was added a Commissioner by the House of Lords, and his Salary was twenty Shillings *per Diem*, which last Precedent comes directly up to be a Precedent in point; only in the Amendments now offered, there are four who are to have five hundred Pounds *per Annum* each, and he was one who had three hundred sixty five Pounds *per Annum*.

Anno 1 Ann.  
1702.

‘ That it was insinuated by some of the Gentlemen of the House of Commons, That the End their Lordships could propose to themselves by such an Enquiry, must be either to discover what Offences have been committed in the Misapplication, or whether there be a Failure of the Money for the Ends for which it was intended; and that to neither of these their Lordships Enquiry can be of Use: For as to the Punishment, it must be by Impeachment; and if there be any want of Money, the Lords cannot come at it. This their Lordships look on as an Objection to the Clause itself, but not to their naming Commissioners, to satisfy their Lordships in relation to the Accounts.

‘ That there are other Uses may be made of these Accounts; the Lords may have Leisure to enquire into these Accounts, whilst the Commons are employed on other weighty Occasions; and the Lords may take notice, for there is an Account of it in the Printed Votes, licensed by the Speaker, That the Commons have not made so great a Progress in those Accounts as their Lordships have done; and should the Lords discover Miscarriages, they may order a Prosecution of them in the Exchequer, lay them before the House of Commons, or represent the Matter to the King.

‘ That there are some Precedents in Richard II’s time, and it seems to be implied in the Precedents quoted in the Year 1677, about the Act for Building thirty Ships, That the House of Commons have not of themselves a Right to take these Accounts, for the Dispute, then, was not about the Commissioners, but the laying the Accounts before the Commons alone; for, had they Power to call for them themselves, an Act would not have been necessary; and the Precedent of the Lords receding at that time ought not to be reckoned to their Disadvantage, because from their suspending their Privileges at that time, which they did with a Protestation, and from the thirty Ships that were built thereupon, it is, that we sit here in Safety.

‘ In that Dispute it was acknowledged, That it was the inherent Right of the Lords to call for the Accounts; so that ’tis no extraordinary thing that the Commons have now done, for this Bill gives the Lords and Commons an equal Right to call for the Accounts: And since the Commons cannot call for these Accounts so well as by this Bill, where-

Anno 1 Ann.  
1702.

in they have named Persons, under their own Jurisdiction as Members of your House, it is but reasonable they likewise should name such Commissioners as they may have Authority to call upon; for the Commons will hardly allow them Authority to send for the Members of the House of Commons.

‘ On the whole, since the Bill had allowed their Lordships to take the Accounts, their Lordships desire to know what Reason there could be, why they should not be allowed the proper Methods of coming at these Accounts.

‘ To this the Commons reply’d, That the Precedents in 1660, 31 Car II. and Additional Bill in 12 Car. II. were no Grounds for their Lordships insisting to add and appoint Commoners; because in those the Lords had the Consent of the Commoners signified to their Lordships by their Representatives in Parliament. But, the Lords have no Right to impose an Office or Burden upon any Commoner, without their own Consent; and, in the Course of the Legislature, the Lords have no Means to know, neither hath a Commoner any way to signify his Consent or Dissent, but by his Representatives in Parliament. To insist to appoint Commoners, after their Dissent is signified in the proper Parliamentary way, is to insist upon a Right of appointing Commoners, and imposing a Burden upon them without their Consents; which their Lordships never pretended to, no more than the Commons to nominate and appoint Peers in any Commissions.

‘ That in the Aid given in the second Year of their Majesties Reign, the Lord Dursley was inserted a Commissioner; in case the Lords had not signified his Dissent, he had been a Commissioner; and yet that would not have been a Precedent of the Commons Right of appointing a Peer to be a Commissioner, and insisting upon it. But the Lords by Amendment left him out, and the Commons agreed to the Amendment, though in a Money-Bill; conceiving they had no Right to insist upon naming a Peer without the Consent of the Peers, who only can bind their own Members: Neither can the Peers pretend to a larger Right over the Commons.’

‘ That their Lordships in their Reasons say, That if they may not nominate Commoners Commissioners, by Parity of Reason they may be deprived of assigning Council upon Impeachments for Misdemeanour, and in Cases of High-Treason, where Matter of Law appears.

‘ That the Commons conceive this is not a natural Consequence: For in Cases of Impeachment they act in their judicial Capacity; and the Law gives the Party accused a Right to have Council, and their Lordships assign Council, when the Party cannot get Council to assist him, and the

Law

Law enables their Lordships to do it. But there is no Law, which entitles them to nominate Commissioners for passing Accounts. Anno 1 Anna  
1702.

‘ That their Lordships alledged, that in the Bill for *Regulating the Trial of Treason*, both Houses agreed that their Lordships might assign Council in Cases of Impeachment for High-Treason.

‘ That the Bill not passing, that cannot be urged as a Precedent.

‘ That as the Lords cannot supply the Want, that being the Act of the Commons, nor punish the Misapplication till Complaint is made by the Commons; so neither can their Lordships acquaint the Commons at a Conference, that there hath been a Misapplication of the Money; because that were giving Judgment, before the Matter came judicially before them.

‘ That the Lords cannot punish a Commoner (except for Breach of their Privilege) without an Information made by the Commons.

‘ That since no Fruit can be had by their Lordships Enquiry, why should they nominate Commissioners, not being their Representatives?

‘ And that to insist upon it at this time, is most unreasonable, when the Commons, for the Support of the Government, lay under the heavy Burden of so many Taxes; which Weight will be much encreased by being denied the Satisfaction of knowing how their Money is disposed of, and having those skreened from Justice, who misapplied the same; which must necessarily happen, by denying to agree with the Commons.

‘ That in answer to what was said by their Lordships, That in case of the building the thirty Ships, it was admitted their Lordships had a Right to take the Accounts; it was admitted, with this Distinction, That as to the Stating and Examining the Accounts, it belonged only to the Commons, but that the Lords claimed the Cognizance of the Accounts in their judicial Capacity, for their Information in Cases of Misdemeanour.

‘ That as to the Question which their Lordships ask, *To what end are these Accounts to be laid before them?* to which there seems some Difficulty to make an Answer; the Commons cannot but observe from thence, Their Lordships Right to demand to have those Accounts, is not very clear; for it is a strange kind of Right, for which 'tis hard to give a Reason.

‘ Upon Consideration whereof, it was *Resolved*, That this House doth adhere to their Disagreeing with the Lords to the Amendments made by the Lords to the Bill, entitled

Anno 1 Ann.  
1702.



Commons Ad-  
drefs to the  
Queen about  
the public Ac-  
counts, &c.

*An Additional Act for appointing and enabling Commissioners to examine, take and state the public Accounts of the Kingdom: And that this House doth adhere to the Bill, as it was sent up from this House.*

The day before this last Conference was reported, the House laid the following Representation before her Majesty.

‘ Most gracious Sovereign, We your Majesty’s most dutiful and loyal Subjects, the Commons in Parliament assembled, (being deeply sensible, that notwithstanding the immense Sums which have been raised for the Service of the late War, the Nation still labours under a vast Debt of many Millions of Money) do think it our indispensable Duty to lay before your Majesty the unhappy Causes and Instruments, which appear to us, to have brought this heavy burden upon your People, not doubting but your Majesty will be graciously pleased, in your great Wisdom and Goodness, to give such effectual Orders, that neither any indirect Practices shall be suffered, nor any Persons entrusted with the Administration of the public Affairs, who have been the Authors of all our Miseries.

‘ We therefore humbly crave leave to represent to your Majesty, that during the said War, which was carried on in Defence of the Protestant Religion, and the Liberties of Europe, against the common Enemy of both, and therefore cheerfully supported by the People of England; yet, even then, when the great Necessities of the Kingdom did require a more than ordinary Frugality, there appears to have been a general Mismanagement of the public Revenue, which was principally owing to some of those great Officers of the Treasury, who, being more intent on their own private Profit, than the due Execution of their public Trusts, did neither discharge the Duty of their own Places, nor take care that the sub-ordinate Officers should discharge theirs.

‘ And we can attribute it to no other Cause than this Remissness in the Treasury, that many Receivers in the several Counties of England and Wales, made so long and unnecessary Delays in their respective Payments into the Exchequer, of the Taxes given by Parliament, and levied on your Majesty’s good Subjects, by which means they made unreasonable Advantages to themselves, whilst the Public was forced to pay great Interest and large Premiums, not only for the want of their own Money, but, as we have great reason to believe, many times for the Loan of it; and several Receivers in such intermediate Time have failed with considerable Sums in their hands, to the great Loss and Damage of the Public.

‘ Your dutiful Commons do farther humbly represent to your Majesty, That great Sums of Money have been borrow-  
ed,



ed, and divers Tallies with Interest struck unnecessarily upon the Assessments and other Parliamentary Aids, before the public Occasions have required them; and this Practice hath been pursued, when Votes of Credit have been obtained, upon Representations made to your Commons of very pressing Necessities for the same: whereby many Officers of the Revenue, and their Friends, have had an Opportunity to receive great Sums for Interest, which did incur on such Tallies before their Money was paid in, to the Use of the Public; for the Advantage of which Interest, we have also reason to believe, that many Accomptants (who have received from the Exchequer great Sums of Money for the Use of the Public) did industriously delay the Payment thereof to the Seamen and Soldiers, to whom it was due. And this seems to be the great Inducement, that made such Accomptants trust great Sums of the public Money in the hands of Goldsmiths and other Persons, in order to make private Advantages of it, and lend it back to the Exchequer in other Persons Names: All which tended to the great Damage of your Majesty's good Subjects, to the manifest Wrong and Discouragement of the Seamen and Soldiers, and to the great Dishonour of the English Nation.

Anno 1 Ann.  
1702.

‘ This evil Practice of striking Tallies with Interest, before the Money was paid in, was also attended with another very great Inconvenience to the Public, that whenever the Nation had Occasion for Ready-Money to answer the present Necessities of the Kingdom, many Persons who advanced their Money upon Loan, knowing they should have the same Advantages by Delay, as by Prompt-Payment, would not bring their Money into the Exchequer for several Months after the Tallies were struck; whereby the Government was forced, in the mean time, to pay excessive Rates for Stores and Provisions for the Army and Navy, in regard the Merchants and Tradesmen could have no Ready-Money for their Goods, but remote Tallies upon a large Discount.

‘ And by these and other undue Means, a very great Part of all the public Aids were squandered away in extravagant Interest, large Premiums, and in excessive Rates for Stores and Provisions, which has been one of the great Causes that hath brought so heavy a Debt upon this Nation.

‘ But here we cannot, in Justice, omit to acknowledge the present good Management of the Treasury, whereby, for the Honour of your Government, and the Advantage of the whole Nation, no unnecessary Tallies with Interest are permitted to be struck, nor more Money at any time borrowed, than the Necessities of the Nation do require; and Care is taken to support the Credit of the Navy, Victualling, and other public Offices; and that Stores and Provisions are in  
good

Anno 1 Ann.  
1702.



good measure provided, with as great Advantage to the Public, as if the same were purchased with Ready-Money ; which Frugality and good Management will be found to be one of the most effectual Means, to make your Majesty's Government easy at home, and to carry on a vigorous War against the Common Enemy abroad.

‘ And we humbly crave leave farther to represent to your Majesty, that though your Commons (who are always ready to support the Dignity of the Crown) had amply provided all those Sums, which (according to the largest Estimates laid before them) were thought necessary for the Occasions of the Civil-List, yet, over and above the said Sums, and out of the Aids given by Parliament, (which by the Law of England are appropriated, and ought to have been employed in the common Profit of the whole Realm) many large Sums of Money, during the time of such heavy Taxes upon the People, have been diverted under the Head of secret Services, and for Salaries, Bounties and Pensions to private Persons, which (if proper to be paid at all) ought to have been supplied out of the Civil-List: Nay, to so great a Degree did this Profuseness extend, that several thousand Pounds were paid out of public Aids, to purchase great Places for the late Earl of Sunderland, and the present Earl of Albemarle; so little could your Commons depend upon the Integrity of the public Officers, so little Regard was had by them to those heavy Taxes the People lay under, that nothing less could secure the public Money from Misapplications, than an express Clause of Appropriation ; which though not at all necessary for the Security of the public Money in general, but only to direct the Application of it in some particular Cases, yet whenever your Commons made no such particular Appropriation, they seldom fail'd to misapply the public Money ; which has been another great Cause of the heavy Debt that lies upon the Nation.

‘ And your Commons humbly crave leave farther to represent to your Majesty, that the ancient and established Method of accounting in your Majesty's Exchequer, hath been in Manner following: that is to say, the Auditor of the Receipt is to make out and transmit the Imprest-Rolls half-yearly to your Majesty's Remembrancer, in order to the Charging and Prosecuting the Accomprants; which being communicated to the Auditors of the Imprest, they are to certify to the said Remembrancer what Accomprants have not brought in, or prosecuted their Accounts, and thereupon the Remembrancer is obliged, every issuable Term, to issue out Process against them, so that the Auditor of the Receipt is the main Wheel that sets all the rest a going ; and when that great Officer is deficient in his Duty, it is not regular,

gular, nor indeed possible, for the rest to proceed, but all Process against Accomptants must be at a stand, and your Majesty, and all your loyal Subjects must extremely suffer by it. And as to the Clerk of the Pells, he is to examine the Imprest-Rolls, but the Auditor is obliged to transmit them to the Remembrancer; and when, thro' the Neglect or Corruption of the said Officers, this ancient Method and Course of the Exchequer, was not so strictly observed as it ought to have been, it was expressly provided by an Act of Parliament, so lately made as in the eighth and ninth Year of the Reign of his late Majesty King William of glorious Memory, and entitled, *An Act for the better Observation of the Course anciently used in the Receipt of the Exchequer*, in these Words following; that is to say, ' That the Auditor of the Receipt ' shall transmit the ordinary Imprest-Rolls half-yearly to ' the King's Remembrancer, in order to the Charging or ' Prosecuting of Accomptants; and shall half-yearly, (to wit) ' at Easter and Michaelmas, make out and transmit to the ' said Commissioners of the Treasury, or the Treasurer for ' the Time being, the Declaration of the Receipt, Issues and ' Remains at the Exchequer for every Half-year successively; ' all which Matters and Things, and all other Matters and ' Things belonging to the Office and Duty of the Auditor ' of the Receipt, shall be faithfully and carefully done and ' perform'd by the Auditor of the Receipt for the Time ' being, in such Manner as hath been anciently accustomed. ' And it is hereby farther provided, that the said Auditor do, ' as frequently as he thinks fit, but at least once in every ' three Months, carefully examine the Teller's Vouchers, for ' the Payments which he allows in his weekly Certificates.' But so it is (Most Gracious Sovereign) that notwithstanding the plain and express Words of the said Statute so lately made, Charles Lord Hallifax, the present Auditor of the Receipt, though he was himself a Member of that Parliament, yet he hath taken so little Care to discharge the Duty of his Office, for the Interest of your Majesty and the Security of the Public, that he hath not duely performed any one of the Particulars above-mentioned; and for want of examining the Tellers legal Vouchers, the said Auditor manifestly deceived your Majesty and the Public, by inserting into the weekly Certificates of the Receipts, Issues, and Remains of the Exchequer, such Sums of Money as were never actually and *bona fide* paid to the proper Parties, nor the Crown legally discharged thereof: And as to the Imprest-Rolls, your Commons cannot without Grief observe to your Majesty, that notwithstanding there may be six Imprest-Rolls now transmitted to the Remembrancer, yet it is well-known in the said Office, that none of the said Rolls from the eight and twentieth

ANNO 1 ANN.  
1702.

twentieth of June, one thousand seven hundred, exclusive, were so transmitted, till very lately after the two and twentieth of January last, and after the said Commissioners of Accounts had made their Enquiries into that Neglect by Order of your Commons; which being long after the Time they ought to have been transmitted, the said Auditor was very far from doing his Duty in this Particular; and by reason of this Neglect, no Charge could be made in the mean time upon the respective Accomptants, who have received vast Sums of the public Money, which are unaccounted for to this day; and by this means, notwithstanding the Imprest Accomptants ought annually to account within three Months after the End of each Year, yet due Process hath not, nor indeed could be issued out against them; and many Persons who have received great Sums by way of Imprest, from the Treasurer of the Navy, and Pay-Master of the Army, are skreened from Prosecution, and not being set *Insuper* in the Exchequer, cannot be regularly called to an Account for the Moneys by them received: And we have great reason to believe, that the Damage to the Public by this Neglect in the said Auditor and his Predecessor, may amount to several Millions of Money, since by length of time (during which the principal Accounts have been neglected) many of the Persons who received the said public Moneys, are either dead, or become insolvent; and the greater the Neglect of the former Auditor was, before the making the said Statute, and before the present Auditor came into his Office, the greater ought to have been his Care to discharge his Duty, pursuant to that Law, which he himself was present at the making of, and which he has so highly neglected for the space of three Years and upwards, ever since he came into the said Office, to the great Detriment of your Majesty, and all your loyal Subjects.

And notwithstanding it was also provided by another Act in the fourth Year of the late King William and Queen Mary, chap. 3. that in case any Officer of the Exchequer should demand or take any Fee, Gratuity or Reward, or misapply any of the weekly Sums therein mentioned, or should not perform other things which by the said Act they are required to perform, they shall forfeit their Offices, and be incapable of any Office or Place of Trust, yet the said Auditor hath acted contrary to the said Statute, and hath received several Sums of Money to his own Use, contrary to Law and the Trust reposed in him: for all which, or any other Breaches of his Duty, as well as for those formerly laid before your Majesty, (for whose gracious Answer to our humble Address on that Occasion, we return your Majesty our most humble and hearty Thanks) we earnestly desire  
your

your Majesty will be graciously pleased to order your Attorney-General, effectually to prosecute at Law the said Auditor of the Receipt: And thus, as we have seen great and good Actions rewarded by your Majesty, we doubt not but to see all Deceits and Mismanagements duly punished; since your Commons can propose no Benefit to themselves by all their Enquiries, unless the Laws are put in due Execution, and those who have lived so long in defiance of them, come at last to feel their Weight.

Anno 1 Ann.  
1702.

‘ And by the Neglect of the said Auditor and his Predecessor, the Auditors of the Imprest, and the Remembrancer, and other Officers of the Exchequer, have not been able to proceed in their Duty, according to the Law and Course of the Exchequer; several of which Officers have been also negligent therein, whereby all the public Accounts of the Nation are far behind. The state whereof (as delivered in to the said Commissioners of Accounts) in the Particulars hereafter mentioned, is as followeth:

‘ The Earl of Ranelagh, late Paymaster of your Majesty’s Forces, of one and twenty Millions and upwards, received in fourteen Year’s time, hath passed no Account during all the late Reign, farther than the last of December, one thousand six hundred and ninety, nor any other Account farther than March one thousand six hundred and ninety two, which was not declared before the twentieth of June last, and even that upon Vouchers, which were not sufficient for a legal Discharge.

‘ The Commissioners for the Sick and Wounded have brought in no Account during all the late Reign, and none since, any farther than the one and thirtieth of December, one thousand six hundred and ninety.

‘ The late Treasurer of the Chamber, Sir Rowland Gwyn, the late Master of the Robes, the Earl of Albemarle, and Mr. Parkhurst, Mr. Paschall, and others, Commissioners of the Prize-Office, have delivered in no Accounts at all to the Auditors of the Imprest.

‘ Jacob Vanderefsche, Esq; Paymaster of his late Majesty’s Dutch Forces, hath received three Millions twenty five thousand seven hundred fifty three Pounds nine Shillings and six Pence; which by computation is fifty two thousand nine hundred and seven Pounds six Shillings and eight Pence Farthing, more than the Pay of those Troops could have amounted to, if they had been always compleat; no Deductions made from them, and upon an English Establishment, which all of them were not: and yet the said Vanderefsche hath passed no Account at all; and, tho’ often summoned, hath never appeared before the said Commissioners of the public Accounts, but stands indebted to the said Troops in one hundred and twelve thousand two hundred twenty nine

Anno 1 Ann.  
1702.

Pounds nine Shillings and eight Pence; which is now demanded as an Arrear due to them, your Majesty and the Public.

‘ The late Treasurer of the Navy, of seventeen Millions and upward received, hath brought in several Accounts, to the last of December, one thousand six hundred and ninety eight. His Account for the Year one thousand six hundred and ninety two, was declared the third Day of July last; since which the Accounts of the three following Years only have been declared.

‘ The said Treasurer, by Mr. Papillion, Cashier of the Victualling Office, hath passed no Account during all the late Reign, farther than the one and thirtieth of December, one thousand six hundred and ninety six, which was not declared till the 19th of May, one thousand seven hundred and one; and on the Foot of that Account he remained indebted five hundred thirty four thousand twenty seven Pounds three Shillings and three Pence.

‘ And many other Accomptants, whom it would be too tedious to enumerate to your Majesty, are either far behind in their Accounts, or have never brought in any Accounts at all; infomuch that altho’ forty five Millions five hundred sixty eight thousand seven hundred twenty five Pounds nineteen Shillings and two Pence Farthing (a Sum never known to be raised in very many Reigns before) hath been levied on your Majesty’s good Subjects, and issued out of the Exchequer to the several Paymasters and Treasurers of the Navy, Army and Ordnance, for the Service of the late War, between the fifth of November, one thousand six hundred and eighty eight, and the eighth of March last past, (besides the several Millions of Money raised for other public Uses) yet the far greatest part thereof hath not been accounted for to this day, to the great Dissatisfaction of your People, and the great Dishonour of the Nation.

‘ By these Neglects and Delays, all Accounts have been rendered so intricate and confused, that the several Accomptants have had great Opportunities of defrauding the Public, the Discovery of their Frauds has been made very difficult, and a hindrance thereby is given to the passing all succeeding Accounts.

‘ Hence it is that so many public Officers and Accomptants have raised great Estates to themselves, at the Expence of the Public, when it is evident they have had no lawful Means to attain them; and several Persons, whose Duty it was to hinder such Exorbitancies, measuring their Requests rather by their own Avarice than their Merit, have obtained for themselves Grants to such a Value, as in foregoing Reigns have been esteemed large Supplies towards great and public Services;

Services; which has been another great Cause of the Debt Anno 1 Ann.  
that lies upon the Nation. 1702.

‘ And your Commons do farther humbly represent to your Majesty, that notwithstanding such vast Sums issued out to the said late Paymaster and Treasurer, whereby your Commons had amply provided for all those Services, and for the effectual carrying on the War against France; yet they find, to their great sorrow, that not only the Officers, but the Seamen and Soldiers, who on all Occasions have behaved themselves bravely in defence of their Country, have not been paid during the late War, and that great Sums are still owing to many of them: whereas if the public Money had been duly applied to the Uses for which it was given by your Commons, instead of those many Hardships that were endured by your Majesty’s most faithful Subjects and their Families, who served so well in your Fleets and Armies, they would have had Justice done them during the last War, and been encouraged more chearfully to engage themselves in this.

‘ But, instead of Justice, we have too much Reason to believe, that those very Persons, who by long and unnecessary Delays have compelled them to accept of remote Tallies and Paper-Securities, have (amongst others) taken Advantage of their Necessities, and employing Brokers to buy up those Tallies and Securities at a low Rate, have afterwards paid themselves with that ready Money which they should at first have distributed to the Seamen and Soldiers.

‘ And such was the mysterious Trade upon Tallies and Exchequer-Bills, which was formerly carried on by common Brokers, betwixt the Exchange and the Exchequer, and which did, as it were, prey upon the very Vitals of the Government; and so great gain was made thereby, at the Expence of the Public, that vast Sums of Money were employed in it, which did very much lessen the true trading Stock of the Nation, whereby both the Exportation of the woollen and other Manufactures of this Kingdom, and the Importation of Bullion, and other Commodities of foreign Countries, to be manufactured in England, have been very much obstructed, to the great Prejudice of your Majesty’s Customs, the loss of the Balance of Trade, and the great Impoverishment of the whole Kingdom.

‘ And tho’ the late Paymaster and Treasurer, by long and unnecessary Delays in settling their Accounts, have in great measure prevented any Discovery of their undue Proceedings, and have endeavoured to protect themselves from a just and fair Account to the Nation, by Privy-Seals and other unjustifiable Warrants, surreptitiously obtained for passing their Accounts, without proper Vouchers, contrary to

Anno 1 Ann.  
1702.

the Law and Course of the Exchequer; yet your Commons, by the great Fidelity and Diligence of the same Commissioners for the taking, examining and stating the public Accounts of the Kingdom, have not only discovered the several Mismanagements above-mentioned, but also some of the unwarrantable Proceedings used by the said late Paymaster of your Majesty's Forces, by whom a considerable part of the Money which came to his hands, and which ought not to have been applied to any other purpose than the Payment of the Army, hath been diverted to his own and to other private Uses; for all which, upon a full and fair hearing in his own Defence, he hath justly incurred the Censure of this House, and been declared guilty of a high Crime and Misdemeanor.

‘ And we find, to our unspeakable Grief, whilst his late Majesty was engaged in the Prosecution of the glorious Design of preserving the Protestant Religion, and the Liberties of Europe, and was thereby necessitated to commit the Care of the public Affairs in this Kingdom to particular Ministers, (whereof none were more particularly entrusted in the chief Administration than those who have been the great Causes of the unhappy differences among us :) This general Mismanagement of the public Affairs did actually spread itself over the whole Kingdom, and seems to be owing (amongst other things) to a Disposition of Offices and Places, where Men were rather chosen for their Inclinations to serve a Party, than for their Qualifications to serve the Public.

‘ And these Men being conscious to themselves of the many Frauds and Offences committed against the Public, have no other hopes to shelter themselves from Justice, than by taking away the Reputation of those who desire to do Right to their Country, by detecting their Iniquities; and being united in Guilt and Interest, they endeavour to amuse and impose upon those, whose Posterity, we have too much Reason to fear, will groan under the sad Effects of the wickedness of the one, and the too great credulity of the other.

‘ These, dread Sovereign, are divers of the Causes of those Mischiefs your Kingdom suffereth by the late Mismanagements, and which your loyal Commons could not omit thus humbly to represent in all dutiful Manner, without being unfaithful to your Majesty, and to the Country by whom they are entrusted.

‘ From hence your Majesty will be graciously pleased to take notice, that the great Debt which lies upon the Nation, and all the Arrears which are owing to your Majesty's Forces, do not arise so much from the Deficiencies of the Funds, as for want of Care in the Management, and Fidelity in the Application of them.

‘ But



' But since it hath pleased Almighty God to place your Sacred Majesty on the Royal Throne of your Ancestors, we have so entire a Confidence in your Majesty's Goodness, that we can no longer fear to see the public Revenue mismanaged or misapplied, the Accounts neglected, or the Forces unpaid; and we chearfully depend on your Majesty's Wisdom, that all our Grievances, by your Grace and Favour, will in due time be redressed and removed, by punishing those who have been the Causes of them, and by entrusting none in the Administration of the public Affairs, who, for their own private Advantage, have manifestly contributed to the Calamity of their Country.

Anno 1 Ann.  
1702.

' This (most gracious Sovereign) will be the only effectual Means to prevent the like Mismanagement for the future; and thereby to make your Majesty's Reign happy at home, and prosperous abroad.

' This will be the best means to enable and encourage your dutiful Commons to raise those Supplies which shall be necessary to support your Majesty against all your Enemies.

' Thus we humbly crave leave, upon this Occasion, to repeat our Assurances to your Majesty, that we will always stand by and assist your Majesty to the utmost of our power, in preserving the established Government both in Church and State, maintaining the ancient Glory of the English Nation, and defending the Liberties of Europe against the boundless Ambition of France.'

To this Address her Majesty made answer:

' Gentlemen, the Repetition of these Assurances you give me in this Address, of your Zeal for my Service, and the Good of the Kingdom, is very acceptable to me. I shall consider the several particulars of it, and always have great regard to the Representations of the House of Commons, and the true Interest of England.'

Queen's Answer.

The Misunderstanding between the two Houses was continued March 10. by the following Message.

' Mr. Speaker, we are commanded by the Lords to acquaint this House, that whereas a scandalous Paper reflecting on the Lord Chancellor and his Proceedings in the Court of Chancery, hath been complained of and read in the House of Lords, of which their Lordships are informed upon Oath, that Mr. Robert Bertie, a Member of this House, can give some Account; their Lordships do desire, that for that purpose this House will give leave for him to appear before the Lords.'

Mr. Bertie, a Member, complain'd of by the Lords.

To which the Commons reply'd as follows.

' The Commons having received a Message from your Lordships, wherein your Lordships did acquaint them, that a Scandalous Paper reflecting on the Lord Chancellor and his

Anno 1 Ann.  
1702.

his Proceedings in the Court of Chancery, has been complained of and read in the House of Lords, of which your Lordships are informed upon Oath, that Mr. Robert Bertie, a Member of the House of Commons, can give some Account; Your Lordships do desire that for that purpose, the Commons would give leave for him to appear before your Lordships.

' The Commons have commanded us to acquaint your Lordships, that they not being informed by the said Message, of the particular Matters contained in the said Paper, or upon what Grounds your Lordships ask to have their Member appear before you, they desire your Lordships to let them know what the nature of that Account is, which is expected from their Member.'

What follows being necessary to clear up this remarkable Contest between the two Houses, is added in the same Order of Time, as it was published by Direction of the House.

*Ordered,* That the said Committee do draw up what is proper to be offered to the Lords, at a Conference upon the Subject-Matter of the Message from the Lords the 4th Instant, relating to the Commissioners of Accounts, and the Lords Proceedings in relation to the Observations of the said Commissioners.

Feb. 16. Colonel Granville reported from the Committee to whom it was referred to draw up what is proper to be offered to the Lords at a Conference, upon the Subject-Matter of the Message from the Lords the 4th Instant, relating to the Commissioners of Accounts, and the Lords Proceedings in relation to the Observations of the said Commissioners; that the Committee had drawn up the same accordingly, which they had directed him to report to the House, which he read in his Place, and afterwards deliver'd in at the Clerk's Table, where the same was read, and agreed unto by the House, and is as followeth:

' The Commons cannot comply with your Lordships Desires contained in your Message of the 4th Instant, because the Commons are still of the same Opinion as was delivered to your Lordships in February 1691, at a Free Conference upon the Subject-Matter of the Amendments made by the Lords to the Additional Bill for the appointing and enabling Commissioners to examine, take, and state the public Accounts of the Kingdom; when they desired to know the end your Lordships would propose to your selves, by an Enquiry into the public Accounts: For should any Misapplication of Money, or Default of Distribution appear in the Accounts, your Lordships cannot take Cognizance thereof originally; or otherwise, even in your Judicial Capacity, than at the Complaint of the Commons. And should a Failure or  
Want

Want of Money appear, it is not in your Lordships power to redress it; for the Grant of all Aids is in the Commons only. Or if there be any Surplusage, the Commons only can apply it to the Charge of the ensuing Year.

Anno 1 Ann.  
1762.

‘ But should the Commons give leave to the Commissioners to attend your Lordships, no Information they can give against any Person whatsoever, can entitle your Lordships either to acquit or condemn. Yet since this Message, the Commons find in your Lordships Journals the following Resolution: *viz.* ‘ That it is Resolved and declared by the Lords Spiritual and Temporal in Parliament assembled, That Charles Lord Halifax, Auditor of the Receipt of the Exchequer, hath performed the Duty of his Office in transmitting the ordinary Imprest-Rolls to the Queen’s Remembrancer, according to the ancient Custom of the Exchequer, and the Direction of the Act 8 and 9 *Guliel. Tertii Regis*, entitled, *An Act for the better Observation of the Course anciently used in the Receipt of the Exchequer*: And that he hath not been guilty of any Neglect or Breach of Trust upon that Account.’

‘ Which looks to the Commons as if your Lordships pretended to give a Judgment of Acquittal, without any Accusation brought before your Lordships, and consequently without any Trial. And that which makes your Lordships Proceedings yet more irregular, it tends to prejudging a Cause which might regularly have come before you, either originally by Impeachment, or by Writ of Error from the Courts below. And therefore the Commons can see no use of this Resolution, unless it be either to intimidate the Judges, or prepossess a Jury.

‘ But if your Lordships could have judged in this matter, it does not appear by your Lordships Journals, that you have had under Examination the respective Times of transmitting the several Imprest-Rolls to the Queen’s Remembrancer; without which, it is impossible to know whether the Auditor of the Receipt has done his Duty according to the Act of Parliament.’

The Lords Reply at the Conference, was contain’d in the following Votes.

‘ Feb. 18. It is resolved and declared by the Lords Spiritual and Temporal in Parliament assembled, That the Lords have an undoubted Right, (which they can never suffer to be contested) to take Cognizance originally of all Public Accounts, and to enquire into any Misapplication or Default in the Distribution of public Moneys, or into any other Mismanagements whatsoever.

‘ It is resolved and declared by the Lords Spiritual and Temporal in Parliament assembled, That the Lords in their Enquiry into the Examination of the Observations of the Commissioners

Anno 1 Ann.  
1702.

Commissioners of Accounts, in relation to Charles Lord Hallifax, and in their Resolutions thereupon, have proceeded according to the Rules of Justice, and the Evidence that was before them.

‘ It is resolved and declared by the Lords Spiritual and Temporal in Parliament assembled, That the Commons in their Reasons delivered at the last Conference, have used several Expressions and Arguments highly reflecting and altogether Unparliamentary, tending to destroy all good Correspondence between the two Houses, and to the Subversion of the Constitution.’

In Answer, the Commons agreed to the following Heads to be offered at the free Conference.

‘ That no Cognizance the Lords can take of the public Accounts, can enable them to supply any Deficiency, or to apply any Surplusage of the public Money.

‘ That the Lords can neither acquit nor condemn any Person whatsoever, upon any Enquiry arising originally in their own House.

‘ That the Attempt the Lords have made to acquit Charles Lord Hallifax, Auditor of the Receipt of Exchequer, is Unparliamentary, and not warranted by any Precedent: And the Resolution thereupon is plainly contrary to what appears on the Records themselves.

‘ That the Conference desired by the Commons, was in order to preserve a good Correspondence between both Houses, by offering Reasons to prevent the Lords from proceeding in a Case which they had no Precedent to warrant; and the Commons expressing the Consequences they apprehended might follow from that Resolution, was neither reflecting nor unparliamentary, or tending to destroy the good Correspondence between the two Houses, and much less to the Subversion of the Constitution.

‘ That the Lords delivering at a Conference their Resolutions instead of Reasons, in answer to the Reasons of the Commons, is not agreeable to the ancient Rules and Methods of Parliament, observed in Conferences between the two Houses.

The Report of the said free Conference as order’d to be enter’d into the Journals of the House, is as follows.

‘ The Managers acquainted their Lordships, that the Commons had desired this free Conference, in order to maintain a good Correspondence between the two Houses. And that, upon consideration of the Reasons offered by the Commons at the first Conference, and their Lordships Answer delivered at the last, they took the Points in difference to be, First, that no Cognizance the Lords could take of the Public Accounts, could enable them to supply any Deficiency,  
or

or apply any Surplusage of the public Money, in case any should be found. And then your Managers went on to open the rest of the Particulars which they had in direction from the House to insist on, which they did in the same manner as they appear by your Journal; but added, when they acquainted their Lordships, that the expressing the Consequences which they apprehended might follow from their Resolution, that it was not a Charge upon their Lordships, that they intended that Consequence; but they would have been very glad their Lordships would have been pleased to have let them know what use was to be made of it, or what they intended by it: And concluded, that, if their Lordships did controvert any of those Points, your Managers were ready to maintain them.

Anno 1 Ann.  
1702.

‘ The Lords made no answer to any of those Particulars, save to the matter of the Resolution relating to the Lord Halifax; upon which their Lordships did acknowledge, that they were no Court of Enquiry, to form any Accusation: That their Proceedings in relation to that Lord, was no Trial; nor was their Resolution any Judgment or Acquittal; but that he might still be prosecuted as before: But that which gave occasion to that Proceeding, was the Resolution of the House of Commons, which they found in the printed Votes, reflecting upon a Member of their House; and thereupon they thought fit to give their Opinion, which they did in their legislative Capacity.

‘ To which the Managers replied, that their Lordships having, in their Resolutions, declared, that they had proceeded according to the Rules of Justice, and the Evidence that was before them; the Commons could put no other Interpretation upon it, than that it was intended as a Judgment: And no Judgment could be made, where there was no Accusation; and if it was not a Judgment, they could not imagine what it did tend to.

‘ As to their Lordships delivering their Opinion; the Managers observed, it was against the Rule of any Court, that any Judge whatsoever, should deliver an Opinion in a Cause that might come before him; and this Matter might hereafter come judicially before their Lordships.

‘ And the Managers observed the great difference between the Resolution of the Commons, and that of the Lords. The Vote of the House of Commons was but in order to a Prosecution, which they can never Vote, without declaring the Crime; and they can never come to be Judges of it. The House of Commons is the Grand Inquest of the Nation; and every Grand Jury that finds *Billa Vera* upon an Indictment, does by that declare the Man guilty. But the Lords have a Judicial Capacity; and their Resolution before an

Anno 1 Ann.  
1702.

Accusation brought, is prejudging the Cause that may come regularly before them. And some of the Managers in speaking to these Points, were frequently interrupted by their Lordships.

‘ As to the Observation the Commons made, that the Lords had not examined the respective Times of transmitting the Imprest-Rolls to the Queen’s Remembrancer; your Managers said, that, as their Lordships Resolution was no Judgment, so this Conference was no Tryal. But to shew the Mistake of their Lordships Resolution, they observed the Dates upon the several Imprest-Rolls that had been transmitted to the Remembrancer; that they apprehended there were still two wanting. That the three last that were transmitted, came not to the Remembrancer till January last, the two first on the 23d, the last on the 27th. The first of these three Imprest-Rolls was Money imprest to the 21st of February, 1700. and said to be in the first Year of the Reign of Queen Anne; which shewed that that Roll was so far from being examined or transmitted in time, that it was not made up till since her Majesty came to the Crown.

‘ That as the Custom formerly has been, to set down the Time of the Examination of those Rolls; since Mr. Charles Montagu came in to be Auditor, he set down the Month, but not the Day: And since the Lord Hallifax was Auditor, he had set down neither Month nor Day. And by his Example, on the three last Imprest-Rolls the Clerk of the Pells had put down no time at all.

‘ To which a noble Lord in his own Defence replied, That the Lords Resolution was well founded, since they had the Rolls themselves before them, and Proof upon Oath; that by the Words of the Act, the Auditor was to transmit the Imprest-Rolls to the Remembrancer Half-Yearly, according to the usual Course of the Exchequer; which is eight Months, and four Months; that it was not his Duty to transmit them immediately to the Remembrancer; because he was to send them to the Clerk of the Pells, who is to examine and sign them. And it cannot be imagined, the Auditor should be tied to a certain Time, to transmit the Rolls to the Remembrancer, because they must first go through another hand; and he never took it, there was any Occasion to put down the Time he examined them, for that would appear from the Time of the Delivery, and Date of the Roll.

‘ That there was one examined by the Clerk of the Pells, the 4th of July, and not delivered till the 23d of January; which he did not take to be the Auditor’s Fault, but took it to be the Duty of the Clerk of the Pells to deliver them. That every body knew the great trouble had been given in his

as well as other Offices, by the Commissioners of Accounts. Anno 1 Ann.  
1702.  
That no public Loss had happened by not transmitting these Rolls; no Process having been issued forth for many Years upon them.

‘ To this your Managers answered, That tho’ Half-Yearly should be taken for eight Months, and Four Months; yet by that they must be transmitted twice a Year; and that he had fail’d in his Duty in that respect.

‘ To construe the ancient Course of the Exchequer, in the Act of Parliament, to be meant that the Clerk of the Pells should transmit the Rolls; is a direct Contradiction to the Act, that says the Auditor shall do it. And the ancient Course of the Exchequer not having been observed, was the Occasion of making that Law; and that they thought Laws were made to be observed. That indeed no Process could issue, till the Rolls were transmitted; and possibly that might be the Ground the Accounts have been so long unpassed, to the prejudice of the Public. That his Lordship’s Apprehension there was no Loss to the Public, by not transmitting the Rolls, might probably be the Reason of his Lordship’s neglecting his Duty.’

While these Disputes between the two Houses were in agitation, her Majesty being desirous to have an end put to their Sitting, ordered Mr. Secretary Hedges to acquaint the Commons, That she desired they would give all possible Diligence, to the Business depending, her Majesty finding it necessary for the public Affairs, to put an end to that Session: Upon which they resolved on an Address to her Majesty, humbly to lay before her, That they had already dispatch’d all the necessary Business before them. The concluding Day at length came, (Feb. 27.) when her Majesty went to the House of Lords, and sending for the Commons, was pleased to give her Royal Assent to the following public Bills, *viz.* *An Act for granting to her Majesty several Subsidies for carrying on the War against France and Spain: An Act for granting an Aid to her Majesty, by Sale of several Annuities at the Exchequer, for carrying on the War against France and Spain: An Act to enable her Majesty to settle a Revenue for supporting the Dignity of his Royal Highness Prince George Hereditary of Denmark, in case he shall survive her Majesty: An Act for continuing the Duties upon Coals, Culm and Cinders: An Act for granting a Supply to her Majesty, by several Duties imposed upon Malt, Mum, Cyder and Perry: An Act for preventing Frauds in her Majesty’s Duties upon Stamp Vellum, Parchment and Paper: An Act for Advancing the Sale of the Forfeited Estates in Ireland, and for Vesting such as remain unsold by the present Trustees in her Majesty, her Heirs and Successors, for such Uses as the same were before Vested in the said Trustees; and for the more effectual Selling and Setting the said Estates to Protestants,*

Anno 1 Ann.  
1702.

*testants, and for Explaining the several Acts relating to the Lord Boplin and Sir Redmond Everard: An Act for the Finishing and Adorning the Cathedral Church of St. Paul's, London: An Act for Explanation and making Effectual a late Statute concerning the Haven and Piers of the Borough of Great Yarmouth, and for Confirming the Rights and Privileges of the said Borough: An Act for making the River Cham, alias Grant, in the County of Cambridge, more Navigable from Hythe-Ferry to the Queen's-Mill in the University and Town of Cambridge: An Act for explaining of a Clause in an Act, made in the Seventh Year of his late Majesty's Reign, relating to Borelaps, and to take off the Additional Subsidy upon Irish Linen: An Act for the better preventing Escapes out of the Queen's-Bench and Fleet Prisons: An Act for punishing of Accessaries to Felonies, and Receivers of stolen Goods, and to prevent the wilful Burning and Destroying of Ships: An Act for the better Repairing and Amending the High-ways from the North End of Thornwood Common to Woodford, in the County of Essex: An Act for continuing former Acts for exporting Leather, and for Ease of Jurors, and for reviving and making more effectual an Act relating to Vagrants: An Act for encouraging the Consumption of Malted Corn, and for the better preventing the Running of French and foreign Brandy: An Act for Taking, Examining and Stating the Public Accounts of the Kingdom: An Act for enlarging the Time for taking the Oath of Abjuration, and also for Recapacitating and Indemnifying such Persons as have not taken the same by a Time limited, and shall take the same by a Time to be appointed, and for the farther Security of her Majesty's Person, and the Succession of the Crown in the Protestant Line, and for extinguishing the Hopes of the Pretended Prince of Wales, and all other Pretenders, and their Open and Secret Abettors: An Act for punishing Officers and Soldiers who shall mutiny and desert her Majesty's Service in England and Ireland, and for punishing False Musters, and for better Payment of Quarters in England: An Act for the more effectual preventing the Abuses and Frauds of Persons employ'd in the Working up the Woollen, Linen, Fustian, Cotton, and Iron-Manufactures of this Kingdom: An Act for raising the Militia of this Kingdom for the Year one thousand seven hundred and three, notwithstanding the Month's Pay formerly advanced be not repaid: An Act for Reviving and Continuing the late Acts, for appointing Commissioners to Take, Examine and Determine the Debts due to the Army, the Navy, and for Transport-Service; and also an Account of the Prizes taken during the late War: An Act to oblige Edward Whitaker to account for such Sums of Public Money as have been received by him. And to thirty-one private Bills. Which done, her Majesty was graciously pleased to deliver herself to both Houses, in the following Expressions:*

' My



‘ My Lords and Gentlemen,

‘ I Return you My hearty Thanks for the great Dispatch  
‘ you have given to the Public Affairs in this Session,  
‘ which is an Advantage extremely material at all Times,  
‘ and I hope we shall find the Fruits of it this Year in the  
‘ Forwardness of our Preparations.

‘ I am to thank you, Gentlemen of the House of Com-  
‘ mons, in particular, for the Supplies with which you ena-  
‘ ble Me to carry on the War; it shall be my Care to have  
‘ them strictly applied to the Uses, for which you have de-  
‘ signed them, and to the best Advantage for the Public  
‘ Service. You have reposed great Confidence in Me by  
‘ allowing so unusual a Latitude, as you have in the Clause  
‘ of Appropriation; I shall improve all Opportunities in the  
‘ Use of it, for the Honour and true Interest of the Nation.

‘ I must further take notice to you, That the Readiness  
‘ you have shewn in the Provision made for the Prince, is a  
‘ very sensible Obligation to Me.

‘ My Lords and Gentlemen,

‘ I desire and expect from you, That you make it your  
‘ Business in your several Countries to continue and preserve  
‘ the Quiet and Satisfaction of my Subjects: I hope such of  
‘ them as have the Misfortune to dissent from the Church  
‘ of England, will rest secure and satisfied in the Act of  
‘ Toleration, which I am resolved to maintain: And that  
‘ all those who have the Happiness and Advantage to be  
‘ of the Church of England will consider, That I have had  
‘ my Education in it, and that I have been willing to run  
‘ great Hazards for its Preservation; and therefore they may  
‘ be very sure, I shall always make it my own particular  
‘ Care to encourage and maintain this Church as by Law  
‘ established, and every the least Member of it, in all their  
‘ just Rights and Privileges; and upon all Occasions of Pro-  
‘ motions to any Ecclesiastical Dignity, I shall have a very  
‘ just Regard to such, as are eminent and remarkable for  
‘ their Piety, Learning and constant Zeal for the Church;  
‘ that by this, and all other Methods which shall be thought  
‘ proper, I may transmit it securely settled to Posterity.

‘ I think it might have been for the Public Service to  
‘ have had some further Laws for restraining the great Li-  
‘ cence, which is assumed, of Publishing and Spreading  
‘ scandalous Pamphlets and Libels; but as far as the pre-  
‘ sent Laws will extend, I hope you will all do your Duty in  
‘ your respective Stations to prevent and punish such pernicious Practices.

‘ Above all other Things, I do recommend to you Peace  
‘ and Union among ourselves, as the most effectual Means  
‘ that

Anno 2 Ann.  
1703.



‘ that can be devised to discourage and defeat the Designs of  
‘ our Enemies.

‘ I must not conclude without acquainting you, I have  
‘ given Directions, That my Part of all the Prizes, which  
‘ have been or shall be taken during this War, be applied  
‘ entirely to the Public Service; and I hope my own Re-  
‘ venue will not fall so short, but that I may be able, as I  
‘ desire, to contribute yet farther to the Ease of my People.

After which, the Lord-Keeper, by her Majesty's Com-  
mand, prorogued the Parliament to Thursday, the 22d of  
April.

The third Ses-  
sion of Queen  
Anne's first  
Parliament.

On the 9th of November, the Queen opened the Sessions  
of Parliament with the following Speech:

Her Majesty's  
Speech to the  
Parliament.

‘ My Lords and Gentlemen,

‘ I Have called you together as soon as I thought you  
‘ could conveniently come out of your Countries, that  
‘ no Time might be lost in making our Preparations for car-  
‘ rying on the present War, in which I do not doubt of  
‘ your chearful Concurrence; since we cannot but be sensi-  
‘ ble, that on the Success of it depends our own Safety and  
‘ Happiness, and that of all Europe.

‘ I hope I have improved the Confidence you reposed in  
‘ me last Year, to your Satisfaction and the Advantage of us,  
‘ and our Allies, by the Treaty with the King of Portugal,  
‘ and the Declaration of the Duke of Savoy, which in a  
‘ great measure may be imputed to the Chearfulness with  
‘ which you supported me in this War, and the Assurance  
‘ with which you trusted me in the Conduct of it: And we  
‘ cannot sufficiently acknowledge the Goodness of Almighty  
‘ God, who is pleased to afford us so fair a Prospect as we  
‘ have now, of bringing it to a glorious and speedy Con-  
‘ clusion.

‘ I must therefore desire you, Gentlemen of the House of  
‘ Commons, to grant me such Supplies as shall be requisite  
‘ to defray the Charge of the War in the next Year, with  
‘ regard not only to all our former Engagements, but  
‘ particularly to our Alliance lately made with the King of  
‘ Portugal, for recovering the Monarchy of Spain from the  
‘ House of Bourbon, and restoring it to the House of Austria:  
‘ Which Treaty being in itself of the highest Importance  
‘ imaginable, and requiring all possible Dispatch in the Ex-  
‘ ecution of it, has necessarily occasion'd a great Expence  
‘ even in this present Year, tho' not so much as it will re-  
‘ quire, and for which, I hope, we shall be amply recom-  
‘ pensed in the next.

‘ The

‘ The Subsidies which will now be immediately requir’d Anno 2. Annæ  
1703.  
 ‘ for the Assistance of the Duke of Savoy, will likewise oc-  
 ‘ casion a farther necessary Charge.

‘ I must take notice to you, That tho’ no particular Pro-  
 ‘ vision was made in the last Session, either for the Charge of  
 ‘ our present Expedition to Portugal, or for that of the Aug-  
 ‘ mentation-Troops desired by the States-General, yet the  
 ‘ Funds given by Parliament, have held out so well, and  
 ‘ the Produce of the Prizes has prov’d so considerable,  
 ‘ that you will find the Public will not be in debt by reason  
 ‘ of either of these additional Services.

‘ I may further observe to you, That tho’ the Funds for  
 ‘ Civil Government are diminish’d by the War, I have, in  
 ‘ conjunction with the States-General, contributed out of  
 ‘ my own Revenue towards some Public Services, and par-  
 ‘ ticularly the Support of the Circle of Swabia, whose firm  
 ‘ Adherence to the Interest of the Allies, under the greatest  
 ‘ Pressures, did very well deserve our seasonable Assistance:  
 ‘ And I shall still be careful not to engage myself in any  
 ‘ unnecessary Expence of my own, that I may have the  
 ‘ more to spare towards the Ease of my Subjects.

‘ My Lords and Gentlemen,

‘ I heartily wish some easy and less chargeable Method  
 ‘ could be found, for the speedy and effectual Manning of  
 ‘ the Fleet.

‘ I must also recommend to you, to make some Regulation  
 ‘ for preventing the excessive Price of Coals. I have exa-  
 ‘ min’d this Matter, and taken particular Care to appoint,  
 ‘ Convoys for that Service; but the Price has not been in  
 ‘ the least abated, notwithstanding a very considerable Quan-  
 ‘ tity has been imported since that Time: This gives great  
 ‘ Ground of Suspicion there may be a Combination of some  
 ‘ Persons to enrich themselves by a general Oppression of  
 ‘ others, and particularly the Poor. Twill deserve your  
 ‘ Consideration how to remedy this great Inconvenience.

‘ And in all your Affairs I must recommend to you as much  
 ‘ Dispatch as the Nature of them will admit: This is necessa-  
 ‘ ry to make our Preparations early, on which in great mea-  
 ‘ sure depends the good Success of all our Enterprizes.

‘ I want Words to express to you my earnest Desire of  
 ‘ seeing all my Subjects in perfect Peace and Union among  
 ‘ themselves; I have nothing so much at heart as their  
 ‘ Welfare and Happiness: Let me therefore desire you all,  
 ‘ That you would carefully avoid any Heats or Divisions  
 ‘ that may disappoint me of that Satisfaction, and give En-  
 ‘ couragement to the common Enemies of our Church and  
 ‘ State.

On

Anno 2. Ann.  
1703.

Commons Ad-  
dress to the  
Queen.

On the 11th the following Address of the House of Commons was presented to her Majesty.

' Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do humbly return your Majesty our most hearty Thanks for your Majesty's most gracious Speech from the Throne.

' We are truly sensible of your Majesty's earnest Endeavours to bring the War to a glorious and speedy Conclusion, of which your Majesty has given us so fair a Prospect by your great Wisdom and Conduct, in engaging the King of Portugal and Duke of Savoy in your Alliance, for recovering the Monarchy of Spain from the House of Bourbon, and restoring it to the House of Austria.

' We do most gratefully acknowledge your Majesty's singular Care in the good Management and Application of the public Money, whereby your Majesty's Exchequer hath greater Credit in this so expensive a War than was ever known in the most flourishing Times of Peace; and your most signal and unparallell'd Grace and Goodness to your People, in contributing out of your own Revenue towards the public Service, particularly Your Majesty's most seasonable Assistance to the Circle of Swabia.

' The many Blessings we enjoy under your Majesty's most auspicious Reign, and your tender Regard to the general Welfare and Happiness of your Subjects, justly require our utmost Returns of Duty and Gratitude. And your Majesty may be assured, that your faithful Commons will support your Majesty in your Alliances, and effectually enable your Majesty to carry on the War with Vigour, to which nothing can more contribute than a firm Union among ourselves: We therefore crave Leave further to assure your Majesty, That we will, according to your Majesty's Desire, carefully avoid any Heats or Divisions that may give Encouragement to the common Enemies of the Church and State.

To which her Majesty answer'd.

' I am well pleased with your Assurances of supporting me in the present War, and your kind Acknowledgments of my Endeavours to bring it to a happy Conclusion.

' You may assure yourselves I shall always pursue the True Interest of the Kingdom, and omit nothing that may promote the general Welfare of my People.'

Proceedings on  
the Bill against  
Occasional Con-  
formity.

On the 25th of November, a Motion was made in the House of Commons, for bringing in the Bill against Occasional Conformity: Great Opposition was made to it; the Court was against it, but it was carried by a great Majority, that such a Bill should be brought in. So a new Draught was formed. In it, the Preamble, that was in the former Bill, was left out. The Number, besides the Family, that  
made

made a Conventicle, was enlarged from five to twelve: And the Fine set on those who went to Conventicles, after they had received the Sacrament, besides the Loss of their Employment, was brought down to fifty Pound. The following Speech was made by Sir John Packington on that Occasion, and seems to contain the Sense of the Majority of that House.

Anno 2 Ann.  
1703.

‘ Mr. Speaker, Her Majesty has been pleased in all her Speeches, to give us so many Assurances of supporting the Church of England as by Law established; and also such Instances of being punctual to her Promise in this Particular, that I think she very justly deserves the Title of Defender of the Faith. Her desire to see this Bill succeed the last Sessions of Parliament, was sufficiently shewn by the Prince of Denmark’s constant Attendance upon it; and I believe the Reason why some Persons opposed it, was because the Queen seemed to espouse it.

Sir John  
Packington’s  
Speech thereon.

‘ But pray, Gentlemen, let us consider, how this Bill came to be lost? Why, two or three noble Lords were by turns to be absent? The Miscarriage of the Bill was imputed to their want of Attendance, when at the same time they were desired to be out of the way. And is it not a shame, that we, who have given fourscore Millions of Money for the Preservation of the Protestant Religion, should have trimming at last in a Bill to prevent Hypocrisy?

‘ It was a Law among the Athenians, that when any Mutiny or Difference arose in the City of Athens, the Inhabitants should take one side or other, or else they banish’d them the City: And truly, Sir, when Members of Parliament, and Ministers of State stand neuter in matters that nearly concern the Interest of the Church of England, and have not Courage to own their Opinion, I think they very well deserve to be turned out. Every \* Gentleman here is sent up to give his Vote, and when he declines that, he cannot be properly said to serve the Place he represents. This I take to be the worst sort of Cowardise.

\* Designed against such as withdrew into the Speaker’s Chamber, when the Question was put for passing the Bill.

‘ But pray, Sir, let us enquire into the meaning of all this trimming. Are we afraid to disoblige a Party of Men, that are against the Church and Government? Whose Principle of hatred and malice to the Family of the Stuarts descends to them by Inheritance? Men, Sir, that offer’d open Violence to her Majesty’s Royal Grandfather; Men that have not only the Impudence at this time to justify that Fact, but to turn the day of his Murder into Ridicule, and keep a Calf’s-Head-Feast in the City. And can we imagine that those who are Enemies to her Majesty’s Person and Office, and that were for hindering her from coming to the Throne, would not be glad of any Opportunity to shove her out of it?

TOMES III.

N n

‘ Are

ANNO 2 ANNI.

1793.

‘ Are these the Men to be countenanced and encouraged? This, in plain English, makes me believe this Ministry has too great a Resemblance of the last; that my Lord S——d is risen from the Dead, and now become Prime Minister of State.

‘ And now I am upon this Subject, give me leave to tell some Gentlemen here, who have been bellowing and roaring against Persons for taking Places in the late Reign, that it is a Reflection upon them to hold and continue their Places, in the Company of those that they have been exclaiming against.

‘ They may remember, if they please to recollect the Language in the late Reign——Sir, you must turn this Gentleman out, or else I cannot serve you.——And if any Gentleman was in the Interest of the Church of England, ’twas a sufficient Exception against his being employed. No Gentleman of that Principle was then thought fit to be a Deputy-Lieutenant, or a Justice of the Peace. If we would take the same Resolution, and the same Spirit, things might be better managed than they are.

‘ I did wonder to hear so many B——ps against this Bill, but that wonder ceased, when I considered whom they owed their Proferment to. The A. B——p of C——y, I think, was promoted to that See by my Lord S——d’s Interest; and being asked what Reasons he had against this Bill, replied, he had not well consider’d the Bill, but that my Lord S——d told him it ought not to pass.——This was a very weighty Reason for the Head of our Ch——h to give; and yet, I dare say, none of the rest of them could give a better. One would be provoked, by the late Behaviour of the B——ps, to move for leave to bring in a Bill for the Toleration of Ep——cy; for, since they are of the same Principles with the Dissenters, it is but just, I think, that they should stand on the same foot.

‘ Now, Sir, give me leave to answer some Objections made against this Bill. The first is, that it is unseasonable at this time. Why unseasonable? Is it not as seasonable for us to pass a Law, for the further Defence of the Church of England here, as it was for Scotland to pass an Act last Sessions for the Security of the Kirk there? Why unseasonable? Does the Success of our Arms abroad, or the levying Money at home depend upon it? No Gentleman can say, that either of them do; and since there can be no Objection made against the Goodness of the Bill, why should we defer the putting it in execution?

‘ Another Argument against this Bill, is, that it will create Divisions. Are we to allow a Schism to avoid Division? The Dissenters hold it lawful to communicate sometimes,  
and

and if so, why unlawful to communicate at other times? But oh! the fear of offending Dissenters is to be urged as an Argument, and not provoking the Church of England: Either the Ministry must think we are so good-natur'd, as not to be displeased at any thing they do, or else that our Number is so inconsiderable, that they do not value it if we are displeased.

Anno 2 Ann.  
1703.

' Another Argument against this Bill proceeds from the Number and Strength of the Dissenters. This I take to be an excellent Argument for the Bill; for, if they are so strong and numerous, it is high time for us to guard ourselves against them, and I appeal to every Gentleman here, whether one Dissenter in Place, is not capable of doing more mischief to the Church of England, than ten out of it? Suppose, Mr. Speaker, the Dissenters had the power in their own hands (as they will certainly in a short time, if not restrained) would they admit the Church of England into Places of Trust, and into the Legislature, upon Occasional Conformity?

' Her Majesty has been so generous as to offer what further Security they think fit for the Religion in Scotland; how comes it, that some Gentlemen should represent her Majesty so much concerned to preserve a Religion she is not of, and so unwilling to grant a Security for the Church in which she expects to be saved? According to this Method, one might expect the Scotch Covenant to be brought again into England, and that the Presbyterian-Party of that Kingdom, should remonstrate (as they did to her Royal Grandfather) the necessity of having one Religion, and one Worship in both Kingdoms.

' We have been under great Expences in keeping these Gentlemen out, and have been traduced as Persons designing a French Government; and all the Return we are like to have for our Services and Sufferings, in our Purses and Reputations, is, that these Persons are like at last to become our Masters, which is a very great Discouragement.

' Mr. Speaker, I take this Practice of Occasional Conformity, to elude the Force of one of the best Laws made in the Church of England's Defence, that it is scandalous and knavish in itself, and I will pretend to foretel this; that, by the Benefit of this Occasional Conformity, the Dissenters will come to be the Majority of this House; and then I will venture to pronounce the days of the Church of England few. That I may not see such dismal effects of our pretended Moderation, I heartily wish Success to this Bill.'

On a Motion to give the said Bill a second reading in the House of Lords, it was thrown out by a Majority of 12.

On the 27th the Commons voted 40,000 Men to act in conjunction with the Allies, 10,000 Augmentation-Troops

Supplies granted.

Anno 2 Ann.  
1703.



for the next Year's Service, 1704; and 7000 Foot, and 1000 Horse and Dragoons for Portugal: And that 1,801,000 l. be granted for these Forces, Guards and Garisons, and Payments to the Allies. Two Days after, they voted 40,000 Seamen, including 5000 Marines, for the Sea Service, 1704. Mr. Secretary Hedges acquainted the House, the 30th, that her Majesty had been pleas'd to give this Answer to their Address about stopping all Correspondence with France, ' That ' she thought the Continuance of the stop of all Post Letters, ' Trade, and all other Correspondence with the Enemies, so ' necessary for the public Good, that she would forthwith ' give Orders to her Minister at the Hague, to insist upon it ' with the States-General, as the Commons desir'd.' The same Day the House voted an Address to her Majesty, assuring her, they would provide for the making good such Alliances as her Majesty had made, or should make, with the Duke of Savoy.

Vote occasion'd  
by the great  
Storm.

Several Men of War having been lost in the great Storm which happen'd about this Time, they unanimously resolv'd, ' That an Address be presented to her Majesty, expressing the great Sense the House had of the Calamity fallen upon the Kingdom by the late violent Storm, and that they could not see any Diminution of her Majesty's Navy, without making Provision to repair the same: Wherefore they besought her Majesty, that she would immediately give Directions for repairing this Loss, and for building such Capital Ships as her Majesty should think fit; and to assure her Majesty, that at their next Meeting the House would effectually make good that Expence; and would give Dispatch in raising the Supplies already voted, for making good her Majesty's Treaties with the King of Portugal, and all her Majesty's other Allies, and would consider of effectual Ways for promoting of Trade, for managing her Majesty's Navy Royal, and for encouraging the Seamen.'

Land-Tax Bill  
pass'd.

December 17. Mr. Speaker with the House went up to attend her Majesty, at the House of Lords; and being returned, reported, that her Majesty had been pleas'd to give the Royal Assent to *An Act, for granting an Aid to her Majesty, by a Land-Tax*: and afterwards to make a most gracious Speech to both Houses, of which he had desired and obtained a Copy, which he read to the House, and is as follows, viz.

Queen's Speech  
concerning a  
Conspiracy in  
Scotland.

' My Lords and Gentlemen,

' I Think it proper, upon this Occasion, to acquaint you, that ' I have had unquestionable Informations, of very ill Practices and Designs carried on in Scotland by Emissaries from ' France, which might have proved extremely dangerous to the

the



' the Peace of these Kingdoms; as you will see by the Particulars, which shall be laid before you, as soon as the several Examinations, relating to this Matter, can be fully perfected, and made public without Prejudice. In the mean time, I make no doubt, but, by this seasonable Discovery, I shall be able to give such directions for our Security, as will effectually prevent any ill Consequences from these pernicious Designs.

Anno 2. Ann.  
1703.

' Gentlemen of the House of Commons,  
' I am very sensible of your great Readiness and Affection for the public Service, by presenting me so early in the Sessions with a considerable part of your Supplies: I depend entirely upon your continuing with the same Zeal to dispatch the remainder of them; that so we may be prepared to give the speediest Assistance to our Allies, and to defeat the malicious Designs of our Enemies; who cannot be more industrious to contrive the Ruin of this Kingdom, and of the Protestant Religion, than I shall always be vigilant and careful both of their present Preservation, and for their future Security.'

*Resolved, Nemine Contradicente,* That an humble Address be presented to her Majesty, returning the Thanks of this House, for her most gracious Speech from the Throne, and for the communicating the Discovery her Majesty hath made of the wicked Designs against her Government; with assurance, that this House will stand by, and support her Majesty, and her Government, against all Pretenders, and all her Enemies whatsoever: Which Address was as follows.

Vote thereon.

' Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons, in Parliament assembled, do return your Majesty our most humble and hearty Thanks, for your most gracious Speech from the Throne.

Commons Address.

' We are truly sensible of your Majesty's great Goodness, and of the Confidence you repose in us, by communicating the Discovery of the ill Practices and Designs that have been carried on in Scotland, by Emislaries from France; whereby we have an Opportunity to repeat our unanimous Resolutions to stand by, and support your Majesty, and the Succession in the Protestant Line, as limited by Law, against all Pretenders, and all your Majesty's Enemies whatsoever.

' We want words to express to your Majesty, the detestation we have of any Conspiracies and Attempts, to disturb the Peace and Prosperity of your happy Government; under which, we must think our Security sufficiently provided for, since your Majesty has been pleased to give such directions, as may prevent all ill Consequences from them.

' It

Anne 2 Ann.

1703.



‘ It is a great Satisfaction to us, to find, that the Supplies we have already given, are so acceptable to your Majesty: We shall go on with the same Readiness and Zeal to dispatch the remainder of them, that we may enable your Majesty to give the speedier Assistance to your Allies, and to defeat the malicious Designs of your Enemies.

‘ Your faithful Commons can never have the least distrust of your Majesty’s Vigilance and Care, for the Preservation of the Protestant Interest in general, of the Monarchy, and the Church of England, as by Law established: And we humbly beg leave to assure your Majesty, that we will never be discouraged, but will continue incessant in our Endeavours, by all proper Methods, to transmit them securely settled to Posterity.

The 20th, Mr. St. John reported, that the Members appointed to search the Lords Journals, as to their Proceedings in relation to the Examination of any Persons, who are discovered to have a Design against her Majesty’s Government, had searched the Lords Journals accordingly; and he read in his Place what they had found therein, and delivered the same in at the Table; where the same was again read.

A Motion being made, and the Question being proposed, That an humble Address be presented to her Majesty, setting forth the great Concern this House hath for her Majesty’s Royal Prerogative, and the Resolution of this House to support the same; and that no Persons accused for Crimes, who are her Majesty’s Prisoners, ought to be taken out of the Custody of the Crown, without her Majesty’s leave; and a Debate arising in the House thereupon;

And a Motion being made, and the Question being put, that the Debate be adjourned; it passed in the Negative.

Then the main Question being put; Resolved, that an humble Address be presented to her Majesty, setting forth the great Concern this House hath for her Majesty’s Royal Prerogative, and the Resolution of this House to support the same; and that no Persons accused for Crimes, who are her Majesty’s Prisoners, ought to be taken out of the Custody of the Crown, without her Majesty’s leave.

The 21st, Mr. Speaker reported, that the House did yesterday attend her Majesty at St. James’s, and presented to her their Address; and that her Majesty was pleased to give a most gracious Answer, as followeth.

Her Majesty’s  
Answer.

‘ Gentlemen, I am very well pleased with your Assurances of dispatching the Supplies, and with the other parts of this Address, in which you express so much Duty and Readiness to support, and to trust me.

‘ You may depend upon my willingness to join my Endeavours with you, in securing to Posterity the Protestant Succession

‘ cession in the Monarchy, and the Church of England, as Anna 2 Ann.  
‘ it is established by Law.’ 1703.

Mr. St. John reported, from the Committee to whom it was referred to draw up an Address upon the Resolutions of yesterday, that they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Table, where the same was read, and (with an Amendment) agreed unto by the House, as follows.

Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons of England, in Parliament assembled, beg leave humbly to lay before your Majesty the great and just Concern we are under, to see any Violation of your Royal Prerogative. Second Address.

‘ Your faithful Commons believe the Administration of the Government best secured, when it is left to your Majesty, with whom the Law has entrusted it; and have so firm a dependance upon your Majesty's Affection to your People, and your great Wisdom, that they can never apprehend so little danger from any Conspiracy, as when the Examination thereof is under your Majesty's directions.

‘ We are therefore surprized to find, that when several Persons, suspected of treasonable Practices against your Majesty, were taken into Custody by your Messengers, in order to be examined; the Lords, in Violation of the known Laws of the Land, have wrested them out of your Majesty's hands, and without your Majesty's Leave or Knowledge, in a most extraordinary manner, taken the Examination of them solely to themselves; whereby a due Enquiry into the evil Practices and Designs against your Majesty's Person and Government, may, in a great measure, be obstructed.

‘ Your loyal Commons do therefore most earnestly desire your Majesty, to suffer no Diminution of that Prerogative, which, during your Majesty's Reign, they are confident will always be exerted for the Good of your People.

‘ And we humbly beg leave to assure your Majesty, that as we are resolved, by timely and effectual Supplies, to enable your Majesty to carry on the War, which you have so gloriously begun; so we will, to the utmost of our power, support your Majesty in the Exercise of your just Prerogative at home, and the asserting of it against all Invasions whatsoever.

January 3. Mr. Speaker reported, that he, with the House, did, before the Recess, present to her Majesty their humble Address of the twenty third of December last; and that her Majesty was pleased thereupon to give this most gracious Answer.

‘ Gentlemen,

Anno 2 Ann.  
1703.

Queen's An-  
swer.

Representation  
of the Lords to  
the Queen.

‘ Gentlemen, I have had the Satisfaction to find, that the matter which may have occasioned this Address, is now at an end.

‘ I return you many Thanks for the Concern you express for my Prerogative; and for your repeated assurances of making the Supplies effectual, which will be greatly for the Honour and Advantage of the Kingdom.

‘ I shall be careful not to give way to any Invasion of the Prerogative of the Crown, or of the Rights and Liberties of the People.’

Upon this Address of the House of Commons, the House of Lords drew up the following Representation.

‘ May it please your most excellent Majesty, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, find ourselves under an unhappy necessity of making this our humble Application to the Throne, upon Occasion of an Address presented to your Majesty by the House of Commons, the 23d day of December last, and since that time published to the whole Nation in Print; by which the House of Lords is charged with the Violation of your Royal Prerogative, and of the known Laws of the Land; with wresting Persons suspected of treasonable Practices, and taken into Custody by Messengers, out of your Majesty's hands without your Leave or Knowledge, and in a most extraordinary manner taking the Examination of them solely to themselves; whereby a due Enquiry into the evil Practices and Designs against your Majesty's Person and Government, might in great measure be obstructed. And they conclude their Address, by most earnestly desiring your Majesty to suffer no diminution of your Prerogative, and promise to support you in the asserting it against all Invasions whatsoever. It is not possible for us to remain silent under this heavy Charge, so unjustly, and, without the least ground or colour, endeavoured to be fixed upon the whole Body of the Peers; which tending directly to create an ill Opinion of us in your Majesty, puts us under an inevitable necessity, of vindicating both the Legality and dutiful Manner of our Proceeding.

‘ The Expressions in the Address of the House of Commons are so very harsh and indecent, that we may truly affirm the like were never used of the House of Peers, in any Age, not even by that Assembly, which, under the name of the House of Commons, took upon them not only to abolish the House of Lords, but to destroy the Monarchy. We shall carefully avoid making returns of that kind: We consider too much what we owe to ourselves; and we know too well the profound Respect due to your Royal Person, to let  
any

any Provocation transport us so, as to use Words unfit to be offered by us to our Sovereign.

Anno 2 Ann.

1703.

The Matter of this Address is no less injurious to us than the Terms. There was not the least Occasion for a just Objection to any Part of our Conduct in that Business to which the Address relates; the Proceeding was strictly justifiable by the known Laws and Customs of Parliament, it was carried on with the utmost Respect to your Majesty, and with true Zeal for the Safety of your Person and Government; all that was done was agreed to by the concurrent Opinion of the House, without the least Objection from any of our Members, who have the Honour of serving your Majesty in your great Offices and Employments.

We humbly represent to your Majesty, that, by the known Laws and Custom of Parliaments, the House of Peers has an undoubted Right, in Cases where they conceive it to be for the Good and Safety of your Majesty and the Kingdom, to take Examinations of Persons charged with criminal Matters; whether such Persons be then in Custody or not, and also to order the Persons so to be examined, to be taken into Custody of your Majesty's sworn Officers attending the House, during such Examination, or to commit them to any other safe Custody that they shall think proper; and to restrain others, if they see cause, from having Access to, or Communication with them: The House of Lords has exercised this Right from time to time, as Occasions have required, without Objection. Our Records are filled with Precedents which warrant our Claim in every Part of it, and we presume to affirm to your Majesty, that the drawing this Right into question at any time, cannot but be of dangerous Consequence to the Liberties and Safety of the People, and to the Constitution of the Government, as tending to avoid, or render in great measure ineffectual the Enquiries of Parliaments, which are so absolutely necessary, especially where many and great Persons are engaged in dangerous Designs against the Government; or where ill Ministers abuse their Favour towards the oppressing or enslaving of the People. Your Majesty's Wisdom and Goodness make us secure at present against all Influences of that kind, and we unanimously and heartily pray we may long enjoy the Blessing of your Reign. But if it happens in future times, that ill Men should gain too great a degree of Favour with our Princes; how easy will it be for them to stifle or defeat all parliamentary Enquiries into their Crimes? For if the being in Prison, or in the hands of a Messenger, will protect Men from being examined in the House of Lords, or from being put into the Custody of the proper Officers of the House, during the Examination, and debarred from conversing with others; it will certainly be always in

Ann. 2 Ann.  
1703.

the Power of Favourites to cause those who can be Witnesses against them, as well as the Accomplices of their Designs, to be taken into Custody. And if Persons in Custody are out of the reach of the House of Lords, who are the hereditary Counsellors of the Crown, and in whom a judicial Power is lodged by the Constitution, it is not to be imagined that the Commons can pretend to a greater Power of Examining, Committing, or Restraining them.

‘ No House of Commons till now has given countenance to this dangerous Opinion, which does so directly tend to the rendring ill Ministers safe from the Examination of Parliaments: And we are persuaded no House of Commons hereafter will assert such a Notion, because they are not wont easily to part with a Power they have assumed; and it is certain, that they have several times taken upon them to exercise an Authority like that which they have so severely reflected on in their Address.

‘ This Consideration gave us the greater Astonishment, to find our Proceeding represented in the strange Terms of wresting Prisoners out of your Majesty’s hands, and taking the Examination of them solely to ourselves. We believe the ordering Persons to be examined in that High-Court, where your Majesty is always present in Consideration of Law, and in that great Council where you may be present in your Royal Person, as often as you please, will never be thought an Exclusion of your Majesty from the Examinations, if that was intended to be insinuated by saying, we had taken the Examinations solely to ourselves. Having thus laid before your Majesty what it is we claim, and must insist on, as the indisputable Right of the House of Peers, which was never thought, in the time of your royal Ancestors, to be prejudicial to the just Prerogatives of the Crown, and which is manifestly necessary for the securing the Liberties of your People, whereof we are assured your Majesty will have an equal Care, We humbly beg leave to lay before you a short State of the particular Matter of Fact relating to these Prisoners; not doubting, but when the whole Proceeding is known to your Majesty, it will be approved not only as lawful, but every way respectful to your Majesty.’

‘ On Tuesday the 14th of December, the House of Lords was informed, that several Persons had been seized by the Custom-House Officers on the Coast of Sussex, as they came from France; and that amongst them there was one Boucher, who was capable of making considerable Discoveries, having been in Arms in the French Service for many Years, and Gentleman of the Horse, and Aid de Camp to the late Duke of Berwick, who stands attainted of High-Treason, and who had been secretly in England several times before; that it was probable, if he was strictly examined, he might be brought

brought to confess, since he saw his Life in apparent danger ; but that he was a bold Man, and likely to attempt an Escape on that very account, if he was not carefully looked after : And the House was also told, that there was a general Remissness both in the taking, searching, and looking to such Prisoners, which did afterwards appear very evidently in the Examinations that were taken. Upon this Information the Earl of Nottingham, your Majesty's principal Secretary of State, acquainted the House that he had not heard of Boucher's Name particularly, but had sent Messengers to bring one Ogilby, and the other Prisoners who had been apprehended by the Custom-house Officers, to Town ; and that he believed the Messengers would do their Duty, but he would not be answerable for them.

Anno 2 Ann.

1703.

' After this Account of the Prisoners, and of what had been done in order to secure them, the House thought themselves obliged in Duty to your Majesty, and for the Public Safety, at a Time when the Kingdom is engaged in an open War with France, and that there are too just Grounds to apprehend the dangerous Practices of French Emissaries, to make an humble Address to your Majesty, that particular Care might be taken for securing the Person of Boucher, and of those who were taken with him, and that none might be suffered to speak with them till they were examined.

' The next day your Majesty's gracious Answer to this Address was reported to the House, that Care had been taken to secure the Prisoners, and that your Majesty would give Orders that no body should speak with them till they were examined. Thereupon the Lords entred into a farther Consideration of the Importance of this Matter, and, conceiving nothing to be more likely to bring Prisoners, who had forfeited their Lives, to a full Discovery of the Truth, than to find themselves under the Enquiry of a Parliament, they thought it would be of public Service, for them to take Examinations of these Persons ; and accordingly an Order was made, that no Persons should speak with the Prisoners, till they had appeared at the Bar of the House.

' On the 16th day, the Earl of Nottingham informing the House of Lords, that the Prisoners were brought to Town ; the Usher of the Black-Rod was ordered to take them into his Custody, in order to their Examination, and to keep them separate, and in close Custody, (as your Majesty had before directed) and it being thought most proper, from the nature of the thing, that the Examination should be by a Committee of Lords, rather than by the whole House, it was resolved accordingly.

' We beg leave to mention to your Majesty a Matter of Fact which satisfied the Lords, that their Resolution to take the Examinations of Boucher, and the Persons apprehended

Anno 2 Ann.  
 1703.

with him, was neither unknown nor disagreeable to your Majesty; on the same day when that was ordered, being the 15th of December, the Lords resolved to examine Sir John Maclean, a very dangerous Person, as was represented to the House, who then stood committed in the hands of a Messenger; and for that purpose ordered him to be brought to the House the next day, having, as they then thought, very good Grounds to believe it might prove of great Service to your Majesty. Sir John Maclean was brought to the House according to the Order, but your Majesty being pleased so far to take notice of this Order, as to signify to the House by the Lord-Steward, that Sir John Maclean had been in part examined already, and that your Majesty thought it not proper, to have that Business taken out of the way of Examination it was then in, but that your Majesty would in a short time communicate it to the House; the Lords immediately acquiesced in your Majesty's Opinion, and sent back Sir John Maclean to the Place from whence he was brought. It was with this Disposition of Mind the Lords acted in the whole Matter; and if your Majesty, who no doubt had the same notice of both Orders, had thought any other Method of the Examination of Boucher, and the Persons taken with him, more proper than of the Lords; they had reason to conclude your Majesty would have intimated it at the same time, and most certainly, the House would have had a like Deference for your royal Judgment in that Instance also.

The Lords Committees appointed to examine the Prisoners proceeded with all possible Dispatch, and made their Report to the House on the 21st of December. Upon Consideration of the Report, the House found it requisite to commit Boucher to the Prison of Newgate for High-Treason, and the Lords Committees having submitted to the Judgment of the House, whether several Parts of the Examinations referred to in their Report, should be laid open to the House, or put into any other Way of being farther enquired into, or prosecuted; the House, out of a full Assurance they had, that when the Matter of Fact should be laid before your Majesty, you would certainly give such Orders thereupon as were every way suitable to your royal Prudence, and tender Care of the Public Safety, did unanimously resolve, without so much as suffering those Parts of the Report to be laid open to the House, that an humble Address should be made from the House to your Majesty, by the Lord-Steward, and the Duke of Somerset, (two of the Lords Committees to whom the Examination had been referred) laying before your Majesty the whole Report, with all Matters relating thereto, and humbly desiring your Majesty to give Order, that Boucher should be prosecuted by Mr. Attorney-General for High-Treason,



Treason, and that as to the Commitment, Prosecution or Discharge of the other Prisoners mentioned in the Report, you would be pleased to give such Directions as should seem most proper to your royal Wisdom. Thus, that as the whole Affair was entred upon out of Zeal for your Majesty's Preservation, and the Safety of the Kingdom, and was carried on and concluded with all possible Respect to you; so we had the Comfort to rest assured, that our Behaviour was no less graciously accepted by your Majesty, from the Answer you were pleased to make, the same Day, to our last Address on this Subject, and which was reported to us on the 22d of December, by the Duke of Somerset, whereby your Majesty was pleased to signify to the House, with your accustomed Goodness, that you would give order for every thing as the Lords had desired.

Ann. 2 Ann.  
1703.

‘ Madam, this is a true and just Account of our Proceedings, which have been so strangely misrepresented, and to which no Exception can possibly be taken, by any Persons rightly informed. For, as we had your royal Approbation of all that was done; so the House of Commons could have had no Pretence of Objection, if they had taken the usual Parliamentary Methods of desiring to be informed of what we had done, and of the Grounds of our Proceedings, before they had approached your Majesty with such a Representation of them.

‘ Their carrying this unprecedented Address to your Majesty, in so hasty a manner, gives us almost as great trouble as the hard Usage we find in it.’

‘ The ancient, known, and indeed only effectual Method of preserving a good Correspondence between the two Houses of Parliament, has been by Conferences. If, at any time, either House conceived they had a reasonable Ground to object against the Proceedings of the other, Conferences have been desired, and the Matter in debate between them fairly discussed; and thereby, Mistakes have been declared for the most part, and a good Understanding cultivated, and a mutual Respect preserved, which is always highly requisite, in the Nature of our Constitution, but more especially necessary in this time of War and Danger.

‘ Had the House of Commons thought fit to have pursued this Method upon this Occasion, we should have been able to have given them entire Satisfaction, not only of the Lawfulness of all we had done, but of the just and weighty Ground upon which we took the Examinations of these Persons into our own hands: or at least, if they could have convinced us of any Mistake, we should have given them any reasonable Satisfaction.

‘ But, without making any such previous Step, the House of Commons have made an Appeal directly to the Throne, against the House of Lords, and charged them, tho’ most unjustly, with Attempts of the highest Nature. Nothing like this was ever done before, and out of our hearty Concern for the

Anno 2 Ann.  
1703.

the Preservation of our happy Constitution, we hope the same thing will never be done again. We know your royal Heart is unmoveably fixed on the preserving the Liberties of your People, and transmitting them entire to Posterity; but if, in after times, the Houses of Parliament should be appealing against one another to the Crown, (for, if such a Course be justifiable in the House of Commons, the same Method may be taken by the Lords) as your Majesty is now sensible how great Difficulties it necessarily brings upon a good Prince; so it is easy to foresee (and we cannot think of it without terror) how fatal the Consequences may be, in the Reign of an ill-designing Prince, and what Advantages may be taken from it, for utterly subverting the best-ordered Form of Government in the World. There are Examples abroad, where Proceedings of this kind have ended in the Overthrow of the Liberties of the People, which makes us the more apprehend the Beginning of them among our ourselves. Your Majesty's great Judgment cannot but readily discern, whether it does naturally tend, for one House of Parliament to be exciting, and earnestly desiring the Sovereigns to exert a real or supposed Prerogative against the other House. It is not easy to imagine what the Commons could expect of your Majesty from such an Application: The Lords have never entertained a Thought of using this dangerous Method, whatever Occasions may have been given within the compass of late Years; and we promise your Majesty, we will always endeavour to preserve a good Understanding with the House of Commons, and shall never think it too dear to procure that Union at any rate, unless that of delivering up those Rights and Powers which are lodged in us by the Law, and without which, the Constitution cannot subsist.

' We shall never be guilty of the Presumption of prescribing to your Majesty, when, or against whom you should exert your Prerogative; but we will be always ready to assist you in the Support of all the just Rights of the Crown, as well as in the maintaining the Liberties of the Subject, which we know are no less dear to your Majesty.

' It may, with Modesty and Truth, be affirmed that the Lords have, in all times, been the surest and most natural Bulwark of the Prerogatives of the Crown, they being (as your royal Grandfather, of ever-blessed Memory, was pleased to express it) an excellent Screen and Bank between the Prince and the People, to assist each against any Encroachment of the other.

' We will never contribute, by any Act of ours, to the Diminution of the Rights of the Crown, nor, as far as we are able, will suffer it in others. We cannot act otherwise without hurting ourselves in the highest degree, being  
thoroughly

thoroughly convinced, that the Preservation of the legal Prerogative, is not only the surest way to secure our own Privileges, but of absolute Necessity for the happy and rightful Administration of the Government. And we hope the House of Commons will, in all times to come, speak and act with that regard to the Prerogative which they seem to have taken up lately.

Anno 2 Ann.  
1703.

‘ There remains one Particular more, which we will only name to your Majesty, because we rest satisfied it cannot have Weight any where; that is, the Insinuation in the Address, as if the Examination of these Prisoners, by the Lords, was in order to obstruct the Enquiry into the Designs against your Majesty’s Person and Government; or at least, that it was likely to produce such an Effect. Our dutiful Zeal for your Majesty’s Government, and our warm Concern to discover all Designs and oppose all Practices against it, are too well known to the World, that any Suggestions of that sort should make the least Impression to our Disadvantage; and we are very sure, it was no Suspicion of that Nature which gave the true Rise to this very sharp Address. It is easy to determine, whether a hearty and forward Undertaking to search into the Designs of your Enemies, or the seeking Occasions to object to, and interrupt such Endeavours, be most likely to obstruct the Discovery of the pernicious Practices of Traytors.

‘ Most gracious Sovereign, We most humbly ask pardon for presuming to give your Majesty the trouble of this long Representation, which has proceeded from the passionate Concern we have to stand, not only acquitted, but entirely approved in the Judgment of so excellent a Queen, and so justly beloved of all her Subjects.

‘ We depend upon your Justice, as well as your Goodness, that nothing can do us Prejudice, (from whatsoever Hands it comes) in your royal Opinion, while we continue to act in that Station where we are placed by the Form of the English Government, according to the Laws and Customs of Parliament, with all imaginable Respect and Duty to your self, and all possible Zeal for the Safety and Happiness of your Kingdom.

‘ Give us leave to conclude this our humble Address with this firm Promise, That no Danger, no Reproaches, nor any Artifices whatsoever, shall deter or divert us from using our utmost Endeavours, from time to time, in discovering and opposing all Contrivances and Attempts against your royal Person and Government, and the Protestant Succession, as by Law established.’

Her Majesty’s gracious Answer to this Representation was;

‘ My Lords,

‘ I am very sorry for any Misunderstandings that happen  
‘ between Her Majesty’s Answer.

Amo 2 Ann.  
1703.

‘ between the two Houses of Parliament, which are so inconvenient for the public Service, and so uneasy to me, that I cannot but take notice, with Satisfaction, of the Assurances you give me, that you will carefully avoid all Occasions of them.

‘ I thank you for the Concern you express for the Rights of the Crown, and for my Prerogative; which I shall never exert so willingly as for the Good of my Subjects, and the Protection of their Liberties.”

Jan. 22. The Commons ordered, that some of their Members be appointed to search the Journals of the House of Lords, touching their Proceedings upon the late Address of this House to her Majesty, and their Representation thereupon; and also to search Precedents concerning Commitments by the House of Lords, in Cases where the Person has been in the Custody of the Crown, and report the same to the House: and several Members were appointed accordingly.

Feb. 3. The said Report of the Journal of the House of Lords, relating to the Address of this House, and the Representation of the House of Lords was read.

*Resolved*, That an humble Address be presented to her Majesty, to clear this House from the Misrepresentation of the House of Lords, in their Representation presented to her Majesty; which said Address was conceiv’d in the following Terms:

The Commons  
Address.

‘ Most gracious Sovereign, your Majesty having, with great Goodness, declared from the Throne to your Parliament, that divers ill Practices and Designs had been carried on in Scotland, by Emissaries from France, which might have proved extremely dangerous to the Peace of these Kingdoms; and that you would lay the Particulars before your Parliament, as soon as the several Examinations could be fully perfected, and made public, without prejudice; we, your Majesty’s most dutiful and loyal Commons, resting secure and satisfied in your Majesty’s great Wisdom and Care, most thankfully acknowledge the Confidence you have been pleased to repose in us.

‘ But finding, upon the Lords Journals, that their Lordships, the very same Day, made two Orders, one to remove your Majesty’s Prisoners out of your Custody into their own, and the other to commit their Examination solely to a Committee of seven Lords, chosen and appointed by themselves; by which your Majesty seemed excluded from any Power over the said Prisoners:

‘ Your loyal Commons, justly sensible of the dangerous Consequences of such Proceedings, thought themselves obliged to declare their Concern at this Violation of your royal Prerogative, and the known Laws of the Land, in an humble Address presented to your Majesty. ‘ Your

Your faithful Commons are well assured, when this Matter comes to be rightly stated and understood; a Zeal so well intendēd, and so well groundēd, will rather be imputed to them as meritorious, than liable to exception; and therefore, since their humble Address has been so artfully misrepresented by the Lords in their late Representation, presented to your Majesty on Tuesday, the 18th of January, and published and spread with unusual Industry through all Parts of the Kingdom, they look upon themselves under an indispensable Necessity of appearing before your Majesty in their own Justification.

Annō 2 Ann.  
1703.

‘ Their Lordships think fit to take offence at the Manner and Words of our Address, and accompany this Exception with Reflexions and Insinuations, more harsh and more odious than the most opprobrious Language: But, as we made use of no Terms but what were suitable to the Occasion, so it will appear by Precedents, that the same have been frequently and reciprocally used by both Houses to each other; nor could the Commons, in respect to your Majesty, assert your royal Prerogative, in Words of less Force than those in which they have vindicated their own Privileges.

‘ Whatever Expressions our Zeal for your Majesty, and the Public, might have inspired, we could never have offered to our Sovereign so ungrateful a Remembrance as the Destruction of the Monarchy, by a detestable Assembly, composed of Members of both Houses, who being alike Partakers in the Guilt, ought equally to share the Reproach.

‘ With much more Reason might we observe, both on behalf of your Majesty and the Commons, that their Lordships, not contented with preferring their own Examinations to yours, not contented with excluding your Majesty and the Commons, to whom Parliamentary Enquiries most properly belong, do appropriate to their House only, even in their Application to their Sovereign, the Name of a Parliament; an Instance not to be paralleled, unless by that very Assembly that subverted the Monarchy.

‘ It is not the Question at present, as stated by the Lords, whether their Lordships have a Power of taking into Custody, while under Examination, Persons accused of criminal Matters, cognizable in Parliament? But, that their Lordships have a right to take the Prisoners of the Crown, and the Examination of them, solely into their own hands, without your Majesty’s Consent, and in such a Manner as must necessarily prove an Exclusion to your Majesty, and this House, is the Proposition your Commons deny, and for which their Lordships have produced no Precedent.

‘ This unhappy Occasion has been, at the same time, accompanied with the most surprizing Instances of Contradiction,

Anno 2 Ann.  
1703.

and Counter-Orders to your Majesty, both preceding and subsequent to it, but especially on the 29th of January last, when your Majesty, with your accustomed Goodness, communicated to the Lords the Papers relating to the Scotch Conspiracy, with an Exception only of some Matters not yet proper to be made public, without preventing a further Discovery of Secrets of greater Importance, with which your Majesty assured their Lordships they should also be acquainted, as soon as it could be done without Prejudice. However their Lordships, upon what Provocation, or for what Reason no where appears, immediately addressed your Majesty, pressing you to lay before them the whole Matter, with all Papers relating thereunto; by which your Majesty was put under a necessity, either to give their Lordships a Refusal, or to comply with their unexpected Importunity, to the endangering the public Service. These Proceedings, so extraordinary in their Nature and in their Manner, could not but sensibly affect your faithful Commons, whose earnest Desire it is to see both your Houses of Parliament, and the whole Body of your People, entirely agreed to pay the deference due to your Majesty's Wisdom, to confide in your Care, and to promote and maintain your Honour and Dignity.

‘ Their Lordships, not satisfied with assuming this unprecedented Power, have endeavoured, with a great deal of Art, to persuade your Majesty of the Necessity of it, to prevent the Designs of ill Princes and their Favourites: But as it may seem unreasonable for their Lordships to begin to practise upon a good Prince, such Methods as are pretended only to be needful against an ill one, so it is our humble Opinion, that the Dangers might be much greater, admitting this Precedent; should the Lords combine to defend one another from Enquiries and Prosecutions, all parliamentary Impeachments might be eluded, secret Designs carried on, the Innocent aspersed without Reparation, and the Guilty acquitted without Trial. Nor is that Instance mentioned by the Lords an unreasonable Caution, since that Revolution in a neighbouring Kingdom, alluded to by their Lordships, was occasioned by the Incroachments of a prevailing Cabal of Lords, who endeavouring to enslave the People, and to betray their King and their Country to a foreign Power, obliged the Church and the Commons to unite in the public Defence.

‘ Your faithful Commons have found themselves so happy under your Majesty's Administration, that they please themselves with more agreeable Prospects, and, renouncing such Examples of unseasonable Jealousies and Fears, most thankfully receive the Blessing of your Reign: Nor could they have made a more grateful return for your Majesty's generous Protection to their Liberties, than by a suitable Concern for your Prerogative.

‘ If

‘ If their Lordships had consulted their own Journals, with the same Care that we always take to be rightly informed, they would hardly have affirmed, that a direct Appeal to the Throne, without any previous desire of Conference, had been an unprecedented Practice. Their Books are filled with variety of Instances to the contrary; but, without examining their Books, it seems very surprizing, that their Lordships could so soon forget their Address presented to your Majesty the last Session on behalf of the Lord Bishop of Worcester, and their Address to the late King on behalf of William Earl of Portland, Edward Earl of Orford, John Lord Somers, and Charles Lord Hallifax, impeached by the Commons of high Crimes and Misdemeanors; and when this House formerly expostulated with the House of Lords, for Proceedings in the very same Method of which they now complain, their Lordships made a most solemn Declaration in these words;

Anno 2 Ann.

1793.

‘ That they must ever assert a Liberty in their House to apply to the Throne by themselves, for the doing any thing warranted by Law, &c.’

‘ Nor can the Lords, we presume, upon second reflection, deny the Commons the same Liberty, which their Lordships themselves have so strongly asserted, and so frequently practised.

‘ Your loyal Commons sincerely concur with their Lordships in declaring, that we will never contribute by any Act of ours to the diminution of the Rights of the Crown, and that we will not suffer it in others: Your Majesty, their Lordships, and the whole World, may judge from the Example we have now given, if their Lordships do truly wish the House of Commons may, in all times to come, speak and act with that Regard to the Prerogative, which they allow as the Honour to have now taken up; we shall be very unfortunate to continue under their displeasure, at the same time when they seem to hope, that those who succeed us will take pattern by us.

‘ We wish their Lordships also on their part may continue, in all times to come, to speak with that Regard to parliamentary Impeachments, which they seem so lately to have taken up; since we have reason to apprehend, that the Misunderstandings which have of late Years arisen between the two Houses, have been principally owing to the Artifices of some particular Persons among themselves, whom the Commons thought it their Duty, for the public Safety, to bring to Justice. How much more difficult will all such Endeavours be rendered, should their Lordships be once admitted sole Examiners of Accusations against each other, as they are already sole Judges?

Annó 2 Ann.  
1703.

' We are accused, but most unjustly, of exciting and earnestly desiring your Majesty to exert your Prerogative against the House of Lords: We appeal to the words of our Address, if it is possible naturally to impose any such sense upon any Expression that is there: We are sorry their Lordships should descend so low as to the straining and wresting of words, by which they rather discover an unfortunate Inclination, to make us seem culpable upon any terms, than that they in truth believe us so. We know how vain and how fruitless an Application it would be to excite your Majesty to any Abuse of your Power, which we are convinced you will always exercise for the general Good; and so far are your Commons from entertaining any such desire, that we heartily wish to see a good Correspondence preserved between the two Houses; nor would forbear to purchase it at any rate, except giving up the Rights of your Majesty, by whom we are protected, and the Liberties and Properties of the People, by whom we are entrusted.

' These few Instances, so plain and so uncontestable, we presume will be sufficient, without trespassing much longer upon your Majesty's time, to discredit whatever else has been alledged, to create in your Majesty, and those we represent, an ill Opinion of us: We have been careful and industrious to avoid, as far as was consistent with our necessary Justification, all Occasion of reviving Animosities, and, how great soever the Provocation has been, your Majesty having declared how uneasy you are under such Misunderstandings, we shall make no difficulty to lay aside our Resentments, who shall always be ready to sacrifice our Lives and Fortunes to your Quiet and Service: Nor can we doubt but we must stand fully acquitted to the whole World, and especially to your Majesty, since the Zeal that we have shewn, and the Reproaches that we have borne, have been owing to no other Cause but the Defence of an excellent Queen, in whose hands God Almighty hath placed the executive Authority over these Nations; which Authority it has been the only Endeavour of your faithful Commons to preserve as entire as our Laws and Constitution allow.

' May it please your Majesty, It is with the deepest Concern, and a Grief not to be expressed, that your dutiful and loyal Commons have found themselves engaged in disputes of this nature, by which they have been so unseasonably interrupted in finishing the Supplies, and other matters of the highest Importance. How zealously they have applied themselves to the Discharge of their Duty, appears from their having already presented your Majesty with the greatest part of their Aids, with a Dispatch and Unanimity beyond Example: Nor could the few Bills yet depending have met  
the



the least Objection or Delay, but from the indispensable Necessity of vindicating your Majesty's Royal Prerogative, the Privileges of our own House, and the Rights and Liberties of all the Commons of England, in several Instances invaded almost at the same time; we wish there may have been more of Mistake than Design in those who have created those unhappy Differences: However, we desire the Remembrance may be henceforth blotted out, and that there may remain no other Impression in the Hearts both of Lords and Commons, than a sincere and passionate Concern for your Majesty's Welfare and Glory: Nor any other Contention hereafter arise, but by whom the public Good shall be best advanced, the Protestant Succession, and the Church of England best secured, and the just Rights and Prerogatives of the Crown best supported.'

Anno 2 Ann.  
1703.

The Queen's Answer to the Commons Address was to this effect:

' Gentlemen, I return you many Thanks for the great Concern which you express for me and my just Rights. Your Dispatch of the Supplies is a great Advantage to the public Service. And I am very well pleased with the Assurances you give me of your Care to avoid any Occasion of difference between the Houses, especially at this time, when there is so apparent a Necessity of strengthening ourselves against the malicious Designs of our Enemies.'

Queen's Answer.

Feb. 24. *Ordered*, That some Members be appointed to search the Journals of the House of Lords, as to what Proceedings have been since the last Report to this House, upon the Papers communicated to the Lords by her Majesty, relating to the Conspiracy; and several Members were appointed accordingly.

The 28th, Sir Humphry Mackworth reported, that the Members appointed had been to inspect the Journals of the House of Lords, what Proceedings had been since the last Report to this House, upon the Papers communicated to the Lords by her Majesty, relating to the Conspiracy; but that they did not find any Proceedings as yet entered into their Journals: But that out of the Papers for making up the same, they had taken Copies of the Proceedings they found therein, which he read in his place, and afterwards delivered in at the Table, where the same was read

*Ordered*, That the Consideration of the said Report be referred to the Committee of the whole House, who are to consider of the Papers communicated by her Majesty to this House, relating to the treasonable Correspondence carried on with St. Germain and the Court of France.

The 29th, Mr. Freeman (according to Order) reported from

Anno 2 Ann.  
1703.

from the Committee of the whole House, to whom it was referred to consider of the Papers communicated by her Majesty to this House, relating to the treasonable Correspondence carried on with St. Germain's and the Court of France, the Resolution which they had directed him to report to the House, which he read in his place, and afterwards delivered in at the Table, where the same was read, and is as followeth :

*Resolved*, That it is the Opinion of this Committee, that the House be moved, that an humble Address be presented to her Majesty, that she will be pleased to re-assume the just Exercise of her Prerogative, and take to her self the Examination of the Matters relating to the Conspiracy, communicated to this House by her Majesty ; and to give assurance, that they will defend her Majesty's sacred Person and Government against all Persons concern'd in the said Conspiracy, and all other Conspirators whatsoever : And to declare, that the establishing of a Committee of seven Lords, for the sole Examination of the said Conspiracy, is of dangerous Consequence, and may tend to the Subversion of the Government.

*Resolved*, That the House doth agree with the Committee, that an humble Address be presented to her Majesty, that she will be pleased to re-assume the just Exercise of her Prerogative, and take to her self the Examination of the Matters relating to the Conspiracy, communicated to this House by her Majesty, and to give assurance, that they will defend her Majesty's sacred Person and Government, against all Persons concerned in the said Conspiracy, and all other Conspirators whatsoever ; and to declare, that the establishing of a Committee of seven Lords, for the sole Examination of the said Conspiracy, is of dangerous Consequence, and may tend to the Subversion of the Government.

*Resolved*, That the said Resolution be presented to her Majesty by the whole House ; which was done accordingly, and her Majesty was pleased to return the following Answer :

' Gentlemen, The great Marks of Trust and Confidence, which you have given me in this Address, are very acceptable to me.

' I thank you for your Advice, and shall constantly exercise my just Prerogative for the Security and Satisfaction of my Subjects.'

The House having order'd all these Particulars to be collected, and publish'd together, we have done the same ; and must, therefore, return now to such other Transactions as took place in the Interval : Among which, the following, for the sake of the Resolutions taken by both Houses thereon, deserves a Place.

Jan. 20. A Petition of Charles Bathurst Esq; was presented

presented to the House of Commons, and read, touching an Order made by the House of Peers, the twelfth of February, 1702, with relation to an Order made by the Court of Exchequer, the fifteenth of July, *Decimo tertio regni Regis Gulielmi Tertii*, concerning an Inquisition and Survey of the Boundaries of the Honour of Richmond, and Lordship of Middleham; and of many other Honours, Manors, and Lordships, bounding thereupon; and praying such Relief on the Subject-Matter of the said Petition, as shall be thought fit.

Anno 2 Ann.  
1703.

*The Case of the said Charles Bathurst Esq; as presented to the House.*

July 15, 1701. The Court of Exchequer made an Order *ex officio*, for the Preservation of a Record of that Court.

Nov. 9, 1702. The Lord Wharton, finding that the said Record was made use of as Evidence against him, in a Trial at the Queen's-Bench-Bar of an Issue directed out of Chancery, wherein the said Lord Wharton was Plaintiff, and the said Petitioner Mr. Bathurst, the said Mr. Squire, and others, were Defendants, concerning some Lead-Mines, did, on the 19th of December, 1702, petition the House of Lords (by way of Appeal) from the said Order of the Court of Exchequer, and prayed to have that Order discharged, and the Record taken off the File.

In which Petition the Lord Wharton complained, that the said Record was imposed on the Court (by contrivance between the said Mr. Squire and Mr. Thompson, a sworn Clerk in the Court of Exchequer) and therefore prayed, that the said Mr. Squire and Mr. Thompson might answer the said Petition, (which he call'd an Appeal;) and accordingly they were ordered to answer the same.

Jan. 7, 1702. Mr. Squire and Mr. Thompson petitioned the House of Lords, setting forth, that no Suit was ever depending in the Court of Exchequer between the Lord Wharton, and the said Mr. Squire and Mr. Thompson; and that therefore the Lord Wharton's said Petition was not an Appeal, but an original Complaint against them for a Crime of a high nature, for which they ought to be left to be tried by the usual Course of the Laws of the Land; and prayed their Lordships to dismiss the Lord Wharton's Petition, and to discharge their Order, by which they the said Mr. Squire and Mr. Thompson were obliged to answer the same.

Jan. 21, 1702. The Lord Wharton put in his Answer to their Petition, insisting on his Appeal as regular, and alledging that there was a Suit in Chancery, wherein the said Mr. Squire was a Defendant (among others) concerning the Lead-Mines in question, and that the Order made in this Case (tho' in the Court of Exchequer) affected the Suit in Chancery; and he then obtained an Order to hear one Council on each side the very next day.

jan.

Anno 2 Ann.  
1703.

Jan. 22, 1702. Council were heard, and their Lordships were pleased (on debate) to dismiss the Petition of the said Mr. Squire and Mr. Thompson, and to order them to answer the Lord Wharton's Petition (or Appeal) on Monday then next following. Against which Proceedings several of the Lords entered their Dissent (or Protest) and gave Reasons for their so doing in the words following, *viz.*

First, ' We conceive that by this we assume a Jurisdiction in an original Cause, for these Reasons:

1st, ' Because there has been no Suit between the Parties in the Exchequer; and consequently this Petition cannot be called an Appeal from that Court.

2dly, ' Altho' there was a Suit in the Court of Chancery, yet one of the Persons required to answer was not a Party in that Suit; and therefore as to him (at least) it must be an original Cause.

3dly, ' Tho' all had been Parties in the Chancery, yet it never was heard, that an Appeal lay from one Court that had no Suit depending in it, because there was a Suit depending in another Court.

Secondly, ' Because no Court can take any Cognizance of a Cause in which that Court cannot make an Order; but in this Case, the House of Lords cannot make an Order (because very many are concerned in this Record, who are not before this House) therefore this House cannot take any Cognizance of it.'

Jan. 25. The Lord Wharton acquainted the House, that he was willing to leave out Thompson, and did only expect Squire should answer his Petition, and thereupon he obtained an Order to that purpose.

Feb. 2. Mr. Squire put in his Answer, still insisting, as he had done in his said Petition, that it was an original Complaint against him, and could not be called an Appeal, there being no Suit depending in the Court of Exchequer, between the Lord Wharton and him, and that the Record, \* (which the Lord Wharton would have suppressed) not only greatly concerned her Majesty, but the Inheritances of several thousands of Persons, who are equally concerned, (if not more than he) in the Preservation thereof; and that it was more immediately incumbent on the Barons of the Court of Exchequer, to justify their own Order; and therefore prayed their Lordships would not proceed further against him, 'till all Parties concerned might be duly heard.

Feb. 8. The City of London, who are Grantees from the Crown of the whole Honour of Richmond, and Lordship of

\* Note—The Record is a Survey and Boundary of the Honour of Richmond and Lordship of Middleham, which together are much larger than the County of Middlesex, and more than one hundred Miles in Circumference; whereas the Boundaries contested by the Lord Wharton and Mr. Bathurst, are not above two or three Miles thereof.

of Middleham, finding themselves interested in the Preservation of the said Record, petitioned the Lords to be heard by their Council against the Petition of the Lord Wharton; and their Lordships accordingly ordered Council to be heard for the City, on the twelfth of February, being the same day that the Council for the said Mr. Squire were to be heard.

Anno 2 Ann.

1703.

Feb. 12. Their Lordships heard Council for the Lord Wharton and Mr. Squire, (but refused to hear Council for the City, notwithstanding their said Order) and thereupon were pleased to order a Trial at Bar in the Court of Common-Pleas, the next Easter-Term, by a Jury of Middlesex, wherein this was to be the feigned Issue, *viz.*

‘ Whether the Skins of Parchment directed by Order of the Court of Exchequer, of the fifteenth of July 1702, to be filed, are the perfect, unaltered, exact, and entire Commission and Return, first filed in the Court of Exchequer in the sixteenth Year of King James the first.’

And ordered, that in the said Action the said Robert Squire should be Plaintiff, and take the Proof of the said Issue upon himself, and the said Lord Wharton Defendant: and that the Skins of Parchment, or any Copy thereof, should not be given in Evidence in any Court whatsoever, until the said Trial was over: And that the said Skins of Parchment (being upon the File, by virtue of the said Order of the fifteenth of July) should not be allowed as any Evidence on the said Trial for the Plaintiff, and that after the said Trial, the Verdict given therein should be certify’d and returned by the Court of Common-Pleas into the House of Peers.

‘ Mr. Squire did not decline the Trial of the Issue above-directed, as being conscious of any ill Practices by himself, or any others, or for that he was not able to produce sufficient Evidence, to prove that the said Record is perfect, unaltered, exact, and entire, as at first filed in the Court of Exchequer, in the sixteenth Year of King James the First, (tho’ Mr. Squire could not but think that it was a great Hardship to make him Plaintiff in the said Action, to put the Validity of the whole Record upon the said Issue, and to oblige him to take the Proof thereof upon himself, and all this without his Consent, or the Consent of others, who are more immediately concerned in the Preservation of the said Record) there being better Proofs, in order to find the said Issue truly in the Affirmative, to be given for the said Record, than for any one of the most authentic Records in any of the Courts of Westminster, (as is verily believed :) for,

‘ I. In a Decree of the Court of Exchequer enrolled, made in the nineteenth Year of King James the first, the

TOME III.

Qq

said

Anno 2 Ann.  
1703.

said Record is cited and referred to, as then on record in the Court of Exchequer.

‘ II. The said Record is entered and enrolled *verbatim*, in the Book of Enrolments of Surveys, &c. kept in a public Office at Westminster belonging to the Auditor for Yorkshire, and the said Entry is near as old as the said Record.

‘ III. The said Record, and particularly the Boundaries of the Honour of Richmond, and Lordship of Middleham, (about which only the Disputes are between the Lord Wharton, and the said Mr. Bathurst, and the other Defendants) are fairly entered, and remain on record, in an old Book, kept amongst the Records of the City of London, and the same Entry there appears to be made in the Year 1628.

‘ IV. Divers ancient Office-Copies (and other Copies) of the said Record, and particularly the Boundaries of the said Honour of Richmond, and Lordship of Middleham, have been taken, and the same were examined with the said Record, when on its proper File in the Court of Exchequer; and certify’d to be true Copies. All which said Entries and Copies do exactly agree with the said Record, now on its proper File. And moreover, there are many other Instances, Evidences, and Proofs of the Truth, Validity, and Entireness of the said Record.

‘ But Mr. Squire being apprehensive that the House of Peers, in making the said Order of the twelfth of February 1702, had assumed a Jurisdiction in an original Cause, could not (as he believed) comply with that Order, without doing Injury to the Rights and Privileges of the Commons of England; and, for that Reason, did not think fit to try the Issue as directed.

‘ Nov. 9. [Note, that at the first Trial at the Queen’s-Bench Bar of the Issue directed of Chancery, (when the said Record was given in Evidence) the Verdict, upon full Evidence, was given and found for the said Mr. Bathurst, Mr. Squire, and the other Defendants; yet the Court of Chancery, (as is usual where a Right of Inheritance is to be bound) afterwards directed a second Trial to the same end as the former, which came on at the Queen’s-Bench Bar, in Michaelmas-Term last Nov 23. 1703.]

‘ That at the last mentioned Trial, the Council for the Plaintiff, the Lord Wharton, insisted, that the said Mr. Bathurst, and the other Defendants, could not give in Evidence the said Inquisition and Survey, (tho’ on record in the Court of Exchequer) nor any Copy thereof, by reason the said Mr. Squire had not tried the Issue directed by the House of Peers, the said twelfth of February 1702.

‘ That, by reason of the Premises, the said Mr. Bathurst, and the other Defendants, were deprived of that so necessary

Part of their Evidence, for the support of their Title to the Matters in question, at the said last mentioned Trial, and so (and for that reason alone) lost their Cause, which otherwise they could not have done; for that the said Record (backed with the concurring Testimonies of so many ancient and credible Witnesses, produced on the said Defendants Behalf) must necessarily have convinced the Jury (as some of them have since owned and declared) that the Boundaries of the Manors of Helaugh in Swaledale, and of Arklegarthdale, are as the said Record mentions them to be; and consequently, the Issue and Verdict must have been found for the said Mr. Bathurst, and the other Defendants.

Anno 3 Ann.  
1704.

In consequence of this Petition, &c. the House appointed Committees to inspect the Lords Journals, as likewise the Proceedings of the Chancery and Exchequer Court, with relation to the said Case: And upon the whole, came to the following Resolutions:

*Resolved*, That the House of Lords taking cognizance of, and proceeding upon, the Petition of Thomas Lord Wharton, complaining of an Order of the Court of Exchequer, bearing Date the fifteenth Day of July, one thousand seven hundred and one, for Filing the Record of a Survey of the Honour of Richmond, and Lordship of Middleham, in the County of York, is without Precedent, and unwarrantable, and tends to the subjecting the Rights and Properties of all the Commons of England, to an illegal and arbitrary Power.

Resolutions of  
the Commons  
on the said  
Case.

*Resolved*, That it is the undoubted Right of all the Subjects of England, to make such use of the said Record, as they might by Law have done before the said Proceedings of the House of Lords?

After this the House of Lords took into Consideration the Proceedings of the House of Commons, and made the following Resolution:

March 27. It is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, That the House of Commons taking upon them by their Votes, to condemn a Judgment of the House of Lords, given in a Cause depending before this House in the last Session of Parliament, upon the Petition of Thomas Lord Wharton, and to declare what the Law is, in contradiction to the Proceedings of the House of Lords, is without Precedent, unwarrantable, and an Usurpation of a Judicature, to which they have no sort of Pretence. \*

Vote of the  
Lords thereon.

Qq 2

Towards

\* Mar. 27, 1704. It is ordered by the Lords spiritual and temporal, in Parliament assembled, That the Resolution and Declaration made this Day, with respect to the Votes of the House of Commons, in relation to the Judgment of this House, given upon the Petition of Thomas Lord Wharton, the last Session of Parliament, shall be forthwith printed and published.

Matthew Johnson, Cler<sup>k</sup> Parliamentar<sup>y</sup>.

Anno 3 Ann.  
1704.

Towards the latter End of this Month, the Queen coming to the House of Lords to pass the *Malt-Bill*, was pleas'd to make the following Speech to both Houses:

Queen's Speech. ' My Lords and Gentlemen,  
' **T**HE Misfortune of the King of \* Spain's being forc'd  
' back upon our Coast by contrary Winds, which I  
' hope will lose but very little Time, does yet make it so  
' reasonable to hasten our Preparations for this Year's Ser-  
' vice, that, tho' I am very sensible of your Zeal in forward-  
' ing all Things relating to mine and the Public Service, yet  
' I cannot but take this Occasion to desire you with all  
' Earnestness, that you would give the greatest Dispatch to  
' the Business of this Sessions still depending, which is so ne-  
' cessary for the Good of the Common Interest.

About the same time, likewise, the great Affair of Ashby and White was depending before the House: A Brief of which Case is as follows:

The Case of  
Ashby and  
White.

One Matthew Ashby commenc'd and prosecuted an Action at Common-Law against William White Constable of Aylesbury, a Borough where Sir John Packington was Lord of the Manor, and the Constable of his or his Tenants making, who had refus'd to admit Ashby's Vote at the Election of Burgesses to serve in Parliament; and Ashby (by Direction of my Lord Wharton, and at his Expense) brought this Action against White for having by Contrivance fraudulent-ly and maliciously hinder'd him to give his Vote at the Election for Burgesses for Aylesbury, where Sir John Packington stood Candidate: In this Action a Verdict was found for Ashby in the Country, but Judgment was given against him in the Court of Queen's-Bench, which was revers'd upon a Writ of Error brought in the House of Lords, where he obtain'd Judgment to recover his Damages, and afterwards had Execution upon that Judgment. The five other Inhabitants of Aylesbury, John Paty, John Oviat, John Paton, Henry Bass and Daniel Horn, followed the Example of Ashby, and brought Actions against White and other Aylesbury Constables, in order to recover their Damages.

The Speaker's  
Speech thereon.

' Upon this Occasion, Mr. Speaker, (Harley) after the Reports were over, told the House, that he thought it to be his Duty to put them in mind of the great Consequence and Importance of this Matter, and that it behoved them to take very great Caution in their Proceedings, not only that the Grounds and Foundation be good, but also that the Method and Manner of treating it, be according to the antient Usage and Custom of Parliament: And to that end he desired the House

\* Charles the late Emperor, then upon his way to Spain.



House would give him leave to state this Matter, as it appeared to him, and according to what occurred upon the sudden to his Memory, that the House might take proper Methods upon this Occasion.

Anno 7 Ann.  
1704.

Mr. Speaker then proceeded to give the House an Account of the State of Elections by Custom or Common-Law, and that the great Alteration in point of Elections, was in the Beginning of Henry the IVth's time, since whose Reign the Returns for Parliament have been made by Indenture. That by the Statute of 7 Hen. IV there is a Method prescribed of Election and Return, and the Occasion he took to be this: Henry the IVth came to the Succession of the Crown by the Deposition of Rich. II. when the Parliament was sitting. That Parliament was continued to Hen. IVth's time: For tho' in the Rolls it was called a new Parliament, and Returns were made, as by the Sheriffs of the Counties, and also by the Boroughs, as if it was a new Parliament; yet it was the same Parliament, for they were the same Men, and there were too few Days between one Parliament and the other, to have a new Election. But Henry IV. having made such an extraordinary Step, he would not leave it as a Precedent to be found out. Afterwards, when Times were a little more settled, in his seventh Year, and that Practice was necessary to be condemned, it was provided, at the great Complaint of the Commons, that it should be done by Indenture, that the same or like Deceit should never be put upon the Kingdom afterwards, and one Part was to be kept below. This continued for about four Years, when there was another Complaint of the Proceeding of Sheriffs, (he said he need not mention the Regulation of forty Shillings a Year, and some other things which are not directly to this Case;) and upon that there was a Penalty put upon the Sheriffs of a hundred Pounds, which he took to be in the eleventh Year; and it was put under the Enquiry of Judges of Assize, and so it stood all that King's Reign, till Henry V. and then there was another Law made for Electors and Elected, that they should be all resident. Some of the Law-Books give a pretty Construction of it, that tho' there was such a Law, yet the Custom of Parliament was to be the Rule; but he said he thought it to be a better Construction, that it being then reckoned a Service, and a hard Service, none but the Residents in the Borough were compellable. Thus it continued, till about Henry the VIth's time, and then if the Sheriffs had made a wrong Return, if indicted or prosecuted at the Assizes, there was to be immediate Execution for this hundred Pounds, without any Traverse. Upon this there was a Statute to allow the Sheriff a Traverse for this hundred Pound, and that he should not be liable to it till he was legally

con-

Anno 3 Ann.  
1704.

convicted; so it stood till about a Year afterwards, that the Parliament thought it necessary to make another Act about 8 Hen. VI. And then there was a great Complaint again of the ill Proceedings of Sheriffs: And the Law was enforced again, and it was declared who should be the Electors; and the Sheriff was made liable to the Penalty of a hundred Pound, and Imprisonment without Bail or Main-Prize, and it was enquirable by the Judges of Assize. Another Statute was made the 10th of Hen. VI. which enforceth the Manner of Elections; and so it stood till 23 Hen. VI. when there are two more Statutes, one relating to the Wages of Knights, Citizens and Burgeses, and how they should be levied; another reciting the Statute of Hen. V. and Hen. VI. and it says, that there were not sufficient Penalties on Sheriffs, who, besides that sometimes they sent no Writs to Boroughs, made insufficient Returns, &c: And the Mayors and Bailiffs were guilty of the same; and therefore, over and above the first Penalty of a hundred Pounds, they laid another Penalty a hundred Pounds more, which was to the Plaintiff, with Costs of Suit; and this was to be tried before the Judges of Assize, and at the Courts at Westminster, and at the Sessions; and the Action is to lie either for a Knight, or Burgeses, or any other Person that would bring the same; but within a time limited; viz. three Months from the Commencement of the Parliament. Thus Elections stood in point of Law till the modern Alteration, within every body's Memory. And he hoped whatever time Gentlemen took this Matter into Consideration in, they would do it as became the House of Commons, and examine all Particulars, as well as the Judgments of Law, and that they would do what became the House of Commons, and that no body would see the Dignity of the House of Commons impair'd. And however Differences were between them in other things, they would be unanimous in preserving the Rights of the Commons, and of doing it in a right and justifiable Manner: And offered to their Consideration, whether it would not be best to proceed in the old Method, by going into a grand Committee for the Courts of Justice to consider this Matter, and that by taking this Course, they would walk in the Steps of their Predecessors, and avoid many Inconveniencies, which were easily to be foreseen would happen, by taking another Course.

But it being moved and seconded to consider of the said Reports in a Committee of the whole House, the Question was put, and carried, that the House on Tuesday then next following, would resolve itself into a Committee of the whole House, to consider of the said Reports.

Accordingly, Jan. 25. Mr. Freeman being in the Chair, Mr. Brewer thus open'd the Debate. ' Sir, we are now in

The grand Debate thereon.  
Mr. Brewer.

a Committee of the whole House upon the Consideration of the Case of Ashby and White; which I take to be a Matter of the last Consequence to the Privileges of the House of Commons, which I think are dangerously invaded by the Lords Preerence of Judicature upon them. But, as I don't doubt every Gentleman here thinks it his Duty to support and maintain the just Rights and Privileges of this House, as entrusted by those who sent us hither; so we shall do it in such a manner, as will consist with, and maintain a due Correspondence with the Lords. I shall open the true State of the Case, with the Judgment given upon it in Westminster-Hall, and some of the Reasons, which, in my Opinion, support that Judgment; and then speak to the Reversal of it by the Lords, (which, with Submission, I take to be a new Attempt of their Lordships, to bring this, and all our Privileges before them in Judgment) which, I believe, neither this, nor any other House of Commons will endure, nor want Will or Power to relieve themselves against such an Usurpation.

Anno 3 Ann.  
1704.

‘ The Plaintiff declares against the Defendants, that whereas, on the 26th Day of December, in the 12th Year of King William the third, a Writ issued to the Sheriff of Bucks, commanding him to cause to be elected two Burgesses for Aylesbury; the Sheriff directed his Precept accordingly to the Constables, to whom it belonged to execute that Precept; and the Burgesses being assembled, and the Plaintiff duly qualified to give his Vote, he offered to give it for Sir Thomas Lee and Mr. Mayne; but the Defendants, falsely and maliciously intending to defeat him of that Privilege, did refuse to receive it; which he lays to his Damage, and Issue being joined, that Cause was tried at the Assizes, and a Verdict for the Plaintiff, and 5 l. Damages.

‘ The Fact being thus tried, the Matter in hand (that is to say, whether this Action is maintainable by the Rules of Law or not) was often argued by Council learned at the Bar, and afterwards considered by the Judges in the Queen's-Bench; and upon their mature Consideration, Judgment was given for the Defendants, that is, that the Plaintiff had no good Cause of Action.

‘ Now I understand the chief Reason was, for that the Right of voting in such Cases hath ever been, and ought to be cognizable and determinable by the House of Commons, and not elsewhere; for, by the Law and Usage of Parliament, the House of Commons have heard and determined the Right of their own Elections, and consequently and necessarily the Right of the Electors to vote; and for this purpose, at the opening of all Parliaments, a Committee of Elections is nominated of Members of our own, to hear and determine of such Right of Elections, to whom Petitions (after presented

to

Anno 3 Ann.  
1704.



to the House) are referred; and if any Elector had been refused his Vote in the Country, he is, notwithstanding, allowed his Vote here, in case he had Right; and it shall avail the Candidate as much as if the Vote had been received below: and the Committee, after Judgment upon the Case, report to the House all the special Matter, and their Resolutions; where the whole Matter may be afresh debated, and the House agree or disagree with the Committee, as shall appear reasonable. So that this Determination and Method of Trial hath two Digestions, and more likely to be well founded than that of a common Jury, who we know are made by Under-Sheriffs, and often of Persons so corrupted or ignorant, that new Trials are often granted by the Judges. But it may be objected, that no single Petitioner will be received by the House: In answer to this, I say he may; and I have known Petitions touching Elections preferred by very few Persons, and by the same Reason may by one: I am sure we have no Order of the House against it; and if Gentlemen object, that no single Petition of this nature was ever received, if they will shew me when it was offered, I will shew them when it was received; I believe they cannot shew me it was ever refused. But I would ask if they can shew me that such an Election as this was ever brought against the Officer, as in this Case. I am sure they cannot, and which, in our Law, is allowed a good Argument, that no Action lies; especially it being a Case which cannot be presumed, but may happen very often, almost in every Election: And I believe there never was a Parliament called but frequent Occasions might have been taken for such an Action, and better founded than this of the Plaintiff's, who was a poor Hostler, and removed from that Parish by the Order of two Justices, as being likely to become chargeable. But it seems our Ancestors reposed a Confidence in their Representatives to have right done them in such Case: They sought not Relief from common Juries. And what is now done by this Attempt? Why, the Judges, upon their Oaths say, that they have no Cognizance of the Cause; but notwithstanding, the Lords say they have no Cognizance, and reverse that Judgment; and the Consequence of that is, the Lords will judge of this our undoubted Privilege, never 'till now drawn into question; and by that Reason and Law, the Lords may sit in judgment upon all other our Privileges, and thereby we become depending upon them; which some without doors, I find, are willing to submit to: for that they say, where one is deprived of his Right he ought to have Damages, which the House of Commons cannot give. I allow, where one is injured he shall have Relief, by our Law, in one Place or other; but we have not one Shop to cure all Distempers.

The

The Queen's-Bench relieves chiefly in Matters criminal; Anno 3 Ann. 1704. the Common-Pleas in civil Pleas between Party and Party; the Exchequer in Matters of Revenue; Chancery in Cases of Fraud; and in the Case in question, Relief may be had (as said before) in the House of Commons, by Law and Usage of Parliament, which all Lawyers know, is a very considerable, known and approved Part of the Laws of England. And tho' no Damages are usually given here, yet the Officer, for Misbehaviour, and arbitrarily refusing Votes who had Right, may be, and has been punished, by the Power and Authority of the House, and even at Common-Law; as when an Alderman is refused by the Mayor, or other Person who ought to admit him, the Remedy is by *Mandamus*, which tho' it is chargeable to the Person injured, yet I do not know any Damages are given him, otherwise than that the Party injured is admitted; which is a Relief, the Alderman having what he complained for: And so the Elector; his Vote is allowed as good as if the Constable had took it. And, by the way, give me leave to observe how small a Relief the new devised Remedy, by Damages, is: I dare affirm and demonstrate, that the Plaintiff, in the Case in question, is above 100 l. out of pocket, more than the Costs and Damages recovered, which I take to be *infelix Victoria*. But if Gentlemen say, the poor Hostler could not expend so much, I believe so too, but if at the Expence of any great Man, I think it less justifiable, to make a Tool of that poor Fellow, perhaps in order to enlarge a Jurisdiction.

I must confess I take the Case of the elected to be much stronger than that of the Electors; and yet, in such Cases, Relief at Common-Law was always denied, as in the Case of Sir Samuel Barnardiston and Soame, there the Sheriff made a double Return: and in the Case of Mr Onslow\*, a false Return

\* The CASE of Denzil Onslow, Esq; was tried at the Assizes holden for Surrey on Wednesday the 20th Day of July, in the Year of our Lord 1681, at Kingston upon Thames, before the Lord-Chief-Justice of England, Sir Francis Pemberton.

#### The DECLARATION.

Denzil Onslow Esq; had brought his Action on his Case in the Court of Common-Pleas, against William Rapley, late Bailiff of the Borough of Haselmere; thereby setting forth, that Haselmere was an ancient Borough that used to send Burgeses to Parliament, that a Writ issued to the Sheriff of Surrey, to cause Knights and Burgeses to be chosen for the Parliament to be held the 17th Day of October, Anno 31 Caroli Regis. The Sheriff made a Precept to the Borough of Haselmere, to chuse Burgeses. That, August 31 Anno 31 Caroli secundi, the Plaintiff was duly elected one of the

Anno 3 Ann.  
1704.

Return; and the Persons injured by those Returns were put to very great Charges, and kept long from their Seats in the House, and yet, at Common-Law could never obtain a Relief. The Judges were of Opinion (as they now are in the Case of the Elector) that it was a Matter of parliamentary Cognizance, of which they were not competent Judges. And should we now admit this Matter to be determined by the Courts below, what great Confusion and Inconvenience would

*Burgesses, and returned, by Indenture, with Sir William Moore. That the Defendant, intending to deprive the Plaintiff of the Honour and Benefit of his Election, did, by another Indenture, return Sir William Moore Bart. and James Gresham Esq; as duly elected: whereby the Plaintiff was hindered from sitting in Parliament, and put to great Charge to assert his Right, to his Damage of 200 l.*

*After Not guilty pleaded, upon Evidence given on both sides, at the Trial, the Case appeared to be thus.*

#### *The CASE and Evidence.*

*At the Election in this Borough for the last Parliament at Westminster, there were four Competitors, viz. Sir William Moore, the Plaintiff, Mr. Dorington and Mr. Gresham. The Electors meeting and voting, the Poll was demanded, granted and taken: The Defendant took time to peruse and consider the Poll until the Afternoon; and having considered of it, came again to the Place of Election, and declared the Plaintiff and Sir William Moore had the Majority of the ancient and lawful Burgesses, and proclaimed those two to be duly elected, and sealed an Indenture thereof accordingly; and Mr. Gresham being then present, opposed not the same, but desired that Sir William Moore (with regard to his Title and Quality) might be first named in the Indenture, although (as was then admitted) Mr. Onslow had the Majority of him; which was done accordingly, Mr. Onslow readily and generously consenting to the doing thereof.*

*That about a Week or a Fortnight after, the Bailiff was prevailed with to seal and return another Indenture, whereby Sir William Moore and Mr. Gresham were returned as elected. Whereupon Mr. Onslow's Right to sit was controverted, and he suspended from sitting; and was put to his Petition to the House of Commons, who, upon hearing of the whole Matter, and Consideration had of the indirect dealing of the Defendant and others, declared Mr. Onslow duly elected, and committed the Defendant; and Mr. Onslow sat in the last Parliament at Westminster for that Borough, and that Mr. Onslow had been at great Charges to clear his Election.*

*First, the Defendant's Council insisted on the Statute of 1 H. 5. cap. 1. That a Person elected must be free, resident, and dwelling within the Borough; to which it was answered, and resolved by the Court, that little or no regard was to be had to that ancient Statute,*

would follow? I presume no body will pretend to exclude the Jurisdiction of the House of Commons, in his Case; and yet, if they judge one way, and the Courts below another, and neither have Power to supersede or reverse the Determination of the other, under what Uncertainty will the Officers and all Parties concerned lie? Whereas, in other Cases, where one Court errs, a superior Court reverses; but here, both Adjudications shall stand together, though inconsistent the one with the other. But

Anno 3 Ann.  
1704.

*Statute, for as much as the common Practice of the Kingdom had been, ever since, the contrary; and it was the way to fill the Parliament-House with Men below the Employment: And the Objection was disallowed.*

*Secondly, it was agreed unto by the Parties, and by their Council on both sides, that the Right of Choice of Burgesses for this Borough to Parliament, lay in the Burgage Freeholders, resident, and inhabiting within the Borough, and none others.*

*Then the Plaintiff's Council insisted and proved, that there voted for him thirteen, having good and unquestionable Votes; unto one whereof, the Defendant's Council excepted, for that he, before the Election, had mortgaged his Estate; which the Party himself, present in Court, denied upon Oath: and the Court was of Opinion, it had not been a good Objection, if true, so long as the Mortgagor continued the Possession, and had the Benefit of Redemption in him.*

*The Defendant's Council said, there voted for Mr. Gresham fourteen, having good Votes: Which, if so, would have made a Majority; but the Plaintiff's Council excepted to six of the fourteen, as being no good Elections, for one of them lived not within the Borough; which was proved, by ancient Reputation and Perambulation, that the House where he lived was left without the Bounds. As to the other five, the Objection was, they were no real Burgage-Tenants; and that, if any Conveyances had been made to them of Burgage-Lands, they were lately made, and fraudulently contrived, to make Votes against an Election: And because the Defendant's Council could not deny but these Conveyances were lately made, the Court put the Defendant to produce and prove them, which was done; and upon reading of them, it appeared, two of the five were made after the Test of the Parliament-Writ, and three of them in order to carry on Sir Philip Floyd's Election in the Borough, about five Years since. Two of them were Conveyances by one Vallor, who had a Garden about thirty Rods, and conveyed to each of his two Sons a Piece of it, containing about ten Rods, of which they had made Jointures to their Wives, each Share being worth, at best, 2 s. per Annum. Another of the five was made by the Father, who had a Close containing two Acres, and made a Conveyance to his Son of about a Quarter of an Acre, which always after lay undivided, and was constantly enjoyed by the Father. Another Conveyance was*

Anno 3 Ann.  
1704.

‘ But ’tis said, in this Case, the Action lies, because the Defendant refused the Plaintiff’s Vote, *Maliciose & falso*: I take those to be Words of course, and no Evidence of that is given to the Jury.

‘ Sir, to conclude, the House lately passed a Resolution, that no Lords should intermeddle at any of our Elections: But if this be allowed as Law, they may at the last, judge and make (for aught I know) all our Elections. But for my part,

*made by a Son-in-law to his Father-in-law, of a Cart-House. The last Conveyance was to one Jackson, of a little Tenement: But it was proved that Collateral Security was given to re-convey, and that the Grantor had repaired. As to all five, there appeared several Badges of Fraud, as a continued Possession in the Grantors, &c. and the several Confessions of the Purpose and Intent of making them for the Elections.*

The Court censured such Proceedings as evil and unlawful: Mr. W, (Recorder of G.) one of the Defendant’s Council, stood up to justify these Proceedings, and said, it was Part of the Constitution of our Government to do so. At which the Court seemed very angry, and wondered that any one, especially a Man of the Gown, should say so, and said, do you think our Government hath no better Constitution? With which the Gentleman not being satisfied, he was told by the Court, he deserved to be taken notice of for saying so, and that he seemed to have advised to have the thing done.

To conclude the Evidence, the Plaintiff’s Council deliver’d into Court ten or twelve several Conveyances, that were proved by the Party that wrote them, to have been made by Mr. G’s Order, to make so many Votes at a former Election, wherein Mr. Gresham was concerned; and the Election being over, they were cancelled and delivered up; concerning which, Mr. Gresham endeavoured to say something by way of Excuse, but was told by the Court, it was too bad to be excused; and it was well an Act of general Pardon had passed, since this was done, else he should have answer’d it in another Place. During the whole time of the Trial, the same was managed with great Patience and Circumspection; for, so soon as the Cause was opened by the Plaintiff’s Counsel, the Court perceiving the nature of it, commanded Silence and Attention in the Jury: The Court declaring it was of great weight, as great as any that ever came there to be tried. And the Evidence being fully given on both sides, the Court, by way of Direction, told the Jury, that the Plaintiff need not, as this Case is, prove any express Malice in the Defendant; for it shall be intended when a Man shall do such an evil thing as this is, contrary to his own Knowledge, and Declaration made upon the Election, and afterwards also; (for it was proved against him, by one or two Witnesses, that a little time before this Trial, he did confess Mr. Onslow duly Elected, and that

he



part, I am for continuing the Possession of this; and all our other just Privileges, as derived down to us from our Predecessors, who ever enjoyed and exercised them as now we should; and I hope before we rise we shall think of some Remedies, and not lie wholly under the Power or Mercy of the Lords.

Anno 3<sup>rd</sup> Ann.  
1704.

Sir Thomas Powis. Mr. Freeman, I believe I should hardly have rose up in this Matter, but that I think it more particularly

Sir Thomas  
Powis.

he had told Mr. Gresham what would come of it.) And the Court further told the Jury, that this was a Cause of Moment, and deserved more than ordinary Consideration; and that the making Votes by such means was a very evil and unlawful Thing, and tended to the Destruction of the Government, and Debauching of Parliaments: And although some of the Conveyances were made some time before this Election, to serve a Turn at a former Choice; yet that they were fraudulent, and void in their Creation, and ought not to be made use of at any time against any other Person; and that it was senseless to think such Practices were Part of the Constitution of the Government, or to imagine that Persons whom we entrust with our Lives and Fortunes, ought to be made and chosen by such evil Devices: And that such Practices deserve to be severely punished, and directed the Jury to give signal Damages. Whereupon the Jury withdrew, and after a short Stay, gave a Verdict for the Plaintiff, and 50 l. Damages.

And the Court, in the Course of the Evidence, having observed one Billingham to be much concerned in the Proof and Management of their fraudulent Deeds, conceived him to be privy to much of the Practice thereabouts, and commanded him to stay in Court till the Jury had given in their Verdict: which when they had done, the Court required him to find Sureties to appear in the Court of King's Bench next Michaelmas-Term, to answer to an Information touching the said Misdemeanour; and in the mean time to be of good Behaviour, which accordingly he did do; and Sir William Moore, and Sir George Woodruff (whom he had served last Election at Haselmere) were his Sureties. And the Court required the Plaintiff, Mr. Onslow, to see that an Information be preferred; which he promised to do: And the Court declared it was a very great Offence, and should be severely punished.

I shall give a few Instances of what the House of Commons have done in former Ages to punish and prevent Evils about Elections.

1. Anno 20 Jacobi, Doctor Harris, Minister of Blechingley in Surrey, for misbehaving himself by Preaching, and otherwise, about Election of Members of Parliament, upon Complaint, was called to the Bar of the House of Commons, and there as a Delinquent, on his Knees, had Judgment to confess his Fault there, and in the County, in the Pulpit of his Parish Church, on Sunday before the Sermon.

Anno 3 Ann.  
1704.

particularly my Duty to speak to this thing, if it were possible, than any other; for in truth, I have had a more particular Opportunity of knowing the Nature of this Case, and the Proceedings in it, and what the Consequences of it will be, than many others have had.

‘ I must acquaint you I was of Council in this Cause, in the House of Peers, upon the Writ of Error with White, and the other Constables that were prosecuted in this Action, and did to my power defend what I took to be the Rights and Privileges of this House.

‘ I would stand right in the Opinion of every body; for what I did there for my Client, in the Course of my Profession, I do not think my self obliged to maintain here: for then it was my Duty to do my best for him as his Council, but now he hath done with me, and I have done with him, in this Place.

‘ It hath been to the great honour of some Judges in Westminster-Hall, who have argued in Cases below, at the Bar, and have been brought on the Bench before the Cause hath been determined, that they have argued at the Bar one way, and when upon the Bench, have given Judgment another way, against their very Clients, and thereby have done their duty in both Places.

Now,

2. Anno 20 Jacobi, *Ingrey, Under-Sheriff of Cambridgeshire, for refusing the Poll, upon the Promise of Sir Thomas Steward to defend him therein, kneeling at the Bar, received his Judgment, to stand committed to the Serjeant at Arms, and to make Submission at the Bar, and acknowledge his Offence there, and to make a farther Submission openly at the Quarter-Sessions, and there also to acknowledge his Fault.*

3. Anno 20 Jacobi, *the Mayor of Arundel, for misbehaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but packing a Number of Electors, was sent for by a Warrant, and after, ordered to pay all the Charge; and the House appointed certain Persons to adjust the Charges.*

4. *And lastly, 3 Car. 1. Sir Willlam Wrey and others, Deputy-Lieutenants of Cornwall, for assuming to themselves a Power to make whom they pleased Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country Letters for the Trained-Bands to appear at the Day of Election, and menacing the Country, under the Title of his Majesty's Pleasure; had Judgment given upon them to be committed to the Tower. 2. To make a Recognition of their Offence at the Bar of the House, upon their Knees; which was done. 3. To make a Recognition and Submission at the Assizes in Cornwall, in a Form drawn by a Committee. See this Case in a folio Pamphlet, printed 1681.*

‘ Now, when I have said this, I hope I do stand fair and clear, that I do now speak as a Member of the House of Commons. Anno 3 Ann.  
1704

‘ You are upon a Point which I wish had never happened, for there is nothing I enter upon with greater Reluctancy than what looks like a Dispute with the other House ; for no Man pays a greater honour to the House of Peers, and to every Peer there, than I do ; however, as I am instituted, I shall endeavour to maintain the Rights of this House. And I do say, if the Peers of England can determine all our Properties at Law, upon Writs of Error, and all our Rights in Equity upon Appeals ; and if they can determine all our Elections in Consequence of this Action (as I am of Opinion they may, if this Action prevails) they have a greater Power than ever that House had in the Days of their noble Ancestors, when they were in the greatest Grandeur.

‘ I will shew you what will be the ill Consequences, and I think it very fit for you to take this Matter into Consideration, if there be any way to come at it. First, I cannot deny but, generally speaking, a Man has Right to bring his Action at Law ; but then I hope, though a Man hath a Right to bring an Action, yet he cannot bring it in detriment to any other Man's Privilege ; for if a Member of this House be sued in time of Privilege, though a Person have a Right to such Action, yet he cannot prosecute it in breach of the Privilege of such Person, much less can a Man prosecute an Action in Breach of the Privilege of this House. And suppose this should come before the Lords in question, by Writ of Error, and they should be in Possession of the Cause, sure every Determination of the Lords, upon a Writ of Error, is not without more ado to be conclusive to the Commons in their Rights and Privileges, so as that they may not take an alarm, and be concerned if all their Privileges are about to be taken from them. Suppose any Member of this House, (as I think by the Privileges of this House he may,) should, in this House, have just Occasion to take notice of some great Misdemeanor in any great Officer of the Crown, and should assert Matters highly intrenching on the Honour of a Peer of England ; and suppose, when the Parliament was up, the Peer should bring his Action of *Scandalum Magnatum* against the Member, at Law, for Words that he had spoken here, and lay them as spoken elsewhere (for in a transitory Action he may) and he should justify that they were spoken in the House of Commons, where, by the Privileges of the House, Freedom of Speech is allowed ; and suppose Judgment in that Case (as in this it was) should be given against the Plaintiff, and afterwards this, by a Writ of Error, should be brought before the Peers, and they should reverse

Anno 3 Ann.  
1704.

reverse this Judgment, and give Judgment for the Plaintiff; can any thing be more destructive to the Constitution of Parliament, if such a Case as this should happen? And must the Commons in such Case sit down under it?

' Suppose any Man should presume to arrest any Member as he was going into the House of Commons, nay, the Speaker himself, and afterwards he is committed by order of the House, and the Person committed should bring his Action for taking him into Custody, and the Serjeant who took him into Custody should plead this matter, and the Judges give Judgment for him as they did for the Defendants in this Case, and by Writ of Error, it being brought into the House of Peers, they should reverse this Judgment, and give the Plaintiff his Damages; will any one say, we could not take notice of this? Would it not destroy all our Rights and Privileges?

' So no doubt in this Case, though they have gone by way of Action at Law, and Judgment in Westminster-Hall, and Writ of Error in the House of Peers, it cannot be said, but, if it concerns our Rights, we may take notice of it. In the Case of Sir John Elliot, &c. the Commons declared the Judgment, 5 Car. I. illegal, and against the Privilege of Parliament.

' It is my poor Opinion, it is our Right (and I think no body can doubt it,) for we are in possession of it, to determine our own Elections; and I would be glad to be acquainted when first we began to hear and determine our own Elections: I believe no body will say with certainty when we did not.

' I know we have a turbulent Author, who generally affected to be in the wrong, and, though a Member of this House, made it his Business to write against their Privileges, and was always hunting among the Records of the Tower, from whence he brought away a great deal of Dirt with him, and yet could never pretend or produce more than two Instances, where the Commons resorted to any other place for the settling the Right of their Elections: The Man I mean, is Mr. Prynne; he takes Occasion to do it from what is said by my Lord Chief Justice Coke, (who, with your Favour, I must take notice so far, as to say he was not only a very great Man in our Profession, but had been Speaker of the House of Commons in his time) and he, in his 1 Inst. fol. 116. and 4 Inst. 1 cap. fol. 14, 15, and 23. asserts, That the Law of Parliament is as much part of the Law of the Kingdom, as any other, and indeed the highest: He calls it *Lex & Consuetudo Parliamenti*; and says, this is a Law that each House hath possession of, and judgeth by, and each House is a House of Judicature; and he puts upon this a great many Instances, and some of them may seem strange to those

those who have run upon the Commons of late. He tells you of a Case 8 Eliz. (at that time Onslow was Speaker, and it is in fol 19, of the Book of the House of Commons of that Year) one Long was returned a Member for Westbury; and it being complained of that he came into the House by undue Practices, it was enquired into by the House of Commons, and found that he had given four Pounds to the Mayor of Westbury; and they having examined and tried this matter, did not only expel Long, but they fined and imprisoned the Mayor of Westbury, *Secundum Legem Et Consuetudinem Parliamenti*. Mr. Pryn, the Author I mentioned, supposeth there was a time when the Commons used to apply to the King, in case wrong was done in the matter of their Elections; and in his Comment on the 4 Instit. 31. goes back to the 12 Ed. II. there the King was pleased by Commission to appoint several Persons to hear the matter of an Election. He pretends too, another Instance, and that is in Henry the VIth's time, in the Case of Huntington; and there was a Petition to, and a Commission from the King in like manner. The latest of these Instances is above two hundred Years ago, and neither of them make any thing for a power in the Lords to determine the Elections of the Commons; but, on the contrary, rather for a power to be delegated by the King; and the Instances are but two. Now, I say, Sir, we are, and have been in possession of this Right for a very great length of time, and have it confirm'd to us by Act of Parliament; for the late Act of 7 and 8 of King William, hath, in effect, declared, that the determination of the Right of the Electors is in the House of Commons: for it says, that the Sheriffs and Officers of all sorts, shall follow the last Determination of the House of Commons, as their Rule and Guide in such Cases. And surely nothing is more absurd, than to say, that this House shall Examine, Try, and Determine who are elected; and yet Westminster-Hall, and the Lords, shall Examine and Determine the Right of the Electors. How can any one examine the Election, but the first step he takes must be to consider and determine who are the Electors? And the determining the one, is determining the other.

' I would trouble you a little with the Reasons they give why this Action should lie. It hath been said, and I think it is true, for the Honour of England, and I believe it hardly can be found to fail, that where a Man hath a right, and a wrong done him, he is somewhere to have a Remedy; but now let us see the Application of this Rule. Are they not by the same Law that settles the right, and declares the wrong, to enquire where the Remedy is to be had? For, though you have a Remedy, you mistake that which is the

Anno 3 Ann.  
1704.

proper Remedy; and the same Law that settles the right, and declares the wrong, gives the Remedy; you must therefore go to the place where the Law directs, for your Remedy, not where yourself would desire the Remedy. Therefore says my Lord Coke, in his Preface to his 4 Instit. and likewise fol. 14, and 15. we have several Jurisdictions, some Ecclesiastical, some Temporal, &c. some governed by one Law, and some by another; and all must have their Rules and Bounds, which must be observed. If your Right be Ecclesiastical, as for Instance, before the Statute of Tithes, could you in Westminster-Hall have brought your Action? Or if Issue had been joined in such an Action, and the Parties had gone to Trial, will any body say but that the Judges must have arrested Judgment, and said that 'twas out of their Jurisdiction? If a Lord of a Manor should refuse to admit a Man, to whom a Surrender is made of a Copyhold Estate, the Lord has done him wrong, and damage too; but yet he cannot bring his Action at Law for it, for it is an equitable Right, and he must go to a Court of Equity for his Remedy; and so I could put a thousand Instances, but I will not spend your time. So that I say, it is not enough to say you have a Right, and must have a Remedy, and therefore you may bring your Action at the common Law; but you must seek it in a proper Place, though perhaps Costs and Damages, and a Trial by a Jury, may be more desirable to the Party.

Now, in this Case I would know, whether this is not a Matter of parliamentary Jurisdiction, and also a parliamentary Right? Is any thing more plain? He that hath Right to vote, hath a Right to send a Person to represent him, and sit in Parliament; therefore it is a parliamentary Right; where then must be your Remedy? In the House of Commons, where you have a Right to send a Person to sit and represent you; there you may complain, I was denied my Vote, or misused upon the Election. This, by the Law of Parliament, shall be examined here, and for this purpose you constantly appoint a standing Committee of Elections. Indeed I cannot but wonder at the bringing of this new-invented Action; for if there be any thing certain in the common Law, it is this, that where you claim a Right to any thing, it must be founded upon common Usage in that Case, or in some Case that carries the same Reason, and is just like it; for the common Law, generally speaking, is nothing else but common Usage. Now let us see for the Usage in this Case, and whether there has been any thing like this Action before. Say they, how do you know but such Actions have been brought before? I do not see that there can be a stronger negative Proof in any other Case than in this; for  
we

we have had Parliaments, as appears by our Statutes in print, Anno 3 Ann. 1704. for five hundred Years, and we have had Parliaments in every Reign since, and in several Reigns a great many Parliaments: And let us consider, whether this Case would not have happened frequently in five hundred Years, in so many Elections in Counties, Boroughs, and Cities where there are such an infinite number of Electors? And therefore this Case must frequently have happened if such an Action lay at Law. If it be asked, how do I know that such an Action hath not been brought before; I answer, it is wonderfully plain there never was such an Action brought before; for as we have our Acts of Parliament in Print, so we have faithful Reports of all our Law-Cases, which we call the Year-Books, and which are Memorials of all Cases so long back as from Ed. II's time, that is 400 Years, followed by a Series of Reports till this time, and are now grown so numerous, that they become a Burden: And I will desire any Gentleman of the Law here, or in England, to shew me the footsteps of any such Action as this, or of this kind till now, ever brought before. We have always said, our Fore-Fathers were wiser Men, and greater Lawyers than we are; and so they were; but such an Action as this never entered their thoughts.

‘ But it may be said, how does it appear that there was Occasion for these kind of Actions formerly, for Men heretofore were unwilling to serve in Parliament, they were hired, and almost prest to it, and it was hard to get Men to come up? I answer, It was so far otherwise for many Years past, that so early as Henry VI's time, there were great Contests about Elections, and the Sheriffs in those days were apt to do wrong, as appears by 7 H. IV cap. 15. And therefore 11 H. IV. cap. 1. there was imposed one hundred Pounds Penalty to the King, on the Sheriff that did not do his duty, according as the Statute does direct: So that it does appear there was Occasion for these Actions, if they had lain by Law; and yet you will find that never, till 23 H. VI. did it enter into the thoughts of any Man, that an Action at common Law could be brought for an Injury in an Election; and therefore that Act recites, that there was not before that time, a sufficient Remedy for the Party grieved, and therefore gives a hundred Pounds to the Party, and Costs, if a Knight, and forty Pounds if a Citizen or Burgefs, and that by a Law made on purpose to help the Party to an Action, where there was no such Remedy before. Thus it rested till the famous Case between Nevill and Strode, in 2 Siderfin, fol. 168. (in that time they sent five Knights of the Shire out of Berkshire.) Mr. Nevill brought his Action against Strode the Sheriff; and he alledged that he being one of the five chosen for that County, Strode had maliciously and falsely refused to return him, &c. and

Anno 3 Ann.  
1704.

the Jury gave him fifteen hundred Pounds Damages. This Action made a great Noise, and the Judges looked upon it as a great Novelty, and thought fit to consult the Parliament in it; \* (they used to consult the Parliament in former days, in matters relating to the Parliament,) and the Judges heretofore, when they were asked their Opinion in difficult matters relating to the Parliament, would say, this is above us, and therefore to be decided by Parliament. And this Case being referred to the Parliament, they looked upon it as so extraordinary an Attempt, that though Mr. Nevill had a Verdict for fifteen hundred Pound Damages, yet he never got a Farthing of the Money, or any Benefit by the Verdict: *Sed ibi dormivit.*

After this, came the great Cause, that hath been mentioned, of Soame and Barnardiston; and methinks this deserves very much our Consideration, and how far the Determination of the House of Peers ought to be a Rule in this very Case. That Cause set forth with great Prospect of Success; Sir Samuel Barnardiston, in that Case, did not slight the Determination of the House of Commons, but first petitioned this House as the proper place to determine his Right, and had it decided for him, that he was the Person duly elected, and the other Return was taken off the File; and then he brought his Action at common Law, and set forth this whole matter, and that the Sheriff falsely and maliciously returned another with him, whereby he was kept out of his Right, &c. a long time, and put to very great Expence and Costs. This came to be tried at the Bar of the King's-Bench, and there was a Verdict given for Sir Samuel Barnardiston

\* Sir Humpbry Mackworth, in his *Vindication of the fundamental Right of the Commons of England*, page 27. saith, *In the Case of Strode and Nevill, An. 1655. in an Action on the Case, against the Sheriff for a false return, to the damage of 2000 l. after a Verdict for the Plaintiff and 1500 l. Damages, the Court of the King's Bench adjourned the Case into Parliament, propter difficultatem, whether the Action did lie or not? Where it is to be observed, that it was not adjourned into the House of Peers, but into the House of Commons, as the only proper Judges, in all Cases of that nature concerning Elections; so careful were they of the Rights of the Commons.*

And let not the iniquity of those times of Rebellion be objected to this Instance; the Argument from thence extremely confirms the Right of the Commons; for if it be consider'd that Cromwel had then created a new House of Lords, and wanted nothing but a House of Commons to establish his Usurpation, that to this purpose he had formed a new Model of an House of Commons, and overturned the Method of Elections, depriving all the Boroughs of their Rights, and causing the Choice and Returns of Members to be made by the County; yet the name of a House of Commons remained; and even that was so revered in those days, that none would attempt to deprive them of their essential Privilege, of judging of Elections: No influence could bias the Judges; they thought it so inherent, that they would not presume to intermeddle in it.



nardiston for eight hundred Pounds. This was looked upon as a great Case, and my Lord Chief-Justice Hale bid all Persons about him take notice, that they did not determine the Right of the Election, for the Judgment in that Case belonged to the Parliament; but said, since the House of Commons had determined the Right, he thought they might follow their Judgment to repair him in Damages, and so gave Judgment for the Damages the Jury had given the Plaintiff.

Anno 3 Ann.  
1704.

‘ This Case was looked upon as so improper for the Common Law, that upon a Writ of Error brought into the Exchequer-Chamber, that Judgment was reversed, because the common Law could not any way intermeddle with Elections to Parliament, further than was directed by Act of Parliament. It might have been said, and I know it was said, that the Reversal of this Judgment, was by an extraordinary high Hand: And therefore upon the Revolution, in the very beginning of King William’s Reign, Sir Samuel Barnardiston brought a Writ of Error in Parliament, complaining that in the Exchequer-Chamber, they had reversed this Judgment unjustly, and went upon these Reasons, as may be observed from the Journal of the House of Lords, which were the Reasons of some very few protesting Lords.

‘ First, Because it was a denying Sir Samuel Barnardiston the Benefit of the Law, which gives Relief to all Wrongs and Injuries; and is a very great Damage to the Plaintiff, and therefore he ought to be repaired.

‘ Secondly, Say they, if it should be allowed that Sheriffs and Bailiffs may make false Returns, and no Remedy but a hundred Pounds Forfeiture, it would be of dangerous Consequence, and might tend to the packing of a House of Commons, which may overturn the whole Constitution. But the Peers then did not think these Reasons sufficient for this new Action at common Law, and accordingly the House of Peers affirmed the Judgment of Reversal in the Exchequer-Chamber, and said, the Judgment was well reversed, for that no such Action did lie at the Common-Law, though the Injury done did tend to the Plaintiff’s Damage; and all other Mischiefs which are now suggested, were insisted on; and thus it stands to this day. And yet now it is said upon the same Reasons, the Action does lie for this Person, though he be only an Elector, and must receive much less damage than the Person elected; and there is no one Reason for the Elector, but holds more strongly for the elected. The elected can’t maintain an Action, and yet now it is clear that one of the Electors may, though he can have no substantial damage; for if a Man comes and gives his Vote, (as here in this Case) ’tis not in the power of the Officer to hinder him of the Benefit of it; for his Vote will be as well given as if the Officer had put it down, and this with respect both

to

Ann. 3 Ann.  
1704.

to the Person who gave the Vote, and him for whom he voted; and so really it is no substantial damage to any Man.

' The next thing I shall mention to you, is another Case of Mr. Onslow: He brought his Action against the Sheriff of Surrey for making such a Return upon him, (I believe I have the Gentleman in my Eye who brought that Action) he declared in the same manner, that it was done falsely and maliciously, and had a Trial and a Verdict; and yet notwithstanding, the Court of Common-Pleas, (being governed by Sir Samuel Barnardiston's Case) did unanimously, 33 Car. II. say, we must not presume to determine the Merits of Elections, or Returns, there is a proper Jurisdiction for it; and they gave Judgment against the Action, and I think he hath acquiesced in it ever since. I am sure I have heard no more of it; the Reasons given by the Court, appear in the Report of the Case in 3 Levinz, fol. 29, and 30. and are worth the reading.

' There was a Case a Year ago between Prideaux and Morris, in the County of Cornwall. Mr. Stratford was returned, and Mr. Prideaux brought an Action in the Common-Pleas, in the time of King William, against the Viander, for making a false Return against him to his great damage, and laid it with all Aggravation. This went to a Trial in Cornwall, and there was a special Verdict found; and the question was, whether this Action would lie before the Commons had determined the Right of Election? And the whole Court unanimously gave Judgment, that the Action could not be brought, till the matter had been first brought before the House of Commons, and they had determined the Right.

' Now here is a total silence in all Books of the Law, that any such Action as this is doth lie: Here are the Acts of H. 6. and King William, which provide Remedies at Law, because there was no other Provision before. Here are not only these solemn Judgments in Westminster-Hall, but the Judgment of the House of Peers, in the Case most like to this of any that can be thought of, that no such Action doth lie: And yet I cannot tell how, there are, abroad, Persons that endeavour to run upon the House of Commons, and use them ill on all Occasions, and are zealous for this Cause, which seems to be set on foot to undermine all our Elections, and bring them to another Judicature.

' Now see the Consequence: No Man ought to have a foot against him, two Judgments at once in two several Courts; whereby one may punish him at the same time for doing a thing, and the other for not doing it. I believe such Proceedings would be looked upon as barbarous even in Turkey, and yet that will be just our case: A Gentleman petitions the House of Commons, and says, the Right is in  
such

such a Set, or Sort of Men; as for Example, in all the Freemen, or free Burgeses; and that, according to that way of Election, he was chosen, and not the Person that is returned: and this is determined by the Committee of Elections, and afterwards by this House against him that petitioned. This Man goes immediately and brings an Action in Westminster-Hall against the Officer that returned the other; nay, every one of these Persons that he affirmed the Right of Election to be in, bring their Actions, and it comes into Westminster-Hall to be tried, and the Jury find the Right to be in these Men, as he has alledged, contrary to the Determination of the House of Commons, and Judgment is given against the Officer in every one of these Actions, for the Men you have determined the Right not to be in. You cannot set one of these Judgments against the other; I cannot defend my self in Westminster-Hall, by saying, the House of Commons have determined that these Men, who sue me, have no Right to vote. There is nothing like this in the World; two independent Courts cannot controul one another, but both may go on together in the same Cause; and both having a Right to judge, one judges one way, and the other the other, and the Officer is crucified between them.

‘ Let it be consider’d again, that at this rate none but Knaves, or Beggars, will be Mayors, or Bailiffs in an Election-Year: For suppose as at Westminster, where I think there are ten thousand Electors: Or suppose it be as in some Towns near Wales, for one of which I have the Honour to serve, where the Descendants of every Burges claim a Right to vote, and by Consequence they will bring it in time almost to all the Sons of Adam; for all the Sons, and all the Daughters Husbands, and all their Descendants claim a Right to vote. Now what a miserable Case must that Officer be in, when Persons shall come from East, West, North and South, and say their Pedigree is so and so, (for they are good at Pedigrees in those Countries,) yet, what a Condition is he in? he is bound to determine whether they have a Vote or not; and tho’ he is no Lawyer, or Herald, yet however he is bound to give Judgment one way or another, at the Peril of an Action: And suppose but a hundred Men should bring their Actions against the Officer, what Man can stand a hundred Actions, tho’ he be in the right? There are not only these Difficulties in the Case, but there is Revenge: and in popular Elections there are those Heats, and the Voters engage with that Animosity, that the losing Side next day will be ready, perhaps only for Revenge, to send for a Multitude of Writs, and have the Pleasure of ruining the Officer who was against them, tho’ he was in the Right; for every one

has

Ann. 3 Ann.  
1704.

Anno 3 Ann.  
1704.

has a Right to bring his Action whose Vote was disallowed, tho' it should be found at last that he had no Right.

‘ As to the Words *falso & malitiose* laid in this Declaration, which seem to be a great Ingredient in this Action, I agree, in some Cases where there is a Jurisdiction, these Words may make a great Aggravation of the Offence; but they cannot make a thing unlawful that is lawful, nor give a Jurisdiction where there was none before: For no Man will say, if a Person should bring an Action at Common-Law for a Legacy, and alledge, that the Executor, tho' he had sufficient Assets, yet he *falso & malitiose* refused to pay it; that would give a Jurisdiction to the Courts of Common-Law. These Words are *Verba Clericorum*, Words of course for the most part. Besides, how dangerous and hazardous would it be for an Officer, tho' ever so innocent, to depend upon these Words; when every body knows that Falstity and Malice rest in the Mind, they are in the Imagination, and the Jury that are to try this Action, are at liberty to judge with what Mind the Officer acted; that would be the hardest thing in the World for an Officer to undergo in every Action. It would be enough for the Jury to presume it was done maliciously, (seeing few Mayors, or Bailiffs, but have their Inclinations, and give their Votes themselves for their Friends,) because the Officer made an Interest for the other Side; and the Consequence of this new-invented Action, if countenanced, will be, that every triennial Parliament will bring a triennial Harvest to Westminster-Hall. I speak against my own private Interest, if that was to be considered. Elections, without Actions, keep up Animosities too long, so that they are hardly healed in three Years time; but these Actions will help to vex and worry Corporations from three Years to three Years, and Mayors and Bailiffs will be the most miserable Men in the Kingdom, and ought to run their Country rather than stand a popular Election; whereas the Officer is accountable to you for his Behaviour at the Election.

‘ This is not a Matter that stands in need of the Aid and Assistance of Westminster-Hall, that they should invent a new Action and Remedy, as if there was a Failure of Justice. Has any one come with a Complaint against any Officer to this House, and they have not been willing to hear it? Have not the Committee a Right to hear and report Matters with respect to the Electors, as well as to the Elected? And have not we known that the Electors, tho' but a small Number of them (as in a late Case of this sorry Town of Aylesbury) about five, I think, of the Electors came and complained, and their Complaints were fully heard. And if any single Elector should come with a Petition, and re-

present that he was abused by an Officer, or ill-treated by any Mayor, or Bailiff at the Election, I do not think but the House would be ready to do him Justice: And they have a Right so to do, for the Officer is accountable to them for his Behaviour. 'Tis not now only so practised, but always was so; for in the same Treatise of my Lord *Coke's*, 4th *Inst. Fol.* 49. he says, that they will make him change his very Return; they will make him raze out the Name of one, and put in the Name of the other. So that they have a Jurisdiction adequate in this Case; and surely if they can hear the Complaint of several Electors, they can hear the Complaint of any one Elector. I would not trouble you with Arguments that may be proper in Westminster-Hall, because we are here upon Matter of our Constitution; but I know no Action more obnoxious to the true Reason of the Common-Law, which abhors Multiplicity of Actions; and a Man shall never have a particular Action, for that which naturally draws on Multiplicity of Actions, and may be reformed in a more compendious Manner. Upon this Reason that famous Case in 5 *Rep.* called *Bolton's Case*, is founded: If a Man builds a Dove-House near a common Field, where Men make all their Profit by Plowing and Tillage, and therein keeps a great Number of Pidgeons that live upon his Neighbour's Corn, is not this a great Wrong and Injury to them? And yet no Action lies; for, if one Man that is wronged thus may bring his Action, a great many more may do the like, and so there will be infinite Actions: therefore it shall be presented in the Court-Leet, as that Book says. So there is that Case of Williams in the same Book, where the Lord of a Manor had a Chapel for himself and his Tenants to repair to, and to hear Divine-Service, within the Parish of Aldbury: He brought his Action against the Vicar, who was obliged to officiate, for that he had neglected, &c. tho' he had used time out of mind to officiate, and had an Allowance for it: Says the Case, if this Action should be allowed, all the Tenants and Servants of the Lord might have the like Action, and so there would be a Multiplicity of Actions, and therefore he shall not have this Action; but, if it had been to have been performed in his own private House or Chapel, he alone might have had an Action. But since it would draw on a great many Actions, which may ruin any Man, therefore the Remedy must be taken in such manner as it is given where there is public Offence. In the Case before us, every Person is chosen *pro Bono Publico*; for tho' he be chosen for a particular Place, he serves for the whole Kingdom; and for that Reason you shall not proceed by way of Action, but in such manner as it hath been always used, where the whole thing shall be examined at

Anno 3 Annæ  
1704.

Anno 3 Ann.  
1704.



Sir John  
Hawles, (So-  
licitor-General,  
*Temp. Will. III.*)

once, and all determined upon one Petition, wherein all the Parties injured may join instead of a multitude of Actions.

‘ I shall not propose to you any thing, but hope you will at least come to some Determination that may assert our Right in this Point; that this Door may not be open to bring a new Jurisdiction, to examine and determine whether any of us sit here rightfully or not.

‘ ’Tis a standing Order of the House, that no Peer hath a Vote in the Election of a Commoner; but in the next Elections, if this be allowed, every Peer may vote, for they are Freeholders, and many of them Burgeses and Members of Corporations, and they may all come and demand their Votes, and if refused, bring their Actions. These and many more Inconveniencies are obvious, if this Action should be allowed, and I believe it may have a great Effect upon our Constitution. Very much more might yet be said, but I have taken up too much time already.’

‘ Mr. Freeman, we are jealous of our Privileges, and I think we have just reason so to be; but we must take care that that does not carry us too far out of the way I would not have it taken for granted, that whatsoever is said against the Lords here, tends to assert the Privileges of this House, or that what is said for the Lords here, is against this House. I am as much for the Privileges of the Commons of England as any Man, and I own they have lost a great deal of Power; I think the Commons had a great Power, when the greatest Part of the Judicature of this Government was their sole Right: Nay, if a Peer had had a Matter of Contest with another Peer, or with a Commoner, and Issue was joined, that Issue was to be tried by Commoners, and not by Peers. ’Tis true, if the Prosecution of a Peer was in a capital Matter at the King’s Suit, it was to be tried Part by Commoners and Part by Peers; the Bill of Indictment was to be found by Commoners, but the Issue was to be tried by Peers: But if a Peer was prosecuted in a capital Matter by a Commoner, or Peer, as by an Appeal, the Issue was to be tried by Commoners. I must confess, as to the Lords Jurisdiction in Matters of Equity, the Commons have great reason to be jealous, because, there, all Facts, as well as Law and Equity, come to be tried and judged by the Lords alone.

‘ Sir, I say, when all Facts were tried, and most of the Officers of Government were chosen by the Freeholders of the County, the Commons were somewhat greater than now they are: when they had the Election of the Sheriffs of the Counties; when they had the Election of what they called Conservators of the Peace, Officers that were the same with our now Justices of the Peace, with this Difference only, those the Commons made, these the Crown makes. The  
Commons

Commons had a great Power when they were to elect their Captains that led them out to War, which heretofore they did, and had a Right to do, till it was taken away from them by the Act that settles the Militia, though I own it was disused many Years before. The making of Sheriffs is now placed in the Crown; we have nothing left now, but Matters of Trials in particular Cases, and even that is so far cramped, that the Jury is returned by an Officer that the Crown puts upon the County.

Anno 3 Ann.  
1704.

‘ But yet I am not for carrying things farther than we have a Right to do; I am for keeping what we have, and for that Reason I am not for encroaching upon the allowed Jurisdiction of the House of Lords; we have always allowed them a Right to hold Plea of Writs of Error. The Parliament in Hen. IVth’s time, did declare the Right of Judicature to be in the House of Peers; and I never found any Inconvenience in it, if the Peers kept only to Matters of Law, and left the Facts to be tried by the Commons; nor did I ever know that Right of the Lords questioned till now. A great deal hath been said for, and against the Right of bringing this Action; I do not think that that is now the Question: the Question is, Whether a Judgment being given in the King’s-Bench, a Writ of Error does not lie in the House of Lords? But whether the Lords did right, in giving that Judgment they have now given in the Case before you, that is another thing. I speak to the Right of holding Plea of this particular Writ of Error; no body hath denied but that they have a Right to hold Plea of a Writ of Error in general, upon a Judgment given in Westminster-hall; but, say they, the Lords ought not to have done it in this particular Case; and several Reasons have been given for it.

‘ First, Here is the Privilege of the House of Commons in question in the Case: That hath been argued and insisted on, but I confess, that Argument does not influence me. The Lords have held Plea of a Writ of Error, in which the Privilege of the Commons hath been in question, and the Lords have done Right to the Commons in it, particularly in that Matter of the Parliament of 1640, when some were supposed to have done irregular things in the House of Commons, and were prosecuted for it by Information in the King’s-Bench, and were fined in K. Charles I’s time; whereupon a Writ of Error was brought in the House of Lords, and that Judgment reversed in the time of King Charles II. There the Lords did Right to the Commons in the Matter of Privileges of the Commons, for it was for laying Hands upon the Speaker in this House; and I think every body commended what was done in that Matter by the House of Lords, and no body ever said but that they had a Right

Anno 3 Ann. 1  
1734

o to do. Some things are not to be come at otherwise, than by a Writ of Error in the House of Lords; and I believe if you look a little back, there have been Judgments given in Westminster-hall, not only in Matters of, but against the Privilege of the Commons; and these Judgments stand unreversed, though I think they are fit to be reversed, and I know no other Method to do it but by Writ of Error in the House of Lords. I think there is one Judgment upon an Information against the Speaker, for licensing Papers to be printed, which he did by Order of the House.

‘ There is another Instance of a Person taken into Custody by Order of this House; it was the Case of Mr. Topham Serjeant of this House: The Party brought his Action; the Serjeant pleaded his Warrant, that it was done by Order of the House of Commons, and Judgment was given against him, and this Judgment stands unreversed.

‘ Now what Method have you to reverse these Judgments, but by Writ of Error? If you think to do it by a Bill in this House, that must likewise pass the House of Lords, and so will be the same thing as a Writ of Error.

‘ Another thing is said, that this Person was not damnify’d; or if he was, there are such a number of Persons who were then likewise damnify’d, that may bring their Actions, that no body will execute such an Office. I think that Argument ought not to prevail, for at that rate you will allow the Officer not only to be a Judge, but the supreme Judge, and the Parties damnify’d shall be without Relief; he may do what he pleases, and he shall never be questioned afterwards, save in this House, which I will consider by and by. ’Tis agreed, you may punish an Officer that misbehaves himself in matters of Elections, and that is practised now very much; but at the same time you punish the Officer, the Person damnify’d hath no Satisfaction, though our Law allows Satisfaction, in cases where he that did the wrong shall not be punished, and allows Satisfaction in all cases where a Person is punishable, if another hath received a particular damage.

‘ A Man is liable to be fined to the King or Queen, that is a Punishment; but if he pays so much to the Party damnify’d, that is Satisfaction. If a Man’s Horse breaks into another’s Ground, he shall not be punish’d, but the Person damnify’d shall have Satisfaction: But in this Case you allow the Officer shall be punished, but you will not allow the Man injured any Satisfaction for the Damage he received; which cannot be supported by Reason, or by the Authority of any particular Case.

‘ In all Cases I take it to be true, where a Man is punished for doing another Damage, the Person damnify’d shall have



have Satisfaction. But that Rule does not hold true in the Anno 3 Ann.  
contrary. 1704.

‘ It is said there are a great many Persons concerned, and if you give every one an Action, there will be no end of these Actions, and therefore none shall have an Action. This is a strange Argument: If a Man injures one, or two Persons, each shall have an Action for their respective Damages; but if he injures an hundred, none of them shall have an Action: as if when a Man is moderately injurious, he shall make Satisfaction; but if he is extravagantly injurious, he shall be scot-free, and make Satisfaction to none. This rests to be made good either by Reason or Authority, which hitherto hath not been done. The Case cited, I own, is true; but you must take it with this difference, if any thing is done which might have been of Damage to a hundred People, but was of Damage to none, none shall bring their Action, though the Criminal shall be punished; but where there is particular Damage done to any Person, an Action will lie for the Damnification of that Person. If a Man digs a Pit, any Man may fall into it, and no Person shall bring an Action for that; but if any Person doth fall into it, and hath particular Damage by it, he shall bring an Action and have Satisfaction. And with Submission, that Argument will not hold, that because a Person might be ruin’d, if he be obliged to make Satisfaction for the wrong he hath done, therefore he shall not make Satisfaction to any particular Person he hath damnify’d.

‘ It hath been said, admitting it to be so, that the Party ought to have Satisfaction, yet he ought to take his Remedy in a proper Court; as if a Legacy was given, an Action would not lie in the Queen’s-Bench for it; which is true. But it would have been well if that Gentleman had told us which was the proper Court to give Satisfaction, for the wrong supposed to be done in this Case; if the Queen’s-Bench be not the proper Court, what Court is? ’Tis said the House of Commons is a Court, I was always of Opinion it was so: ’Tis a Court of Judicature, my Lord Coke says, and a Court of Record. I wonder, when all this is allowed, it should be said this Court hath not a power to administer an Oath to a Witnefs; I think that was never deny’d to any other Court whatsoever. Every Court of Record has power to administer an Oath; but though this be a Court of Record, this cannot, it hath not that power. It would have been very well if those who are against this Action, could shew us that this is a Court that can give Satisfaction; some Courts can punish, but can’t give Satisfaction, whereof I think this one; Satisfaction was never given here that I know of; was it ever? or pretended to be had here? In the first Instance

Ann. 3 Ann.  
1704.

Instance, 'tis true, this House hath punished, and by such Punishment compelled the Delinquent to make Satisfaction to a Person, by increasing, or remitting such Punishment; but that is not the Case before us.

' It hath been said there has been no Instance of this kind of Action brought; and that the Court of Queen's-Bench have declared they have nothing to do with the Business of Elections, for that the Right of Elections ought to be determined here, and for that purpose the Declaration of the Lord Chief-Justice Hale, in the Case of Barnardiston and Soame, has been cited. I must confess I can't but wonder at that Case; we did lately think that the Judgment given in the King's-Bench in that Case, was rightly given; and afterwards, when it was reversed, People were astonished at the Reason of it; and more when that Judgment of Reversal came to be affirmed in the House of Lords. No body hath ever said why that Judgment was reversed; I do not see but, on the same Reason, several Judgments within these few Years, nay, even in this Reign, may be reversed likewise; for the Court of King's-Bench, in that Case, did not pretend to a Judicature of determining the Right of Elections; the matter in that Case had been determin'd before in this House; but they only gave Damages for the wrong sustained, that was all the Court did in that Case, and yet that Judgment was reversed. I believe there hath been some Judgment given by this House, within these twelve Months, that where the House hath determined the Right of Election, the Party grieved shall be allowed to maintain an Action at Law for his Damnification.

' But I take it there is a difference between the Case of Barnardiston and Soame, and this present Case. Time was, when it was doubted, where a Man was Elected, and the Officer refused to return him, whether the Person elected was damnified or not. 'Tis very certain, heretofore Persons were not so ambitious of sitting in this House as now they are; and some Persons purchased Charters of Exemption, to be excused sitting in this House: And so it had been practised in the House of Lords. The Act that hath been mentioned before, expressly commands, that the Person chosen shall come and be present in Parliament. And afterwards there was a Penalty put upon such as were chosen, if they did not appear here; to which another Punishment was added, which was, that the Person elected, if he did not come hither, should lose his Wages. It was not reckoned a Damage that any Person was not returned a Burgess to sit here, but a Kindness; but that did not hold so in the Case of an Elector. Every body agrees, as the Electors had a Right to chuse, so there was no Statute to compel them so

to do; but they looked upon it not only as their Right, but their Interest, to be present at the Elections. And none can say but it is a Man's Interest, to make choice of such a Person to serve in Parliament, (who hath the power over his Estate, and Life too for aught I know,) as he could trust. No body ever doubted that a Person who had a Right to vote, had an Interest, and might be damnified if his Vote was refused. So that none of the Cases that have been put of the Right of the Person elected to serve in Parliament, as Knight of the Shire, or as Burgeſſes, come up to the Case in question.

Anno 3 And:  
1704.

'I would say one thing as to the Damnification of the Persons elected; there is a late Act that gives double Damages where the Return is contrary to the last Determination. Now, I do take it, that Act supposes that a Man might have been damnified before; and if he was damnified before, he was so by the Common-Law, for no Statute gives him any Damages: 'Tis true, that Statute gives double Damages, but still that Statute supposes there was a Damage before, and builds upon that Foundation; so that with Submission, that very Statute runs against all the Cases that have been put as to the Persons elected.

' 'Tis said, at this rate, the Lords may come to vote in Elections. I am of Opinion the Lords have no Right to vote in Elections for a Knight of a Shire or a Burgeſſes; and the Reason I go upon is this, every Person who had a Right to vote, ought to have contributed to the Expences of him that was elected; if he was a Freeholder, he was an Elector for the County, if a Burgeſſes, for the Borough; and the Expences of the Knight of the Shire were to be levied of all the Freeholders, and the Expences of the Burgeſſes upon all that were resident in the Borough. But the Lords were excused from that Charge, they were not to be contributors to the Expences of a Knight of the Shire, or Burgeſſes, because they were of another House. There was a Law made which says, that for Lands purchased by any Lords, such Lands should continue chargeable to the Expences of Knights of the Shire, as they were before such Purchase; so that 'tis plain before that Act, the Lands the Lords were seized of, or purchased, were excused from that Charge.

' But, Sir, I think this matter is not to the Case in question. This is nothing but a collateral Action for Damnification, whereof the Consequence is not much, not above five Pounds; tho' I acknowledge the smallness of the Sum does not influence this Case. Nor is the question, whether the Lords have done right or not, in reversing the Judgment given in the Queen's-Bench: *Humanum est errare*. If they have a Jurisdiction, we can't justly complain; tho' I am of Opinion they have done right: I think the Plaintiff in this Case was  
damnified,

Anno 3 Ann.  
1704.

Sir Edward  
Seymour.

damned, and I think the Court of Queen's-Bench ought to have given Judgment against those who did him the Injury, for the Damage he sustained; and I think the Lords have done right in reversing that Judgment, and in giving such Judgment as the Court of Queen's-Bench ought to have given.

' Sir, 'Tis enough for me that we have the Law on our side, and we are very much obliged to the Pains and Understanding of those learned Gentlemen that opened this Debate, in presenting us with a true state of our Disease; it only remains now for your Prudence, to apply a Remedy. And I cannot but take notice, that this is an Action without any Precedent to warrant this Proceeding; and I believe it might have remained so still, (for I don't think there was Virtue enough in the Cocker of Aylesbury, nor had he Purse enough) if a Lord had not acted that part.

' For my part, Sir, I do not think this to be the single Instance of the House of Lords, we have reason to complain of: I think in a great measure, by their Proceedings, they seem to hold forth, That the Axe is laid to the Root, and that they have a dislike of this House of Commons, and endeavour to get rid of them. I shall not instance in Particulars, but I hope there is one you will not let go, without applying some Remedy to; and that is, that noble Representation in which they have vilified you to the highest degree, and lay all the Mischiefs of the last Reign, and this, at your door. I could shew you, there is nothing in it but stuff, *populum fallere*; and we see the Consequence of it, and what Pains and Endeavours they have taken to disperse it all over the world, to make Impressions upon the People. But that which I would have some resort to, is this, that these worthy Persons that have spoke before, tho' they have truly represented the State of our Condition, yet they have been very tender of applying a Remedy.

' It does, I think, consist of two parts; one is what relates to the inferior Courts, the other to the Judgment of the House of Lords upon this Writ of Error. Now there is a Right to bring a Writ of Error, the Learned admit; but I would take away the Foundation, and make this Declaration:

' That no inferior Court below should presume to intermeddle with the Elections of the House of Commons; and I am sure then there will be no Foundation for a Writ of Error. In the next step, with relation to the Judgment given in the House of Lords; 'tis true, the Lords make a great Complaint, that in matters of Parliament we have addressed, without advising and consulting with them: I will not say how far 'tis justified by their Proceedings; I need not remind you of the Address they made without you, when  
you

you addressed against my Lord of Worcester; before you had presented your Address, they presented a Counter-Address to yours. But I take the Distinction to be here, 'tis one thing in matters of State, and another thing when the matter depends between the two Houses: Where 'tis a matter of State, with relation to the Queen's Prerogative being violated and invaded, as you are her great Council, you are to advise the Queen in that matter, and not let any thing of that kind pass upon her.

Anno 3 Ann.  
1704.

' But however I would go the regular way, by condemning this Judgment, in relation to the House of Lords; and, after you have made that Condemnation, I would apply to the House of Lords, to see if they would recede from this Judgment of theirs. But I am afraid Arguments or Debates will help your Case but little, you must have recourse to Remedies that are in your own power. We see what they did upon the last Occasion, when they thought their Privileges were concerned; they adjourned, and all to prepare the way to make the World believe they were injured, and prepare them for their Proceedings afterwards.

' And I say, this is not a thing that falls out by Chance, but carried on by all their Power, to represent you as inconsiderable, and to make you useful for nothing but giving Money, and then to send you home into the Country. But if you do not keep the Power in your own Hands, you will be without Remedy. I conclude with what I mentioned in relation to the Courts below, to declare that they have no Power to intermeddle in Matters of our Elections.

' I shall not pretend to follow that honourable Gentleman near the Bar, in all the steps he hath made, tho' I think I may be as regular as he. I think he hath only shewed, that there is not so much Reason in this Case to find fault with the Lords, but that it is necessary to find fault with them one way or other.

Marquiss of  
Hartington,  
afterwards  
Duke of Devonshire.

' I think this is a matter of great Consequence, and as long as I sit here, and as long as I live, I shall be as tender of the Privileges of this House as any body. I think 'tis upon the due Balance of both Houses, that the Safety of the whole does consist; and I must confess, I think the Liberty of a Cocker ought to be as much regarded as of any body else; That is the Happiness of our Constitution.

' I think it was very well observed by an experienced Member, that this Writ came very regularly before the Lords: If so, then I think the question is between us, and the Persons that elected us; and I think, tho' Gentlemen would not formerly allow of any Distinction between the Privileges of the House, and those of the People of England, yet they must allow it now, or they can't complain that this Action

Anno 3 Ann.

1704.



is any Prejudice to this House. For when a Person offers his Vote at an Election, and is not admitted to give it, and upon such refusal brings his Action in the Courts in Westminster-Hall, (which I take to be the present Case,) if giving judgment upon it be contrary to the Privileges of this House, then 'tis pretty plain, that our Privileges do interfere with the Rights of the People that elected us

' I shall plainly give you my Opinion in this Case: I can't think this Action to be a Breach of the Privilege of this House; For, Sir, the party grieved, can be no way relieved, but by applying to the Law: and I think the leared Gentleman below, is out in all his Instances; for he hath given an account of People injured applying to you, but they were Candidates, and certainly that was their proper Remedy; but in the Case of an Elector, I don't see he can have Satisfaction by applying to you.

' Gentlemen talk of the Law of Parliament; I can't see how that can give any Interruption to the Law of the Land, that it shall not do right to the Party grieved. How shall a Man, injured in the manner I have mentioned, receive Satisfaction, by applying to the Parliament? 'Tis true, the Officer offending may be punished, but the Party injured can't receive that Satisfaction he would in the Courts below, by giving him his damages.

' I think this is a matter of great Consideration, and it is necessary to consider well of it, and not to determine rashly. I think it may be of use to us, since there are Judges who have been of Opinion, that the Subject ought not to have his Remedy in this Case. A Judge that will, out of Fear, or any Regard to one House, do contrary to his Oath, I believe at another time will be influenced by the other. I think 'tis the duty of a Judge to act according to Law, and not be afraid of either.'

Mr. Lowndes.

' Sir, there is no doubt but all the Judges, (as hath been said) and every body else, are obliged to behave themselves according to the Laws of the Land: But the Question is, what is the Law of England in this Case? If the House of Commons has an original Right to determine all matters concerning Elections of their own Members, (as it hath been always understood to have) and if we have a power to punish Officers for making false Returns, or any other Mifeazances committed by the returning Officers; then it will not be necessary, that the Judges in Westminster-Hall should have any Jurisdiction at all, in the matter now in question; and if they have none, then by Consequence the Lords will have as little by Writ of Error.

' I do confess, Sir, when I first heard of this Case, it gave me some apprehension that it might be of fatal Consequence  
(by

(by reason of the Novelty of it,) to your Privileges, which are indeed the Privileges of the Commonalty of England, which we represent. But since I have thought of it from time to time, and it hath been better opened by the learned Gentlemen that have spoke in this Debate, I conceive our coming to some Resolutions declaratory of our Right in this Affair, may preserve the Liberties of this House, and of all the Commons of England, who have entrusted us with the Preservation of their Rights.

Anno 3 Ann.  
1704.

‘ I think the learned Gentleman over-the-way took his ground too narrow ; I might yield him this Point, that where there is a Writ of Error brought from a Judgment in Westminster-Hall, in Cases where a Writ of Error lies, and where that Court and the House of Lords have a Jurisdiction, there the House of Lords are at liberty to give what Judgment they please. But I have read, The House of Lords is not an unlimited Jurisdiction, but is bounded, as well as the Courts of Westminster-Hall, by the Law of England. I speak it with the greatest reverence, that the regal Power, (which is the most supreme in England) is obliged to the Observance of the Laws ; and it would be absurd at the same time to say, that any Part of the parliamentary Constitution is not limited by the known Laws of the Land, or the Laws and Customs of Parliament ; and I doubt not but it will appear, a Writ of Error doth not lie, and never did lie before the Lords in such a Case : And so it comes at last to this Point, what is the Law of England in this Case ? And I will tell you my Thoughts of it.

‘ I have read and learned, and I believe it is true, that Matters of Parliament are determined by the Laws and Customs of Parliament ; and I believe there is as good an Authority for it as there is for Writs of Error, or any thing else ; and that this Law and Custom of Parliament is a principal Part of the Laws of England, and to be learned by Experience and Precedents, and I reckon that we must come to them at last. Now, Sir, let us see what Experience or Precedents we have to found this Jurisdiction of the House of Commons upon, for examining and determining Matters concerning their own Elections. ‘Tis true, we have no Journals extant before Ed. VI’s time : And there is a Book they call Seymour, I think it is a Book of no great Authority, and if it be, there is but a small Matter in it. I have read it over carefully myself more than once, and find only Titles of Bills depending, and when they were read ; and all I learned from it was, that sometimes Bills in those Days were read four times. And, Sir, there is as little concerning Elections in Queen Mary’s Reign ; but in the beginning of Queen Elizabeth, you have the Matters of Elections plainly set down, and so they have

Anno 3 Ann.  
1704.

been ever since. And from that time to this it hath been a standing Rule in the House of Commons, in the Beginning of every Parliament, and (as I take it) of every Session, to appoint a Committee to examine all Matters concerning Elections. Now, if the Right of Elections is not a Matter concerning the Election, then I own my self under a Mistake: but if that be a material Part, and comprehended within the general Words, and if those Committees have from time to time proceeded to examine the Right of Electors, and this House hath proceeded from time to time to give Judgment in such Cases, sometimes according to general Qualifications settled and adjusted in the House, and very frequently upon examining and considering the Rights of particular Votes; then I think we have as good Authority for the Jurisdiction of this House, in the Matter of these Elections, as can be had for any thing whatsoever.

‘ I do say, in this Case, we ought to take our Ground and Foundation upon the Right which the Commons of England have, and ever had by Law and Customs of Parliament, to be exercised by the Representatives of their own chusing; which Right is grounded upon manifold Precedents and constant Usage. For if we have a Power to hear and determine the Right of the Electors; and to punish Officers for abridging them of their Right, and give Satisfaction to the Party, which most evidently appears, not only in our Journals but by a continued and uninterrupted Practice, time out of Mind; then I think we need look no further.

‘ I do say, that from time to time there has never been a Session of Parliament but this Power has been exercised; and in your Committees they have often come to Resolutions to determine the Right of all Electors, and frequently of particular Electors; and for that purpose only they have examined whether Persons had Burgage-Tenures, or have paid Scot and Lot, or have been Freemen, and other Circumstances necessary for the Information of the Committees; and as Matters have appeared, they have judged them qualified or unqualified: And where the Votes of Persons having Right have been offered, tho’ refused at the Election, the Committees have usually allowed those Votes as if they had been given; and upon their Determination the House have agreed with the Committee very frequently, and sometimes have disagreed with the Committee, as the Merits of the Cause have appeared to the House. So that nothing is plainer than that the House of Commons have, from time to time, exercised this Jurisdiction in all the Parts of it; and sometimes Elections have been tried at the Bar, and determined by the House upon such Trial.

‘ Then how comes this Action to be brought in Westminster-Hall?



ster-Hall? I have consider'd that Point, and take nothing to be plainer than this, that Westminster-Hall never had a Power to meddle with Elections, but where, by some special Act of Parliament, you have given them Power. I know that there are some Opinions that Elections have been tried in Chancery, and in the House of Lords; but I cannot find any thing of that nature ever settled, though some Attempts have formerly been made that way. I know that Witnesſes have been carried up ſometimes to the Houſe of Lords Bar to be ſworn, but the Trial of Elections, and of the Right of the Electors hath always been in the Houſe of Commons; ſo that here would be no Defect of Power or Juſtice if nobody elſe meddled in this Matter.

Anno 3 Ann.

1704.

' Then conſider what Acts have altered this original Right; I think there are two that are moſt material to be conſidered; one is that of 23 of H. VI. cap. 15. What is the Importance of that? It takes notice, that convenient Remedy for the Party griev'd was not ordained in the former Statutes againſt Sheriffs, Mayors and Bailiffs offending; whereby one would infer, that the Parliament in thoſe Days did not think or know any thing of the Remedy now endeavour'd to be ſet up in Westminster-Hall and the Houſe of Lords. And this Statute provides, that if any Sheriff do contrary to the Statutes about Elections, he ſhall incur the Penalty of the former Statutes, viz. one hundred Pounds to the King, and a Year's Imprifonment, and ſhall forfeit a hundred Pounds more: To whom? to the Party that ought to have been returned; and if he do not ſue, there is an Action given for the ſame to any body elſe. And a Mayor or Bailiff, for a falſe or undue Return, is to forfeit to the King forty Pounds, and forty Pounds to the Party that ſhould be returned; and if he do not ſue, then a popular Action is given for the laſt Penalty: So it is plain, by this Statute, no Action is given to the Voter, who had his Remedy in the Houſe of Commons. Your Anceſtors were ſo careful of your Liberties, that they never truſted their Elections to all Perſons; ſuch as held in Villenage, all cuſtomary Tenants who held at the Will of their Lords, and might be influenced by them, and, (as I take it) Tenants by Eſcuage, till Eſcuage was reduced to Certainty, were excluded, and afterwards all Freeholders under forty Shillings a Year; and when the Officers were by Law to admit ſome Votes and reject others, they were to uſe the beſt of their Judgments, without being liable to a Multiplicity of Actions, (unleſs in the Caſes I have mentioned,) but for their Defaults were always reſponſible to the Houſe of Commons.

' Let us conſider then the Statute in King William's time, I think it is in the ſeventh Year of his Reign; there the Sta-

tute

Anno 3 Ann.  
1704.

tute takes notice of the Injury done to Gentlemen by double and false Returns, and thereby a double Return is made a false Return; and by the Statute 'tis provided, that if any returning Officer return contrary to the last Determination of the House of Commons, of the Right of Election; such Return is thereby adjudged to be a false Return, and void.

' This Statute of the seventh of King William, admits the very Determination of the Right of Election to be in the House of Commons; it does not say the Determination of the Election, but of the Right of Election. I will endeavour to avoid Repetition.

' But how does this Matter stand? By the Law and Custom of Parliament, which is a most material Part of the Law of England, the House of Commons have the Jurisdiction in these Matters of their Elections; but, by one or two Statutes, the House of Commons have given Power, in one or two Cases, to proceed in the Manner therein prescribed; but none of the Cases allowed by those Statutes, are like the Case of this Man at Ailesbury, for he is not a Person who has suffered because he was not duly returned, nor the Person mentioned in 7 Willielmi; nor is his Action founded upon any Statute; so that this Case is left out of the Statutes, and it must be determined according to the Law and Custom of Parliament.

' As to the Case of Mr. Nevil, it never came to be determined in Parliament: We read it was put off to the Parliament because of the great Weight of it; and the Judges were of Opinion that it was a Matter too high for them. And in the Case of Mr. Onflow, where the Case of Mr. Nevil was cited, they positively said, it was a Matter of too great Presumption for the Judges to meddle with it.

' Then how comes it to pass, if this Action might have been brought at Common-Law; I say, how comes it to pass, that this Action was never brought before? Certainly that is an Argument it never lay, for there must have been Occasion for such an Action, if the Common Law would have maintained it. But the Judges, who knew best the Grounds and Reasons for this pretended Action, have refused meddling in this Matter, because it concerned the Parliament, and the Parliament had not entrusted them with it. As to the Case of Barnardiston and Soame, first adjudged in the King's-Bench, the Reason was, because it had been adjudged in Parliament; for Sir Samuel Barnardiston had a Majority by near a hundred, and the House of Commons had tried the Cause, and gave him his Right of sitting in the House; so that one would have thought that he had liberty to have gone into Westminster-Hall. But afterwards this Judgment was reversed in the Exchequer; and Judge Ellis, in his Argument,  
says

says plainly, that the Right of determining Elections belongs to the House of Commons, and the House of Commons have determined it for Sir Samuel Barnardiston, and for that Reason you ought to affirm this Judgment.

Anno 3 Ann.  
1704.

' This Matter was brought, presently after the Revolution, into the House of Lords, and when it came there, all but five or six Lords were for affirming the Reversal. Now, Sir, by reading the Reasons of these five or six Lords that dissented, we may easily infer what were the Reasons that induced the whole House to affirm the Reversal. Two Reasons were given; first, say they, because otherwise there will be a Defect of Justice. One may infer, if these five or six Lords were of Opinion that there would be a Defect of Justice, all the other Lords were of Opinion there would be no Defect of Justice. The five or six Lords that dissented said, that the Plaintiff ought to have this Action by the Common-Law; certainly if the other Lords had been of this Opinion, they would have maintained the Action, but they concluded no such Action did lie, because no such Action was given by the Common-Law.

' I take this Matter to be of infinite Moment, and I think there is no Degree or State in this Realm but what is bound by the known Laws of this Land, so that they have no Jurisdiction in this Case, then I do not see how a Writ of Error can give them Jurisdiction. Sir, I appeal to you, and all the Gentlemen here, whether what hath been said on one side hath been at all answered by the other: If an Action of *Scandalum Magnatum* should be brought against a Member, for what he has said in this House, no doubt but that Member would plead the Privilege of this House, and 'tis to be hoped the Judges would allow it, and put the Plaintiff off *sine Die*. But notwithstanding, a Writ of Error, according to this Doctrine might be brought, and the Lords might give Judgment that this Action does lie, and then what would become of your Liberty of Debate? This is an Instance worth your Regard.

It hath been told you how the Lords have taken notice of the Privileges of this House, in the Case of Hollis and Elliot. Let that be set in its true Colours, and see whether any thing can be drawn from that Case to fortify the Judgment lately given in the House of Lords. There was a Disorder in the House of Commons and the Speaker was violently forced back into the Chair, and scandalous Words against the King's Privy-Council and Judges, were uttered by Elliot, Hollis and others, and upon that a Prosecution was brought, 5 Car. *primi*, against those particular Gentlemen in Westminster-Hall; as well for the Words spoke in the House of Commons as for the Force; and Fines were set upon them. This Matter,

after

Anno 3 Ann.  
1704.

after the Restauration of Charles II. was brought before the Lords, at a Conference, and they took notice of the Privileges of this House, not to set them aside, but confirm them; and their Lordships declared the Judgment to be illegal, and the Freedom and Privilege of Parliament, and desired the Lord Hollis to bring the Roll before them by Writ of Error; and so, by Agreement, the Judgment was reversed, as being against the Freedom of Speech in Parliament, allowed by Strowd's Act; which their Lordships acknowledged to be declaratory of the ancient and necessary Rights and Privileges of Parliament. Their Lordships then would not let any Matter appear upon Record, to the destroying the Commons Privileges; and I wonder how this Precedent comes to be cited, to justify a Proceeding which tends directly to take away your Privileges.

' I wish with all my heart the House would have appointed some Persons to have searched Precedents, and I am sure they would have found an infinite Number to be produced, to have justified the Power of the House in this Case, how it hath been in their power, time out of mind, how they have a Power to punish Officers, and in some Instances they have given Damages.

' I remember one in my time; Mr. Tankred caused a Person to be brought hither, and he cleared himself; and the House (as I remember,) made an Order, that, as he was the Occasion of the Man's coming up, and had done him an Injury, he should make him reparation, and he was forced to do it by paying him a Sum of Money.

' Not that I would go so far as to say, that this House is a proper Court for imposing Fines: But if they are not a proper Jurisdiction for the Business of their own Elections, I think they have no Jurisdiction at all. I will not say this House has a Power to fine: I know we read something of that in your Journals, but I think those Fines came to nothing, because there was no Means to estreat them, or cause them to be levied; and so that Matter has slept ever since, and I hope, will for ever.

' But not only your Freedom of Debate, but Right of sitting in this House, is concerned in this Case: And if you have not a Power to determine Matters of Elections to this House, I wonder how any Author comes to say this House has any Judicature at all; for if they have not a Jurisdiction to this, they have no Jurisdiction to any purpose whatsoever.

' If this Point be settled, that this Power belongs to the House of Commons, the next Consideration will be how to attain it; and in this, I hope Gentlemen will take such steps as are proper for them, and for those they represent; for we are sent here *ad tractandum*, &c. in the Name of those we represent

represent: And we have but a delegated Power, and can't, without Breach of Trust, give up the Rights of the Commonalty. For my own part I have taken an Oath to preserve the Privileges of the People that chose me, but, without such an Oath, should be of Opinion that I cannot give up this Privilege which I am to execute on their Behalf; but I will use all the lawful and just Methods I can to come at it, and I think you may do this without interfering with the House of Lords; or the Judges. There is no doubt but the Judges in Westminster-Hall are bound to take notice judicially of your legal Proceedings here; and if you come to make a Declaration, That the Power of hearing and determining all Matters concerning Elections, does belong to the House of Commons in Parliament; I doubt not but they will take notice of it, as becomes them. And give me leave to say, no body can help bringing this Action, as this was done; for a Person may take out a Writ and declare upon it, and carry it down to Trial, without the Privy or Knowledge of any Court; and then, when the Cause is tried, the other side comes and moves in Arrest of Judgment, and the Court gives Sentence. But I wish the Defendant had demurred, and then that would have put it as a Point of Law to the Judges; and if they had determined it judicially for you, I believe it would have gone no further. For it is one thing to determine it upon Demurrer, and another thing when the Cause has been tried and Damages given, to have the Court's Opinion *ex post Facto*.

' The Judges determined the Action does not lie; but as Matters stand now, perhaps in like Cases, there will be brought a Writ of Error before the Lords, and they will give such a Judgment as they have given now, for aught I know. I should not think it proper to come to any Question now, by which you shall determine your Right, if you are not fully satisfied about it; but it ought to be considered farther. The Law and Custom of Parliament is to be found out by Experience and Precedents: But if you are satisfied, then I think the proper Question is, that by the Law and Custom of Parliament, the hearing, examining and determining all Matters concerning Election of Members to serve in the House of Commons, is to be by the same House. I think that is to be your Question, or to that Effect.

' The Consequence will be, if this be Part of the Law of England, as it plainly is, you may as well stand upon that Declaration, as upon any new Law to be made by Parliament; if you could get it: But I believe you have no great Reason to expect a new Law in this Case to pass in the House of Lords. Then what would you do? If you should try to get a new Law and fail, it will be construed, that you had not

Anno 3 Ann.

1704.



this Power before, but endeavoured to get it, and the House of Lords denied it you.

‘ But ’tis plain and clear you have this Power already, and a sufficient Ground to stand upon; and I doubt not but Westminster-Hall will take notice of it, and the House of Lords too: If they do not, [Here Mr. Lowndes was interrupted by a Noise made by some few of the Members, who said, What then? but he proceeded] I say, if they do not, it will be time enough to confer with them afterwards: And give me leave, I am not afraid to say, if a private Man, much more the House of Commons, have the Law of England on their sides, let them be undermined ever so much, one way or other they will obtain their Right sooner or later. The Rights of the People of England are safer in the hands of their Representatives than any other; if they do not like them, they can turn them out and chuse new ones; but they cannot do so in the Case of the Lords.

‘ I beg pardon for my great Prolixity: I take it to be of Importance to avoid all Contests with the House of Lords, and with Westminster-Hall, and I think you may do it, by proposing and adjusting a plain Declaration of your Right by the Law and Custom of Parliament.’

Mr. Solicitor-General, (Sir Simon Harcourt, afterwards Lord Harcourt, and Lord-Chancellor.)

‘ After what hath been said at large concerning the Law in this Case, especially since it hath received no Contradiction in any Instance whatsoever; I will avoid the Repetition of what has been already offered, and endeavour to shorten your Debate, by bringing it something toward a Point. It hath been said, that the Question now before you is, whether Judgment being given in the Court of Queen’s-Bench, a Writ of Error does not lie in the House of Lords, to reverse that Judgment? I cannot, by any means, agree that to be the Question.

‘ But that which I take to be the proper Question before you is, whether or no it be the sole Right of the Commons of England to determine their own Elections? If you are of that Opinion, never let your Disease grow to such a Head, as to put you upon the necessity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

‘ It may perhaps sound harsh, that a Man shall not be admitted to make use, and have the Benefit of the Law; and yet when that Thought is thoroughly digested, I believe no Gentleman in this House, but will agree, that there may be many such Instances, where you will not endure any Suit at Law. I cannot give you any better Instances, than what have been mentioned to you by a learned Gentleman on the other side, who approves of this Proceeding by Writ of Error; the Prosecution against Sir William Williams for publishing a Libel (as it was called) by Direction of this House,

House, and an Action against the Serjeant for obeying your Commands. If such an Action should be brought against the Speaker or Serjeant, should we sit still here to see what they would do in the Courts below, and afterwards wait for the Event in the House of Lords by Writ of Error?

Anno 3 Ann.

1704.

'Tis very true, these Judgments that are mentioned by that Gentleman continue still unreversed. As to that given against the Speaker, he mentioned it as a Precedent not fit to be followed; indeed, 'tis a Reproach to the House to mention it, since no Parliament hath reversed it. As to the other Action against the Serjeant, he says, Judgment was given against him, and that stands in full Force; as I remember that Case, it went off upon the Form of Pleading.

' But nothing of that kind being the Question now, I beg leave to state what this Action is that is now before us; for Gentlemen in the Country, who have frequently met with Actions, prosecuted without Censure for matters relating to Elections, may, perhaps, be surprized, till they come to consider what the Point is. This is not an Action grounded upon any Statute whatsoever. 'Tis agreed an Action may be maintained where a Statute gives a particular Remedy, but this is an Action founded upon the Common-Law. Whatever your Privileges are, if you will consent to an Act of Parliament to make other Persons Judges of those Privileges, so far as you consent, if they pursue the Power given them by Act of Parliament, there is no Wrong done you: But an Action brought at Common-Law is that which, I think, interferes with the inherent Right of this House.

' We have, I think, attained to one Piece of Knowledge upon this Debate, that this was the first Action that was ever brought of this kind; and Gentlemen will not much wonder why this is brought now, when they consider what Endeavours have been used to make this House contemptible. I believe this may be thought the most probable Method to attain that end.

' I would not repeat the Precedents that have been quoted, yet I cannot but take notice of that of Barnardiston and Soame: Those Arguments that were made use of for this Judgment, in that Case were rejected, and the Judgment of the Lords was then directly contrary. I should be very glad to hear how the Lords Judgment of Reversal in that Case, and in this, are reconcilable. The Commons, at that time, would scarce have suffered such an Attempt upon their Privileges, and I hope we shall be as careful and as zealous to preserve ours: We have as much Power as our Predecessors, we shall never suffer for want of Power, if we do not suffer for want of Will to exert it.

Anno 3 Ann.  
1704.

‘ I expect to hear of the great Authority of one learned Judge, that differed from them; I have the utmost Esteem for his Judgment, but I am sorry to hear any Insinuation, that those Judges who have given their Opinion otherwise, are guilty of a Breach of their Oaths. It hath been touched upon, that, whenever any Question has been asked the Judges, concerning the Privileges of the Lords, or the Privileges of the Commons, their Answer is recorded for the Instruction of all their Successors, and, to the Honour of both Houses of Parliament, that it was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common-Law, and is not to be subject to their Judgment, *'tis alieni fori*.

‘ And, Sir, as I have been informed, this was the Answer given in the House of Lords by one of the present Judges, and by what I have heard, it was well he escaped their Censure; shewing too much Respect to this House gave very great Offence.

‘ I beg Gentlemen to consider, (I shall not enter into Particulars that have been mentioned) whether any thing of this kind would not make you despicable, to the lowest Degree, in the World, and expose Electors to such Mischiefs that none could endure? Upon every Election that comes before you, 'tis impossible to judge the Right of Election, but by the Right of the Electors. If you will endure any Person, after you have said he has no Right, to go into Westminster-hall, and bring an Action in the Courts there, a Jury may find a Verdict, that the House of Commons are mistaken, and that this Person hath a Right, and Judgment shall be given accordingly. Will not this Proceeding, that very Moment, submit your Resolutions to the Examination and Censure of the inferior Courts? May not they say, they vote for one another, we have detected them all? That they are a Parcel of People packed together, and not one of them elected as they should be?

‘ What Condition the Magistrate will be in, hath been mentioned already; when a Multitude hath a Right, and every body may bring his Action, can any Magistrate, (a Constable as in this Case) bear the Expences of a hundred or a thousand Actions at Law? There will not be wanting some to prosecute a Magistrate with all the Violence possible.

‘ Tho' I can by no means agree, that this Matter is to be determined according to the common Rules and Methods of Law, but according to the Course of Parliament; yet I shall compare it with some other Cases in the Law,

‘ That which makes these Persons Hardships the greater, is, these Magistrates are not People that officiously interpose to take a Poll at Elections, and make a Return; but these  
are



are Men, who, by the Duty of their Office, are obliged to do it; and if they do not execute their Office, and give you Satisfaction, yet if you let this be examined in another Place, after you have said they have done well, they may be punished for doing so.

Anno 3 Anno.

1704.

‘ I will compare this with one or two common Cases that have not been mentioned; suppose a Person should exhibit an Indictment against another maliciously: he does this wilfully, and an Action does lie against him; but if a Grand-Juryman find a Bill against a Man, the Law will not admit an Averment that it was done maliciously, because he was obliged by his Office to do it: So it is in the Case of a Witness, because he is brought in by the Process of the Court: So it is in the Case of Judges. And is it not equally the Duty of a Magistrate to determine upon the Poll, and afterwards to make a Return? And is not that examinable before you?

‘ A great deal might be said further upon this, but I hope ’tis pretty unnecessary: And that no body can have any Doubt but that our Privileges are very much concerned in this Question, and what the Consequences would be; therefore I would humbly propose for the Question what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

‘ We certainly have such a thing as the Law and Custom of Parliament, and that is very well known, and upon that Foot I desire you would put a Question to this effect:

‘ That the sole Right of examining and determining all Matters relating to the Election of Members to serve in Parliament, except in such Cases as are otherwise provided for by an Act of Parliament, is in the House of Commons; and that neither the Qualification of the Electors, or the Right of the Persons elected, is elsewhere cognizable or determinable.’

*Members.* The Question, the Question!

‘ Sir, I speak only to your Order, that Gentlemen would not interrupt one another by calling for the Question, but give diligent Attention to the Debate, for this is a Matter of great Consequence.

Then. Mr. Freeman (in the Chair) stated a Question on his Paper to the Effect proposed by Mr. Solicitor, and read the same to the Committee.

‘ I am very willing to hear any Gentleman that will stand up and speak, and you have had a very good Hint given you by an honourable Person, that this is a Business of great Moment; and I hope we shall continue to do as we have done, that is, to hear Gentlemen patiently: and that we may not be guilty of any Disorder, I move you for Candles to be brought in.

Sir Christopher  
Musgrave.

Then

Anno 3 Ann.  
1704.

Mr. Dormer,  
afterwards a  
Judge.

Then the Question was put, and carried for Candles.  
And they were brought in accordingly.

‘ Mr. Freeman, you have now a Question upon your Paper, but that which I take to be the Question, is, Whether a Freeholder, or a Freeman, who hath a Right to give his Vote for his Representatives in Parliament, may arbitrarily and maliciously be deprived of that Privilege, without any Redress in any Court whatsoever.

‘ This I take to be the Case before you, ’tis said to be of great Consequence, and I do take it to be of as great Consequence as any thing that ever came before either House; and I don’t look upon it only to concern the Jurisdiction of the Lords and Commons, but to affect every Part of the Constitution, and the Queen the Head thereof, in the highest Degree. For it comes to this; if the Lords have not a Right to determine in this Matter, which by Writ of Error is regularly brought before them, we shall be turned into a State of Villenage, and the People will be deprived of chusing their own Representatives without Relief, and shall not have Relief by her Majesty in the Court of Queen’s-Bench, nor before her in the Court of Parliament, where, in Consideration of Law, she is always present, and where, by our Law, is the last Appeal; and there will be a Failure and an Interruption of Justice, and our Constitution, in relation to ourselves, will be so far changed, that ’twill be impossible there should be any right Representatives of the People: For, ’twill not be the People then that will chuse, but the Officer may arbitrarily refuse and return whom he thinks fit, and the particular Person will be without Remedy. For, whatever Gentlemen apprehend, if the Right of Return be not controverted, which way can any particular Man bring his Case before you? And what Remedy shall he have, if not by Action? I will not say there has not, (but I will turn the Argument, and put it upon them to shew there has;) but I believe there never was any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the present Case: And this Matter is found by a Jury that was struck, and not one Man of the Jury but of Quality, and approved on both sides: And I think, tho’ it never came before the Parliament, nor the Committee of Privileges, they might consider of a particular Injury.

‘ And as for the notion that hath been taken up, that where the House of Commons have a Jurisdiction, there the Party is in all Cases without Remedy in any other Court; sure that is not according to Truth: for in the Case of a false Return, there is a public Injury, that does not hinder the Party from obtaining Satisfaction as to his particular Injury; and if no  
Action

Action lies, there can be no Satisfaction; for this House hath not awarded Damages in any Case, notwithstanding the Case cited; for that was only Costs for the Man's Trouble in coming up to be examined before this House. And, if they should award Damages, there is no way of levying those Damages; What Writ can we issue out? And if this Person be without Remedy at Law, he must sit down without any Redress whatsoever.

Anno 3 Annæ  
1704.

‘ There may be a Multitude of Cases, where this House hath a Jurisdiction as far as concerns the Public and themselves, and the Party shall have his Action also.

‘ If I receive a Blow in this House, 'tis a Violation of the Privilege of this House, and this House can take Jurisdiction of it, and censure the Person that hath done the Injury; but will any Man say, that an Action of Battery will not lie at the Common-Law in that Case?

‘ There was the Case of Sir Thomas Clarges: At the time of his Election there was one Roe spoke Words to his prejudice: He might certainly have complained to this House of it; (you had an Instance, I think, last Session, of one that complained, for some such Injury, against the Lord Bishop of Worcester, and the House took it into Consideration; which Sir Thomas Clarges might have done,) but he brought his Action, and recovered considerable Damages; and afterwards a Writ of Error was brought in the King's-Bench, and Judgment was affirmed.

‘ There is a Case not within any Provision of your Law, and that is, where a Sheriff made a Return, and he delivered this to a private Messenger to bring up to the Crown-Office. The Messenger by the Way thought fit to vitiate the Return, and make another Return than what he received from the Sheriff: For this an Action was brought, and he recovered at Law against this Messenger, for the private Damage he had done him. Certainly otherwise the Law would be defective.

‘ In another Case, the Sheriff adjourned, in prejudice to a Candidate, to a Corn-Field; an Action was brought against this Sheriff, at Law, for the Damages he had done this Gentleman, and it was maintained; and I dare say more Cases may be put: Which shews that your having a Jurisdiction as to what concerns the Public, does not exclude the Party, but he may have an Action for his private Injury.

‘ A great many Positions I have heard, which I take not to be true, particularly this, ‘ That there is no Remedy at Law, ‘ but in Cases provided for by the Statutes:’ That is not so; these Statutes imply the contrary. The first says, Whereas there was not a sufficient Remedy, therefore that gives a  
more

Anno 3. Ann.  
1704.

more compleat Remedy, and so the Judges declared in the Case of Barnardiston and Soame.

‘ Sir, they have told us of the Cases of Barnardiston and Soame, and of Nevill and Strode; with humble Submission to you, those Cases go so far as to prove the Jurisdiction of the Lords, and the inferior Courts: That of Barnardiston and Soame, was an Action tried before the Court of King’s-Bench, and a Set of as learned Judges as ever were before, or since; and three of them were of Opinion for the Action, and my Lord Chief-Justice Hale was one of them; who, the Term before he surrendered his Character, did thus express himself: ‘ He gave thanks to God, that he had spared him ‘ to that time, that he was able to keep his Cushion, and declare his Conscience in that Place.’ But afterwards it had its Fate; a Writ of Error was brought in the Exchequer-Chamber; Mr. Justice Levinz, that reports it, says it appears, that those who argued against the Judgment in the King’s-Bench were made Judges, and they themselves afterwards determined the Case. And every body knows how valuable it was at that time, to know the Price of an House of Commons, and an English Parliament. Three Judges were made then in the Exchequer, and I think two in the Common-Pleas. Afterwards it came into the House of Lords, and there the Reversal in the Exchequer was affirmed, for Reasons different from what are argued now, and I believe for several good Reasons. The Sheriff in that Case had made a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than finding a special Verdict; and therefore the saying, *falso & malitiose*, being put to a thing that was in itself right, would not alter the nature of the thing. Another Reason they went upon was, they said this double Return was a void Return, and for that Reason the Action did not lie; and upon these Reasons depended that Judgment. That Gentleman who said that only four or five Lords dissented, is under a great mistake; four or five Lords only, I believe, entered their dissent, but there was a great number, and near an equality against that Judgment; and divers Lords, now in that House, were against that Judgment, that did not enter their dissent.

‘ Then, Sir, there is the Case of Nevill and Strode, and that was first a Judgment in the Common-Pleas, and when it had taken its Progress in Westminster-Hall, it came before the House of Lords; and the Lords returned it back again to Westminster-Hall, and ordered all the Judges of England to deliver their Opinion in it. That was founded upon an Ordinance of those Times; Berkshire was to send five Knights, and Nevill was one of them that were elected, but not returned: There they said, in that Case that Ordinance was entirely

tirely new, and that Case did not recommend itself by the known Laws of the Land, and for that Reason they would not give Judgment, for Wages could not be levied for five such Knights. And, when afterwards they were to give Judgment, the right Constitution had recovered itself.

Anno 3 Ann. 1704.

“ Now, as to the Lords Right to receive a Writ of Error in this Case: You have addressed to them that they would receive a Writ of Error, at a time when your Privileges were invaded. That was the Case of my Lord Hollis, who with others was informed against, 5 Car. for having spoke Words in this House that did affect the Government: And he pleaded to the Jurisdiction of the Court, (is there any such thing here? No they have submitted to it;) and the Court over-ruled their Plea to the Jurisdiction, and that Judgment continued in force, (as some others which have been since do now, which it were well if they were reversed,) 'tis this House took notice of it; and in 1667, they desired a Conference with the House of Lords. The Chair-Man was my Lord Chief-Justice Vaughan, and this House there complained how they were grieved by that Judgment; and, after repeated Conferences, both Houses did consent to this Expedient, that my Lord Hollis being the only Survivor, should be desired to bring a Writ of Error in the House of Lords, and he did so, and the Lords in that Case did you Justice, and reversed the Judgment.

“ As to your passing this Vote, what it will signify, I cannot tell. What signified a Vote you passed before about the Year eighty, that the putting the Laws in execution against Protestant Dissenters, was an Injury to the Public, and a Subversion of the Government; and that those that put them in execution, should be looked upon as Enemies to the King and Kingdom? The Consequence was, that all the Laws against Popery were put in execution against Protestants more than they were before. The Judges in Westminster-Hall said, this Vote had not passed into a Law, and they could not take notice of it. I hope we shall do nothing that will lessen ourselves, nor any thing but what will be effectual for the Ends for which 'tis proposed.

“ Mr. Freeman, I consider you have been a long time in this Debate, and a great deal of it has been spent, either in Suggestions contrary to what appears before you, or else in questions altogether improper for the Consideration of the Committee; and therefore it is necessary to look back to that which gave Occasion to the present Dispute.

“ The Committee hath a Copy of the Proceedings of this Action referred to them, but it hath not been read; and I am confident if it had, and had been attended to by Gentlemen, they would scarce have said that the Lords, in the Judgment they

Anno 3 Ann.  
1704.

gave, did any thing in opposition to your Judgment, or in derogation to your Privileges.

‘ Before the Action was brought, there was a Resolution of the House of Commons, That the Right of Election for the Borough of Ailesbury, was in the Inhabitants not receiving Alms. ’Tis from that Resolution the Plaintiff hath taken his Rise, and hath brought his Action; for by his Declaration he makes his Case to be, that he was an Inhabitant of that Borough, not receiving Alms; and that the Constables, falsely and maliciously, obstructed and hindred him from giving his Vote at the Election there. The Constables plead, Not guilty, and the matter goes to a Jury, and they find for the Plaintiff, and give him five Pounds Damages: Which is in effect a finding that the Plaintiff was an Inhabitant, not receiving Alms, and that he was obstructed and hindred from voting by those Constables, and that it was done *falsè & malitiose*, and to his Damage. And this may serve to demonstrate, that the proceeding at Law has not been in opposition, but in conformity to your Judgment.

‘ Now let us consider, whether the bringing of this Action is a Violation of your Privileges: A great many things have been said not proper for you to deliberate upon; one, that this will encourage a multitude of Suits; another, that this Action was never brought before, and several other matters which go to the question, whether the Action will lie. Now that is not the question here; but the true and only question before you, is, whether this Action was brought in Violation of your Privileges; for, if there be no Breach of Privilege in it, I know of no Authority we have to stop the Course of legal Proceedings. And as to that, but one thing (as I conceive) has been said materially, which is this, that this is a parliamentary Case, and appertains to your Jurisdiction; and the Judges of the Common-Law, are not Judges of the Law of Parliament, and therefore they ought not to have given the Plaintiff his Judgment, (and it must be admitted the Lords ought not to have given any Judgment, but what the Judges ought to have given.) To maintain this, it hath been said, and undoubtedly it is true, that this House hath a Right to judge Elections; and it is as true, that in order to come to that Determination, it is incidently necessary that the House do judge of the Right of Electors; and it has been said, (but that I deny) that the Right of the Electors is by the Law of Parliament.

‘ I take the Right of every Elector in England to accrue to him by the Common-Law, for he is under one or other of these Qualifications: Either he is a Freeholder, and then he has a Right to vote for Knights of the Shire; or he has a Right by Charter, or a Right by Prescription; which two  
last

last Rights take in the Right of voting in all Cities and Boroughs. Now I would be glad to know whether the Right of a Freeholder is not by the Common-Law? Is it not an Estate, with all its Privileges and Services, created by that Law? Whether a Right by Charter is not by the Common-Law? Is it not that Law that enables the Crown to grant Charters, and qualifies that Power? Whether a Right by Prescription is not by the Common-Law? Is not Prescription, Common-Usage? And is the Common-Law, any thing but Common-Usage? So that the Right of every Elector being by the Common-Law, the Judgment of that Right is primarily and originally in the Courts of Law. The Freeholders Right of voting, is of the Essence of his Freehold; and you may as well take away his Freehold, as take away his Right to vote, which he has by virtue of that Freehold, and then tell him he must come to the House of Commons to recover it. And the same may be said of those several Interests, which give a Right of voting in Cities and Boroughs. And thus, I hope, I have made it out, that a Right of voting is not a Parliamentary Right, but an ordinary, legal one, and by the Common-Law. Judges have the Judgment of it originally; and it is incidently only that the House has a power of judging of it, and that too according to the Rules of the Common-Law; which is a further Demonstration, that it is a Common-Law Right; for it would be absurd to say, a Man has a Right by one Law, which is to be judged by the Rules of another.

‘ Then what Course has the Plaintiff taken? He has a Right by the Common-Law to chuse Burgesses for Ailesbury: That Right has been invaded, and he has gone to the Common-Law for Redress, and from no other Power could he have it; for this House, or the Committee of Elections, cannot give a Remedy in this Case, that is, cannot make the Person injured Reparation for the Damages done him, by obstructing him in the Exercise of his Privilege: And that is the thing the learned Gentlemen, who have spoke in this Debate, have passed by: And these are the material Points: That this is a Right at Common-Law, and this House cannot apply a Remedy.

‘ But it has been said, that the House will examine, not only on behalf of the elected Person, but of the Electors. ‘Tis true, but in order to what? To see whether you have a right Member here, and for no other end; for I challenge any Gentleman, to shew me one Instance of a single Man who came hither and complained, that he had a Right to vote, and was hindred from voting, and made that solely to be the Offence of the Officer. Did the House, or would the House receive such a Complaint? And yet he may go with

Anno 3 Ann.  
1704.

that Complaint to the Law: For whether the Person he would vote for be returned or not, the Injury is the hindering him from enjoying his Privilege: And it cannot be made an Injury or not an Injury, by matter *ex post facto*; that is, by the Officer's returning, or not returning the Candidates. And tho' the Officer should repent him, and not carry his Injustice so far as to make a false Return, yet it is of Use, that the Law will redress the Wrong done to the Voter, and thereby, perhaps, stop the first steps or approaches towards a false Return.

But if I should admit the House would receive the single Petition of a Voter, who was refused, and when the Person he would have voted for was returned, yet the House cannot make him Reparation; all we can do, is to censure the Officer, but we cannot make the Person complaining whole, in point of Damages. Indeed it has been said, the House can give Damages, and there was an Instance given of Mr. Tankred, who complained against a Clergyman, and the House ordered Mr. Tankred to pay him Costs: So was Sir George Meggot ordered to pay Costs to the Member he causelessly petitioned against, \* and the like is provided for at

\* *The Case of Sir George Meggot, 23 Nov. 8 Willielmi R.*

*A Complaint being made to the House, that Sir George Meggot had prosecuted at Law several Persons, for what they had testified the last Session at the Committee of Privileges and Elections, upon hearing the matter touching the Election for the Borough of Southwark; it was referred to the Committee of Privileges to examine the matter of the said Complaint, and report their Opinion.*

*4 Decemb. 8 Willielmi. A Report was made of the matter of Fact, and that the Committee had come to this Resolution: That Sir George Meggot having prosecuted, at Law, Thomas Malyn, and John Ludd, for what they testified at the Committee of Privileges and Elections the last Session, upon hearing of the matter touching the Election for the Borough of Southwark, was guilty of a Breach of Privilege.*

*The House then agreed with the Committee, and ordered Sir George Meggot to be taken into Custody of the Serjeant at Arms.*

*The Case of Mr. Tankred, 20 Jan. 9 Willielmi R.*

*Mr. Tankred complained to the House of a Breach of Privilege against Mr. Edward Morris, Minister of Aldborough, in the County of York; for that the said Morris had intercepted Letters of Mr. Tankred's which were sent by the Post.*

*14 Feb. 10 Willielmi R. Mr. Morris attending, was brought in, and the House having heard him, and his Witness, resolved, that there was no ground of Complaint of Breach of Privilege, and ordered that Mr. Morris should be discharged from any further Attendance, and that he should be paid the Charge of his Attendance by Mr. Tankred.*



at the beginning of every Session. But are these Instances of any Petitioner repaired in Damages by this House? No, these are Instances against Petitioners, not in Favour of them; nor are Damages given in those Cases, but Costs; all that is provided for, is, that Persons, frivolously complained against, shall not be out of Pocket. And by a mean you have a Jurisdiction in point of Expences, but not in point of Damages; for you may order the Wrong-doer into Custody, and make his Payment of Costs to the injured Person the price of his Liberty; but there is no direct Remedy, even for Costs.

Anno 3 Ann.  
1704.

‘ But it is apprehended, here may be a clashing of Jurisdictions, and if the Party should be allowed to go to Law, the Courts of Law may be of one Opinion, and this House of another. This is a Supposition the Law does not allow of, for this is to suppose Courts of Justice will not do right. It will be allowed to me that your Determination will always be just, and other Courts the Law supposes will do right too, and then they will determine as you; and your Determination, and that of the Law, as I said before, has been the same in this Case. But then, as the Supposition of Law is, that all Courts will do right, so human Frailty supposes there may be, an Error in Judgment: And yet Courts must have Jurisdiction, or else there can be no Administration of Justice among Men, since there is no Judicature short of another World, that can pretend to an unerring Judgment. And now I will shew you the several Courts have different Jurisdiction of the same Fact, and the Law allows them, notwithstanding there may be diversity of Judgments. The Court of Common-Pleas may punish a Person for assaulting an Officer in the Execution of their Process, as a Contempt to that Court; but at the same time, for the same matter, the Offender may be punished in the King’s-Bench, as it is a Breach of the public Peace; and the Officer may, if he pleases, bring his Action in the Court of Exchequer for the Damage done him.

‘ I would observe a little upon the Cases cited, and that as short as possible; The first is that of Nevill and Stode: I have looked into the Journal of 1659, and the only Book of our Law, where that Case is reported, and that is Syderfin’s second Reports; and that was upon Writs issued out by Cromwell, whereby he appointed Counties to chuse differently, some three, some four, some five Members. Mr. Nevill who was a Member of the long Parliament, stood for one of the five Knights for the County of Berks; they chose him, but he was not returned, and therefore he brought his Action in the Common-Pleas: That Action depended there some time, and thereupon the Justices brought the Record into this House for difficulty, and desired the House would

Anno 3 Ann.  
1704.

would come to a Determination in it, (and by the way, there was no House of Lords in being at that time; for it was in the time of the long Parliament, who had usurped the whole legislative, as well as the executive Power:) and no wonder the Judges complimented them with the Determination of that Question, since they were their Creatures, and had their Commissions from them. Well, but the Record being brought in, the House appointed a day to consider of the matter, and when they saw the Plaintiff had proceeded according to the known Methods of Law, they gave no Judgment in it, but sent it back to Westminster-Hall, and there it was again argued, but never adjudged. And that there was no Judgment given, is easy to account for, if the Judges thought such an Action would lie; for at that time, the long Parliament was upon the point of bringing in the King, and restoring the Laws: And if they had given Judgment for the Plaintiff, they had given a Sanction to the highest Usurpation of the Protector, and all his wild Fancies of changing the Constitution at his Will and Pleasure. And indeed the Plaintiff had disaffirmed the Authority of the long Parliament, which he had with great Zeal asserted, and of which he was himself a Member. But if the Judges had thought such an Action would not lie, they might, without any Scruple, have given Judgment for the Defendant. And this seems to me a strong Authority that Westminster-Hall thought such an Action would lie: And it is very remarkable, that when that House of Commons (as they called themselves) had usurped the exorbitant Power I mentioned before, they did not proceed to assume the Jurisdiction of the Common-Law.

‘ The next Case is that of Soame and Barnardiston, in which Westminster-Hall was divided: My Lord Hale was of one Opinion, and my Lord North of another, and there were six and six of a side, and the matter came by Writ of Error into the House of Lords, and a Gentleman said, 800l. was worth contending for. But I am apt to think Sir Samuel Barnardiston did not hope to recover one Farthing of the Money, for Soame was dead, and I believe without Assets: For, in all the Proceedings in the House of Lords, none appeared on the behalf of his Widow, she had no Council there: But it was argued against Sir Samuel Barnardiston, by Mr. Mountague, the late Lord Chief-Baron, to vindicate the Proceedings of the Exchequer-Chamber, and Judgment was given, as hath been said, in the House of Lords.

‘ But what happened next? The Commons were so uneasy under that Judgment, and the Injury which might be done to the People, from whom they derived their Authority, by double or false Returns, that the next thing was the Interposition

position of the Legislature to apply a Remedy, and the Lords came into it, though it was a great discredit to the Reversal of that Judgment; for the Act of the 7th of the late King, declares false Returns to be against Law, and provides an Action shall lie where an Officer makes a Return falsely and maliciously; they never thought it an ensnaring thing, but knew Malice might be tried in that as well as many other Cases: And I wonder to hear *falsè & malitiosè* should be so much words of course. Men are tried for their Lives every day, where Malice is the main point in Issue. If a Man does without any Provocation kill another, the Law intends Malice, and that is Murder: So here, if an Officer refuseth the Vote of one, who hath a clear and indisputable Right, the Law presumes it done maliciously; but if the Officer refuses a Man's Vote, and there is any probable Cause, or Colour to do it, or his Right of voting is doubtful, the Judge will tell the Jury they ought to find for the Defendant; and therefore it is only in a plain and glaring Case, that a Man can prevail in such an Action; and this by the way, is an Answer to that Objection, that such Actions as these will bring all your Elections to be determined by the Lords; since an Officer can never be found guilty by a Jury upon this Action, where there is a Controversy or Dispute, much less can the Lords try or determine any thing of the Right.

Anno 3 Ann.  
1704.

‘ There is another Case, and that is the Case of Mr. Onslow against the Bailiff of Haslemere; that Judgment was against the Action; and was given by my Lord Chief-Justice North, and the rest of the Judges of the Common-Pleas, upon the Authority of the Judgment in the Case of Soame and Barnardiston, in the Exchequer-Chamber: and no wonder; they would not give a Judgment contrary to what some of themselves had given in another Place.

‘ Sir, this Question hath been before this House not long since, Whether a Candidate should be hindered from proceeding upon an Action at Law, before he had come to this House for their Determination, whether he was chosen or no? And this House, upon a solemn Debate, adjudged that he might go to Law before he had come hither; and I desire your Clerk may read a word or two in your Journal, 'tis Monday 13 March 98.

Clerk reads. ‘ [The House being acquainted, that John Buller Esq; who was Candidate at the Election for choice of Members to serve in this present Parliament, for the Borough of Lescard, in the County Cornwall, hath brought an Action upon the Statute made in the 7th Year of his Majesty's Reign, against Mr. Richard Roberts, Mayor of the said Borough, for the Sum of 500l. for making a false Return of William Bridges Esq; although the said Mr. Buller never

Anno 3 Ann.  
1704

Sir Joseph  
Jekyll.

never petitioned against, or questioned the said Return in this House, and a Debate arising thereupon, resolved that the Debate be adjourned 'till Wednesday morning next.'].  
 ' Now I desire you to look upon Wednesday the 15th day of March, when that Debate was resumed.

Clerk reads. '[This was the 15th of March. The House resumed the adjourned Debate relating to Mr. Buller; and after a long Debate, the same fell, without any thing done thereupon.]

*Members.* Well, what then?

Sir Joseph  
Jekyll.

' I take this to be a plain Authority, that will govern the Case before you: For if it was not reasonable to restrain a Man, from proceeding at Law upon the Statute, before he had come hither for a Determination, when it was to controvert the very Election, which was undoubtedly proper for the Judicature of the House; much less will it be reasonable to restrain a Proceeding at Law, which is not to controvert the Election, and upon a Case not proper for the Judicature of the House; and the House doing nothing upon that Complaint, is a Declaration, that the House could not justly do any thing upon it. For if a Man makes a Motion in any other Court, and the Court declares they will do nothing upon it, I desire to know whether that be not a Declaration of that Court, that the Motion is unreasonable, and it is all the Judgment the Court gives in such a Case. And I had the Honour to sit in Parliament when that Motion was made, and very much pressed; and some that have spoke in this Debate, were then of an Opinion contrary to what they are now, and were not for stopping the Course of Law.

' Sir, I apprehend the Action is well founded in this Case; this Man had a Right to vote, he had an Injury done him in respect to that Right, he hath sought to be repaired in a proper way, and he could not be repaired in any other: I am for doing nothing to his Prejudice, and therefore am against your question.'

Mr. Harley,  
(Speaker.)

' Sir, I shall trouble you but with a few words after this long Debate: And rather to understand the Terms you are debating on, than to think any thing I can offer to be of any great Weight. But I take the question not to be as some have represented it, but to be singly this in general, whether an Action does lie at Common-Law in the Case before you?

' There is no need to mention the particular Circumstances of Ailesbury Election; for if that was the single Case, you might have taken another Method. I will not insist, that in this very Election, a great number of those Inhabitants petitioned this House upon this point, that their Votes were denied: And after this Petition had lain in the House  
 some

some time, it was withdrawn by their own consent; I do not trouble myself whether this particular Man was amongst them, nor will I trouble you with what may reasonably be urged from this; but leave that to other Gentlemen.

Anno 3 Ann.  
1704.

But I desire we may understand the terms upon which we are debating; we have had Maxims of the Common-Law; and the Rights of Parliament mentioned. The Common-Law is the Common-Usage of the Realm; I take the Laws of Parliament to be the Common-Law of the Land, and the Usage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Usage, as the Common-Law is.

Then how shall we know whether this belongs to the Common Law? If there be any other way, I should be glad to be informed; but I think there is no other way of knowing, whether an Action will lie at Common-Law, but by Reason or Usage, and Precedents. Now, if by Reason; it is to be made out by what necessarily attends this Case, or some other Cases like it. And pray what do they offer, that it lies at Common-Law? Do they give you any Precedent? What Reason do they offer? I suppose that which was read last is no Precedent in this Case; for that was an Action upon the Statute; or that the Courts below take upon them a Legislature instead of a Judicature, which must be, if there be no Rule for them to go by. I take the question you have read, to consist of two parts; one asserting your own Right, the other is Negative, that no other Courts have any Right, but in Cases particularly directed by the Statute.

I cannot think this of Electors and Elected a Privilege, I take it to be a Service both in the Electors and Elected; and formerly it was reckoned a hard Service; I know not how they find it now. 'Tis a Service, I take it, because all who are Electors are liable to pay the Wages, and I take that to be a Burden: And not only from that, but the very Towns that were Boroughs, and elected when one paid Fifteenths, the other paid Tenths; so that I take it to be a Service: And if a Franchise, see the Consequence; it will be in the power of the Crown to create as many Boroughs as they please.

Then consider, this House is in possession of this Power, as of Right, and I do not find the Common-Law in possession of any such Right. Then what do they offer to bring it in, but that there would be some failure of Justice? Now I took it, that the Judges are *jur dicere*, and not *jur dare*: If any thing want a Provision to be made for it, it must be done by the legislative Power; and if the Electors want it, Provision must be made for them, that they shall have an Action. And those Gentlemen, who think that necessary, may bring

Ann<sup>o</sup> 3 Ann.  
1704.

in a Bill to that purpose, and take the Sense of the Legislature upon it in a regular Way.

' The Question before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where some Statutes have not particularly directed otherwise, do not belong to this House? There was a famous Case of Goodwin, that was contested by the Crown, and the Crown pretended to send out another Writ. And there they say, that as to Members of Parliament, their Attendance, &c. they are the sole Judge: And this they laid before King James in the first Year of his Reign, and claim it as their sole Right, and the King's second Writ was determined to be void.

' But a Gentleman makes an Argument, if one should strike another in the House, what Remedy? Why there is an Act made for that Case in Henry the VIth's time.

' I think now the Matter will turn upon this: Say they, 'tis true you can try Elections, and who are the Electors; but here is one thing remains, that is, to give Satisfaction. Have they any Precedents for this? I believe the Precedents are without; they have a Power for what is necessary; nothing less than a Law can give the other.

' Gentlemen say, there may be a Difference in Judgment in Courts below, but they are subordinate, and there lies an Appeal: But in this Case, all Courts will be co-ordinate with you; and therefore if that be a Grievance, nay a Solecism in Government, prevent it now.

' 'Tis said, what will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote must be the Ground of it.

' You are Judges of the Whole; but say some, you cannot give the pecuniary Satisfaction. Well, suppose so; but you can restore all to their Right. But let me say this, if you would not set up a co-ordinate Power with you in Matters of Elections, and which will be too hard for you at last, I hope it will be a Warning to you, to take more care in the Judging of your Elections for the time to come.

' If the Judgment belongs to you, and you are possessed of it for so long a Tract of Time, that no body can offer any thing against it since Hen. IV's time; till Gentlemen shew me some Reason, why the Common-Law should lay hold of it, I must be of Opinion, that it does belong to you, and no Court can take cognizance of it but you, except where it is otherwise provided for by Statute.'

Sir, I shall not enter into a Discourse, and repeat what I remember of former times: I will say but this, let others answer it better if they can. As to the Words *falsè & malitiosè*, it seems one Chief-Justice said, they were Words of Impor-

Sir Thomas  
Meres.

Importance, and must be proved; another Chief-Justice said, they were only Words of course, that is, like Pepper and Vinegar to a Slice of Roast-Beef: So there is one Chief-Justice, that spoke last but one, against another.

Anno 3 Ann.  
1704.

‘ As to making Satisfaction, I confess, I like very well what that Gentleman said on the right-hand, if there was any Precedent for it, I agree it would do very well, that this House could give Damages, and we will make the best of it; but most of these things have spite in them, and these Actions are brought with spite. Now this we can do, we can punish the Officer, and there is Revenge in that; and that is a sweet Bit, and some Satisfaction. What further occurs to me, hath been spoken by other Gentlemen, better than I can do it; and I shall not repeat, it being so late in the Night.’

‘ I perfectly agree with that honourable and learned Gentleman that spoke last but one in this Debate, in what he laid down as an undoubted Maxim or Ground-work for the Opinion he delivered, that the Law and Custom of Parliament is Part of the Law of the Land, and as such ought to be taken notice of by all Persons. And I think ’tis the exact Standard by which we ought to walk; and the Deduction my poor Judgment is apt to make from that Principle is this, That we ought not, out of Zeal to our own Jurisdiction, to go one Step farther than that known Law and Custom of Parliament will warrant us to do.

Mr. Cowper,  
(afterwards  
Earl Cowper.)

‘ Now I take it upon this Debate, that this Law and Custom of Parliament doth not give the Subject, who is injured by his Vote being denied him, any Satisfaction, or Recompence for that Damage: And am the rather confirmed in that Opinion, because that very learned and honourable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleased to represent to you any one Precedent, where the Subject so injured hath complained to the Parliament, and had Redress in that Particular; but all Petitions have been either from the Candidates, or Electors, complaining of an undue Return. So that it cannot be shewed, that it hath been the Law and Custom of Parliament to give that Remedy, or Relief in Parliament, which is the Subject-Matter, or End of the Action now in question.

‘ I go likewise along with him, and every Gentleman that hath spoke in this Debate, that by the Law and Custom of Parliament, none but yourselves can determine who are rightly elected, in order to displace, or place them here; and, incident to that End, you have the sole Right of considering the Right of the Electors: I say so far forth, as it is necessarily incident to determine who shall, and who shall not sit here; and no other Court can consider the Right of the

Anno 3 Ann.  
1704.

Electors, in order to determine the Right of any to sit in this Place, further than you, by some Act of Parliament, have given them leave. But this Matter having now been disputed a great while, you have had it fully represented to you, how they came to hold the Scales in this Action in Westminster-hall, not as in a Case where the Right of Election, or the Privileges of this House was the Subject-Matter of the Question: the Action was brought there only to entitle the injured Subject to Damages. And this Matter ought to be considered, as it relates to different Ends and Purposes, and upon that it turned in the Case of Soame and Barnardiston. They who thought that Action lay, thought Courts below might try the Merits of an Election to repair Damages, not to determine who should be admitted to sit in Parliament.

‘ And I will venture to say, that the Judgment of the House of Lords that confirmed that Reversal, was in no wise, at that time, satisfactory to the Commons of England.

‘ But the Act of Parliament that hath been mentioned, was built upon this, that the Reversal of the Judgment between Barnardiston and Soame was not Right, and so that Act was procured to set up the Right of the Commons of England, that was thought to be invaded by that Reversal, or Judgment, that the Action upon the Case did not lie.

‘ I will go a Step farther, that as you have the sole Power to try the Right of Election, and consider the Right of the Electors, to the End I mentioned, to determine who shall be admitted here; so I grant it hath been the Law and Custom of Parliaments, (how ancient I will not enquire) to punish the Offenders, particularly the Officer and Magistrate presiding at the Election, for doing any Wrong, or Injury in his Office on that Occasion, in order to make him an Example; or as an Offender against the Public, and the Constitution of Parliament: So far I grant you have just Right to go, and no body ought to interfere with you.

‘ But now we are carrying the Matter yet further: The Question now is not, Whether we have the sole Right to punish the Officer as a public Offender; this Action is not brought to that end, nor is there a Word in the Declaration who was, or who was not duly elected, or that the Constitution or Privilege of Parliament was violated. But the Plaintiff only says he had a Right to vote, and that he was injuriously denied it (whether the right or wrong Member was returned, he meddles not with it) and he submits it to the Court and to the Law, Whether he ought not to have Damages for that Wrong? And the Question now is, Whether that Demand of Damages was not well founded? Or whether there is any thing in this, contrary to the Law and Con-



Constitution of Parliament? Law depending on Custom, certainly consists not in, and is not to be made out by one Act, but by often re-iterated Acts: And that must be very far from the Law and Custom of Parliament, which is so far from being a frequent Repetition of Acts, or Precedents, that in this Case, there is not one Instance, where an Elector hath brought his Petition, without regard to the Return made, and desired his particular Right to vote might be tried and asserted, he having been obstructed and injured in giving his Vote: Nor was ever such Elector repaired in Damages here, nor ever had his particular Right to vote resolved, or asserted by any Judgment, or Declaration of this House.

Anno 3 Ann.

1704.

‘The learned and honourable Person, upon whose Reasoning I am humbly offering my Thoughts, with great Defe-  
 rence, was pleased to instance in the Case of five Persons, in the Town of Aylesbury, who exhibited a Petition, and complained of an Injury done them at an Election for that Town, at which their Votes were refused. And if they complained of nothing further, and did not conclude to the Right of the Return, and complain, that they were unduly represented, I admit it had been so far an Instance to his Purpose. But if they had so complained only of the Injury done the Petitioners in denying their Votes; yet he is pleased to tell you, this Petition was withdrawn, and by the Consent of the Persons who presented it, and so came to nothing. I suppose this is the single Precedent to prove the Law and Custom of Parliament, because there is no other Instance given. It does not appear upon what Ground or Reasons it was withdrawn; and I having no particular Memory of that Passage; you will pardon me, if I am mistaken in my Conjecture. I believe no Man, that seeks a Remedy, would desist, if he expected to succeed; so I take the most probable Reason (till another appear) to be, that they were hopeless of doing any good with it: And one Petition not prosecuted, will hardly shew, that Parliaments use to give Redress in such Cases. Now, if that Precedent had been successful, if the Petition had been referred to a Committee, if Damages had been given upon the Complaint, and a declarative Vote had passed to assert the Petitioners Right, (but I did not observe there were any such Proceedings;) then, indeed, I must admit, that it was one Precedent in point, and a very material one; and it would have proved, that we had once held Plea of this Matter, and by consequence, if we had often done so, that no body else had to do with it. But if that Precedent be defective, and none can shew, that ever any Petition was exhibited by any Elector, for a personal Injury done him in rejecting his Vote, tho’ the Person he would have voted for was returned, this Action may lie for  
 such

Anno 3 Ann.

1704.



such an Injury done to an Elector, without interfering with any Law, or Usage of Parliament, that hath yet been made evident; and that brings me to another Matter of that honourable Person's Discourse, and I acknowledge he entered into it with a great deal of Candour and Fairness.

' He was pleased to say, he thought it was admitted in this Debate, that the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objection its due weight, and admit what I take his Meaning to be, that this Action, in the particular Species of it, may be new, tho' it's old in its Genus, or the principal Materials on which it is built; and I take it, if by the general Rule, or Reason of Law for such an Action, it be warranted, this Action (as a thousand other Actions on the Case may) will lie, tho' in all the Parts 'tis not to be exactly paralleled; for it is the very nature of, and implied in the name of an Action upon the Case, that every Man may maintain it on his particular Case, provided it carry in it the general Reason, or Ingredients required by Law to support such an Action, tho', in many Circumstances, it may be perfectly new. I see that honourable Person understands clearly the necessary Incidents of that Action; that is, there are to be *Damnum & Injuria*, which I take to mean a Damage to the Subject, not arising from a lawful, but, which is the Consequence, of an unlawful Act. Now, says he, first here is no Damage, because anciently the Attendance was thought a Service and a Burden, and the Right of Electing was a Service too, and in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Case is wanting. This is clear Reasoning, and either to be answered or submitted to.

' It is said, the Right of Electing was a Service, how true, I doubt upon the Reason of the thing: A Service was often a Part of the Tenure, by which a Man held his Land till it came up to the Crown; and the Service was originally created by Grant and Reservation. Now, can any one imagine, that where one holds a small Freehold, any such Tenure was created between him and his immediate Lord, originally by Reservation, as that he should vote to send Members to Parliament?

' But if it might be consider'd as a Service so created, it will not do the Business of the Argument, unless you consider it also as a Service of Burden, without Advantage or Privilege; for if it be a Privilege too, (tho' in its Creation it might be a Service) then the Depriving a Man of it is an Injury. Now no body can think but that the Right to elect a Parliament-Man, which is a distinguishing Character from the Vulgar, and hath its weight in the Legislature, is a Privilege; and

and therefore to be deprived of it, is to be deprived not only of a Service and Burden, but of a very valuable Privilege; and I believe any Englishman would think we dealt hardly by him, to deprive him of it, tho' we should tell him, at the same time, we deprived him only of a Service and Burden, and not of a valuable Privilege.

Anno 3 Ann.  
1704.

' There is another thing occurs on this Head: We have been so far from thinking the being elected, a Service or Burden only, that, in the nature of a Repeal of those Judgments of Soame and Barnardiston, by a positive Law, we have given the Elected double Damages if he be deprived of that Service. Therefore, by our own notion, and in our Case, 'tis a Privilege that ought to be recompensed even with double Damages, that is to say, when it concerns ourselves. And shall we declare it a mere Service in the Case of our Electors, not to be recompensed even by single Damages, and that after the undoubted Methods of the Common-Law have adjudged it their due; for I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the last Resort? The Lords have not judged the Fact; they are bound as to the Fact by the Verdict, and they are unquestionably the Judges of the Law on a Writ of Error. And therefore, as to what has been said, that any Fact of an Election might come to be determined before the Lords, it is a great mistake, for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Constitution. Give me leave to say, we, upon this Occasion, judge of this matter only as a Matter of Law, which may affect our Privileges; and, tho' we have Authority to consider what is Law, as it relates to, or may intrench upon our Privileges, no body that sits here can think that there lies an Appeal in this Place, or a second Consideration of this matter after the Lords Judgment, as 'tis a Point of Law only, and as it regards the Right of the Subject. So that an Objection in Point of Law here, to the Judgment of the Lords, will not hold otherwise than as it relates to our own Privileges; for no body will say, that we are the dernier Resort in any other respect. And tho' that is the only Point that brings it properly under our Consideration; yet, I fear we are taking from the Subject, in effect, what the Law hath adjudged his Right, and reversing a legal Judgment given in the Subject's favour. There are other Arguments hung in, to make up the Weight only, as that which compares the present to the Case of a Dove-House; in which Case, in regard of the multitude of Actions that would follow, an Action will not lie for every one that is injured by the erecting of it. It is true, where a multitude are injured by one and the same Fact, it shall not be punished by a multitude

Anno 3 Ann.  
1704.

titude of Actions; but the Public is to take care of it, because the Injury is of a public nature. But by the same Standard and known Laws of England, if one Man is so rash as to commit a multitude of Injuries, which severally affect several Persons, it was never said, that he became unpunishable by the multitude of his Offences, but every one injured has his Action against him. I have heard it said, *defendit Numerus*, but that is spoken as to the Number of Offenders; not the Number of Offences committed by the same Man. And these Injuries which consist in denying the Subject to vote, when of right he ought, will not be multiplied (as is objected) by letting the Subject know, that as they may come into Parliament to punish the Officer, as a public Offender against the Constitution; so the particular Person injured by being denied his Vote, may also have an Action for the private and particular Injury done to him only.

‘ I would mention one thing more: They who have spoke for the other Opinion, seem to take it for granted, (which I do not take to be a true way of reasoning) that because, in determining who have a Right to sit here, we do incidently, and only can, in order to that end, determine who have a Right to vote; therefore no other Judicature can try the same Matter or Right to vote, tho’ it be to different Ends and Purposes.

‘ Now if you will consider the different Jurisdictions in the Constitution of this Kingdom, there is nothing more common, and many Instances may be given of it. There are Variety of Jurisdictions that try the same Fact, and yet each hath a sole and separate Jurisdiction in that Matter, to different Ends; and these Jurisdictions are not, in that respect, subordinate to another: take the spiritual and temporal; the spiritual is not subordinate, but only restrainable by the temporal, where they intrench upon the temporal; as in the common Instance of Matrimony, which, directly, and abstracted from other Purposes, is triable in the Spiritual Court, and no where else. But, yet, if that comes to be a Question of Fact in relation to a Title at Law, or to make out a Descent, why the Temporal Courts every day try it, tho’ *per se*, and taken by itself, it belongs to the Jurisdiction of the Spiritual Court; and yet these Courts are not, in that respect, subordinate one to another.

‘ So, in the Case touched upon, of a Battery, ’tis not triable in the Common-Pleas, as ’tis an Offence against the public Peace, by Indictment, in order to a Fine, but triable in those Courts only that have a criminal Jurisdiction; but as ’tis a private Injury, and in order to recompense the injured in Damages, that is triable in the Court of Common-Pleas, and other Places which have Cognizance of civil Actions only; and this is not in respect that one Court is subordinate to the other, but one holds Plea of the same Fact, in order to one End; and the other  
in

n order to another End ; and there is no clashing of Juris-  
 dictions in such Cases. Anno 3 Ann.  
1704.

‘ For what hath been objected, that this may create Variety of Judgments concerning the same Right; this does not weigh, it seems, in our own Cases; for we may bring our Actions for double Damages for a false Return, and yet that may produce the same Variety of Judgments. So was the Opinion of the House in the Case cited behind me; and the Law is plain, that tho’ the last Determination of this House; where there hath been any, shall determine the Right of Election, and there the Judges and Jury shall be bound by the last Determination, and to act by the same Rule; yet, in Towns where there has been no Dispute of the Right settled here one way or other, the Candidate may, notwithstanding, bring his Action, and he, or the People of the Place, may also petition the House of Commons. And then there is the same Objection; for there may be Variety of Judgments touching the Right of Election, one in the House of Commons and another in the Courts below. And upon the Trial, in order to obtain Damages, a Jury, in such Cases, where the Right had never been settled in Parliament before the Election in question, are not directed by the Judgment of your House, on the same disputed Election, nor is any Jury bound to follow such Judgment; and if you will go upon a Supposition that a Judge and Jury may go contrary to Law and Right, or the Determinations of the House, in the Case before you, ’tis an Objection which you have overlooked in your own Cases; and therefore why should it be an Objection to hinder the Person whom you represent of his Remedy for the Injury done him?’

‘ Upon the whole, I am for so much of your Question as serves only to declare, that you have the sole Power of determining the Right of all Elections, and even the Elector’s Right to vote, to the end to try who is your Member, or to punish the Officer as an Offender against the Constitution: So far is agreeable to the constant Law and Practice of Parliament. But for that part of the Question which relates to the restraining the Electors from bringing their Actions for the personal or private Damage done to them, I think it is not agreeable to the Law or Constitution of Parliament.’

‘ Mr. Freeman, we are much obliged to the Gentlemen that have argued on both sides, who have brought the Matter of this Debate into a narrow Compass: The Question is, whether an Elector be entitled to an Action at Common-Law against the Officer, for recovery of Damages, in case his Vote which he offered, be not taken down in writing, and entered on the Poll? or, whether the House of Commons have the sole Privilege of examining and determining the Right or Qualification of every Elector to give his Vote, and to judge of the

Sir Humphry  
 Mackworth.

Anno 3 Ann.  
1704.

the Behaviour of every Sheriff and other Officer, in taking the Poll on the Election of Members to serve in Parliament.

‘ I am of Opinion, with great Submission to better Judgments, that the House of Commons have a sole Right of Judicature in these Cases, and that the Elector is not entitled to an Action at Common Law. I shall endeavour to support this Opinion by answering the Arguments that have been made use of to prove the contrary: And first, I crave leave to observe, that the Gentlemen who have argued on the other side, have not taken notice of a Distinction, which seems to be very material in this Case, and that is between an actual Force or Violence done by the Officer, and a bare Omission in point of Duty. It is agreed, that, in case the Officer does by Force or Violence obstruct, or hinder an Elector from offering or pronouncing his Vote at an Election, for which of the Candidates he pleases, the Elector will be entitled to an Action at Common Law for Recovery of Damages, for that is personal Wrong, and does not concern the Right or Qualification of an Elector to vote in Elections: But, in case the Officer does permit the Elector quietly to offer or pronounce his Vote, (as he did in the Case of Ashby, who pronounced his Vote for Sir Thomas Lee, and Symon Mayne Esq;) but does not think fit to enter his Vote upon the Poll, the Elector in this Case is not entitled to an Action at Common Law for recovery of Damages, because he has neither suffered any Force or Violence, nor is, by such Omission, deprived of his Vote; for a Vote being once pronounced, the Law takes it for the Benefit of the Public, tho’ the Officer be wanting in his Duty; and none have power to determine whether the Elector had a legal Vote, and whether the Officer had sufficient Reason to refuse to enter the said Vote in the Poll, but the House of Commons. If any other Persons should have Authority in this Case, they will be able to destroy the Freedom of Elections, and the Constitution of Parliament.

‘ It is insisted by some Gentlemen, that the Electors have no proper Remedy, in this Case, in the House of Commons, and therefore they must have their Remedy at Common-Law: but, with great Deference to their Judgments, the Electors have a proper Remedy, in this House, in every respect; for here their Votes will be allowed, the legal Representatives restored, and the Officer will be punished for any wilful Default in the Execution of his Office. This is a Remedy that answers the End for which every Elector is entitled to give his Vote, which is not for a private Advantage to himself, but for the general Advantage of the whole Kingdom. But the Action at Law is no proper Remedy in any respect; for since a Vote that is offered and refused, is as good by the Law of Parliament as a Vote that is offered and received, and is

is so adjudged on the Trial of every Election in the House of Commons, or else they could not fill their House with legal Representatives; it is not proper or reasonable that an Officer should pay Damages to an Elector that has not suffered any, nor that a public Offence should be punished by a private Satisfaction; which is not likely to prevent the Evil, preserve the Vote, and restore the Representative; nor is the same consistent with the Constitution or the public Safety.

Anno 3 Ann.

1704.

The Qualification of Electors, and the Behaviour of Officers, in all Elections, are Matters of Parliament, and such Matters are not cognizable elsewhere, as hath been often declared by all the Judges of England: A Parliamentary Case requires a Parliamentary Remedy. And since Votes have been refused in all Elections; if Electors, in this Case, had been entitled to an Action at Law, it must be presumed, that some time or other such an Action would have been brought, which yet was never once attempted in any former Reign; and all those Acts of Parliament that were made to give Damages in Cases relating to Elections, do demonstrate that no such Damages could be recovered at Common-Law; for if they could, there had been no Occasion for making any of those Statutes.

It is insisted, that every Right must have a Remedy, but then the Subject must be first deprived of that Right, which in this Case he was not; and, even when he is, he must have his Remedy in a proper Manner, and in a proper Court. There are several sorts of Rights and several sorts of Laws in England, and there are several Courts of Justice for the Administration of those Laws: A Man that has a right to a Legacy cannot bring an Action at Common-Law, but he has a proper Remedy in the Spiritual Court. The like may be observed of Cases that belong to the Courts of Chancery, Admiralty, Stanneries, and of the Forest-Laws. The Subject cannot bring Actions at Common-Law in Cases that belong to the Jurisdiction of other Courts. And when my Lord-Chief-Justice Coke enumerates the several Laws in this Kingdom, he gives the Precedence to the Law and Custom of Parliament, which he tells us is superior to the Common-Law in Westminster-Hall. And as every Court at Law has its Customs and Privileges peculiar to itself, and is sole Judge of them, so also the High Court of Parliament, *suis propriis Legibus & Consuetudinibus subsistit*, hath its own Power, Laws and Customs, and is sole Judge thereof. And, if an Action at Common-Law will not lie for a Legacy, where the Spiritual Court has a Jurisdiction, though the Temporal Courts have, in many respects, a superior Authority, such an Action will much less lie in a Case concerning the Parliament, which is the highest Court of the Kingdom, and who are sole Judges in

Anno 3 Ann.  
1704.

all Cases relating to themselves. But some carry this further, and say that every Right must have a Remedy with Damages. This may be true in most Cases, where a Man is deprived of Rights of Property and Possession; but there are many Instances to be given, where a Right of Franchise or Privilege is not entitled to any Damage; as a Person elected Mayor of a Corporation, if the proper Officer refuses to swear him, has no Action at Law for Damages, but his Remedy is by *Mandamus* out of the Queen's Bench; there is a Remedy by *Quare impedit*, but not to recover Damages. In a Writ of Right, you shall recover the Land, but no Damages: So in this Case, the proper Remedy is to have the Vote allowed, which can only be done by the House of Commons. Some Gentlemen have found out a new Distinction which I never heard before, that the House of Commons have the sole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one intent, but not to another; that is, in order to determine who are the legal Representatives, but not to give Damages to the Party injured. But, with great Submission, there is no weight at all in this Distinction; for, as it is plain that the Elector is not, in this Case, deprived of his Vote, and therefore suffers no damage, so it is also evident that the Judgment of the House of Commons, in Matters properly cognizable before them, cannot be contradicted by any other Judicature; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, must be conclusive to all Intents and Purposes whatsoever. It is contrary to the Reason of all Laws, that the Behaviour of an Officer should be subject to the Determination of two independant Jurisdictions; or that he should be innocent by the Judgment of a superior Court, and guilty by the Judgment of an inferior; or that he should be twice punished for the same Offence. No Man can serve two Masters; the Officer, at this rate, will be every way ensnared, and made liable to Punishment, whether he does his duty or not; if he accepts illegal Votes on the Poll, he will forfeit 500 l. by the Statute, for a false Return; if he refuses them, he may be ruined by a multitude of Actions; for if one may bring an Action, there may be five hundred, since every Man, at this rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this consistent with the Freedom of Elections, in which there ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors should be free to offer their Votes, so the Officers should be free to judge whether they ought to be entered on the Poll, or not; and they ought not to be accountable to any but the House of Commons, whose Servants they are, in all Matters relating to Elections, and who are entrusted



entrusted with the Determination of all Matters and Cases relating thereto; and they may as well punish them for taking illegal Votes on the Poll, as for not taking those that are legal. In neither of which Cases have the Judges of the Common Law any Jurisdiction, tho' there is the same reason in both, to take care that every the meanest Subject may have Relief for any Injury done him; but we are not to take more care of the meanest Subject than of the whole House of Commons. The greatest Subject in England ought to have no Relief but what is consistent with the Law of Parliament, and the Safety of the Constitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the House of Peers, the Lords will be the sole Judges at last, who have Votes to chuse a House of Commons; which is directly contrary to the fundamental Maxim of the Law and Custom of Parliament, that the two Houses are mutual Checks to each other, and sole Judges of their own Privileges.

Anno 3 Ann.  
1704.

' This is an excellent Constitution, and admirably well contrived for the common Safety: But how can this Constitution be preserved, if the Lords can punish our Officers, and govern our Elections? This will be the way to destroy all Checks, and to make the House of Commons dependent on the Lords; and then I cannot see upon what Foundation you can be said to sit here to do any service for your Country.

' Others insist that this is a Right that is incident to the Freehold and Freedom of Electors; therefore, as their Freeholds are cognizable at Common-Law, so is every Incident belonging to it. This Argument is plausible at first sight, but in reality there is nothing in it; for tho' the Commons of England have submitted their private Differences to Arbitrators, or Judges, indifferently chosen and appointed by the Prince, the common Parent of the People; yet they have never submitted their fundamental Rights and Privileges, which they hold in their public and political Capacities, as a free Branch of the High Court of Parliament, to any but their own Representatives, who are chosen and appointed by themselves. This is not a Case, properly speaking, between Party and Party, but between the Lords and Commons; because the Determination of this Case brings the whole Right in question, who have a Privilege to judge of the Qualification of Electors, to give their Votes in Election of Members to serve in Parliament, whether the Lords or the Commons? It is not now the Question who hath the best Right to a Freehold or Freedom, or to any thing that is incident to it; but whether the Commons of England shall have any Freeholds or Freedoms at all? or, which is the same thing in effect, whether they should have any Security for those Rights or not? For if the Lords are Judges of  
your

Anno 3 Ann.  
1704.



your Privileges, you can hold no Right but during their Pleasure.

‘ The Lords seem to contend for the Right of the Subject, but I wish it be not for a Power to enable themselves to judge and determine, as they think fit, of all our Rights and Liberties; for this is the necessary Consequence of allowing an Elector to have a Remedy in any other Place but within these Walls.

‘ This is my humble Opinion; and if I am mistaken, other Gentlemen will set me right. This is certainly a Matter of the highest Importance to the Welfare of the Subject, and I doubt not but they will very well consider it before they give way to the establishing a Precedent that tends to destroy the Privileges of this House, or the Liberties of their Country.

‘ A great Tenderness is expressed for this poor Man, whose Vote has been refused: But whether he had a right to give his Vote is very much questioned, and never yet determined by this House, who has the proper Judicature thereof. But admitting he had a Vote, whether ought to be preferred, a private Interest or the public Safety? Whether will be most for the Honour of this House and the Interest of our Electors, the Care of a private Person by a new-invented Action, neither warranted by Reason, Precedent, or any established Law; or the Care of the Parliament, and the Constitution on which depend the Rights and Liberties of all the Commons of England.

‘ Sir, I beg pardon for taking up so much of your time, but I must confess it seems to me, that our All depends upon a right Determination of this Matter; for I cannot see any other Reason why this new Device is supported by the Lords, but only to render you precarious and useless.

Sir Gilbert  
Dolben.

‘ Mr. Freeman, I shall not trouble you very long at this time of day; I think the Point in Debate has been truly stated by the Gentlemen who insisted on this Question, Whether an Action will lie for an Elector, for having been refused his Vote at the Election of a Member to serve in Parliament? A learned Gentleman would have the Question to be, not whether an Action will lie, but whether this House has the sole Right of determining that Matter, and of giving remedy in it. I confess I think it is more properly stated the other way: but the thing is scarce worth a Dispute, since which way soever you turn the Tables it comes to the same Point, and one of the Questions will in consequence be resolved by the Resolution of the other. For if that Question be put which is proposed by the Gentleman, and carried in the Affirmative, that this House has the sole Right of determining this, and all other Matters whatsoever that concern the Right of Election; then it must follow, that who-  
ever

ever is wronged in any such respect, cannot be redressed by Action, since the Right of determining in Cases of this nature, is not in the Courts below, but solely in this House.

Anno 3 Ann.  
1704.

‘ I shall not offer you any Arguments to prove this sole Right, many having been urged by others; but I will consider some things (without taking up much of your time,) that have been offered as Objections to it.

‘ Some Gentlemen have made a distinction, in this Case, between the Right of Electors and of the Electèd; and they will have it, that the Courts below may decide the first, but not the last; whereas, in my poor Opinion, the Decision of the Elector's Right must necessarily, in many Cases, decide who has a right to be electèd. For suppose a common Case, that one of the Candidates insists upon an Election by a select Number, and the other upon a popular Election: If, in this Case one of the Populace be refused his Vote, upon a Pretence that he is not of the select number, whereupon he brings his Action against the Officer; will not the Event of that Trial determine (in Consequence) the Right of the Candidates? Surely it must; since if it go for the Plaintiff, he for whom the Plaintiff offered to vote, and who had the popular Interest, will appear to have had the Right of Election; and so will the other Candidate, if it go for the Defendant. Several other Cases to the same purpose might be put: So that if an Action of this nature should lie, it must (as I apprehend) unavoidably follow, that Westminster-Hall by original Action, and by Writ of Error the House of Lords, will have power to determine, (at least consequentially,) who has a Right to sit in this House, and who not. And how consistent such a Determination will be with your undeniable Right, (acknowledged on all sides) of determining the Elections of your Members, exclusive of all other Jurisdictions, I leave to Gentlemen to consider.

‘ A learned Person was pleased to object, that Right is founded upon Usage; and if this House had the sole Right of judging in a Case of this nature, where a single Elector is wronged, doubtless there would be some Precedent of Relief given to such an injured Person. But (says the Gentleman) there is no such Precedent, and therefore it must follow, that this House has not the sole Right of relieving in that Case. I think I may safely deny his first Proposition, as he applies it to the Rights of this House, which (generally speaking) are not founded upon Usage. Sir, the Rights of Parliament are chiefly founded upon the Nature and Constitution of Parliaments. Usage is indeed a Corroboration, and an Evidence of those Rights; but the Foundation of them, is our being a part of the Legislature, whereby we necessarily become invested with such Rights and Privileges,

as

Anno 3 Ann.  
1704.

as enable us to act, and to discharge our Duty, in that great Capacity: So that it is not so much what has been used, as what is necessary to the Support of our Constitution, that must be the Rule and Measure in determining the Rights of the House of Commons.

‘ But neither has Usage been wanting in this Case: For whereas the Gentleman asserts, that there is no Precedent where this House has given Relief to a wronged Elector, (with Submission,) several such Precedents appear upon your Books, particularly in the Case of Banbury, where four or five of the Inhabitants complained, and the House gave a Remedy. And I cannot see why, if it has been given to four, it may not be given to one; nay, I should think if more than one have been relieved, *a fortiori* one should be relievable.

‘ But it seems to me, that the Argument drawn from Usage, goes much further than the learned Gentleman intended it should: for if all right be founded upon Usage, all Right of Action must be so founded; and then what becomes of this Action which the Gentleman has laboured to support? If Usage be nothing else but the Repetition of the like Acts, then this Action (according to the Gentleman’s Rule, that Usage is the Foundation of Right,) cannot be rightful, unless there hath been a Repetition of the like Action.

‘ Nor can it be said, that this is the first time any such Cause of Action has arisen, and that therefore it could not have been brought before; for there has scarce been a Parliament called in any Reign, but some or other has, without doubt, been wrongfully refused his Vote: So that the Cause having been frequent, it must have had the like effect ere now, in Case such a wrong could have been redressed by bringing such an Action.

‘ But no Gentleman has pretended to say, that any Action of this nature was ever brought before; and therefore we may infer from the learned Gentleman’s own Position, as likewise from the Authority of Littleton’s Text, that, since none has been brought, none can be brought. And this has been the constant Opinion of the Courts in Westminster-Hall, the Judges having, upon every Occasion, where the Rights of Parliament have fallen under their Consideration, in all times declared, that nothing of that kind is within their Jurisdiction; nor can they judge of any such matter, farther than as they are empowered by particular Statutes.

‘ And this was the Reason why the Judgment in Barnardiston’s Case, given in the Queen’s-Bench, was reversed in the Exchequer-Chamber, because it was a thing purely of parliamentary Cognizance; the House of Commons having the sole power of determining all matters relating to Elections  
and

and Returns, except in Statute-Cases. Nay, the Court of King's-Bench had declared, they would not have proceeded in that Action of Barnardiston, had it not been grounded upon a precedent Judgment given in the House of Commons. But the Judges in the Exchequer-Chamber thought, that even the Determination of the House was not a sufficient Authority to the Courts below, to hold Plea in an Action relating to the Rights of Parliament, tho' the Action was grounded upon that Determination; and therefore they reversed the Judgment given in that Action, and (which is a mighty strong Circumstance in that Case) that Reversal was afterwards affirmed in the House of Lords. So that it is plain, even the Lords themselves were, at that time, of the same Opinion of the Judges, that nothing which concerned Elections was cognizable in Westminster-Hall: For otherwise they could not have affirmed the Judgment given in the Exchequer-Chamber, which was grounded entirely upon that Maxim.

Anno 3 Ann.  
1704.

' This appears farther, by what their Lordships did in the Case of Hollis and Elliot, against whom Judgment had been given in the King's-Bench, for what they had said and done in this House. In the Year 1667, the House of Commons voted, that the Judgment given in the King's-Bench against those Persons was illegal, as being against the Privilege of Parliament. And this Vote was (as I remember) delivered to the Lords at a Conference, with a desire of their Concurrence to it: Accordingly, the Lords sent a Message, that they did concur. Nay, they were so zealous, as to desire the Lord Hollis to bring a Writ of Error upon that Judgment, which was done, and the Judgment was reversed. From whence it must be inferred, that their Lordships were then of Opinion, that whatever Judgment is against the Privilege of Parliament (that is, of either House of Parliament,) is an illegal Judgment.

' Now to lay these two Opinions of the Lords together: If the House of Commons has the sole Privilege of judging all matters relating to Elections, (upon which ground their Lordships affirmed the Reversal of the Judgment in Barnardiston's Case) and if every Judgment given against the Privilege of Parliament be illegal (as their Lordships both resolved, and judged in the Case of Hollis and Elliot,) how comes it to pass, that the Lords have lately thought fit to reverse the Judgment given in this Case of Ashby and White, which was grounded upon that very Opinion, established by their Lordships in the Case of Barnardiston, that all matters concerning Elections are determinable only in the House of Commons? And consequently, how can we avoid saying, (pursuant to the other Opinion, and to the Judgment they

Annals of Am.  
1704.

gave in the Case of Hollis) that their Lordships Judgment of Reversal given upon the Writ of Error in Ashby's Case, being against what themselves have owned to be the Privilege of the House of Commons, is an erroneous, (not to say an illegal) Judgment?

I confess I cannot much wonder at its being so, when I consider, that the steps their Lordships made in proceeding to this Judgment of Reversal, were so very hasty, as not to afford them sufficient time to weigh and to deliberate upon a matter of such Importance. This Cause had depended near a twelvemonth in the King's-Bench, it had been argued several times at the Bar, and at length seriatim by the Justices, three of whom, upon the Reason of former Resolutions, gave Judgment against the Plaintiff; that the Action does not lie: And yet no sooner was this Writ of Error brought, but the Errors are immediately argued; and upon the first Argument, the Opinion of the Judges are required; and notwithstanding they desired time but till the next day to consider of the Case, the Lords (as I am very well assured) would not allow them an Hour; but obliged them to deliver their present Thoughts, which tho' several of them expressed very doubtfully, and several others were for affirming the Judgment; yet their Lordships were so very clear, and so determinate in the Point, that, without any farther Consideration, the Judgment was reversed.

And now I desire Gentlemen to judge, whether, in this Instance, the Lords have shewn that Regard either to the Privileges, or to the Dignity of this House, which their Ancestors, and themselves, had formerly expressed upon the Occasions before mentioned.

I will take notice but of one thing more, which fell from a learned Gentleman, who insisted, that the Election to Parliament is not a Service, but a Privilege, because double Damages are given by the late Act concerning Returns. I have cast my Eye upon that Act, and I think, if the Preamble be read, it will appear, that Gentleman was somewhat unfortunate in appealing to it; for the Preamble calls the Election to Parliament, a Service, in express terms, and certainly with good Reason; if the House will give me leave, I will read it.

Whereas false and double Returns, of Members to serve in Parliament, are an Abuse of Trust in a matter of the greatest Consequence to the Kingdom, and not only an Injury to the Persons duly chosen, by keeping them from their Service in the House of Commons and putting them to great expence to make their Elections appear; but also to the Counties, Cities, Boroughs, and Cinque-ports by which they are chosen, and the Business of Parliament disturbed and delayed thereby; Be it therefore enacted,

Sir,

' Sir, not to trouble you any longer, I am entirely for the Question, as it is stated.' Anno. 3 Ann.  
1704.

That which calls me up, in the first Place, is what that honourable Gentleman, just against me, was pleased to intimate, as if the Right of electing was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that spoke last, is of the same Opinion. Truly, I am loth to tell you my own, without desiring the Act 25 Car. II. 9, cap. may be read.

Mr. King,  
(afterwards  
Lord King,  
and Lord Chan-  
cellor.)

Members. No, no.

'Tis an Act to enable the County-Palatine of Durham to send Members to Parliament, and it recites, that they had not, before that time, had the Liberty, and Privilege of electing and sending any Members to Parliament; Where you see the Legislature call it a Liberty and Privilege; and if the Legislature call it so, I think I may venture to call it so too. And if it be a Liberty and Privilege, then the question will be, whether it does not stand on the same bottom with our Liberties and Privileges? In case of any other Franchise or Liberty, an Action lies at Common-Law for the Breach thereof; and why an Action should not lie at Common-Law for the Breach of this Franchise, as well as for the Breach of every other Franchise, is to me very strange. Gentlemen take it for granted, this is purely an Action at Common-Law, and no Statute hath any influence on it. Now there is a Statute, which hath not been mentioned, only I must first premise that which, I think, no body will deny, viz. That wherever an Act of Parliament does forbid any thing, if any body be injured by the doing of the thing so prohibited by that Act, in Consequence of Law, the Person injured hath an Action: I say, there is a Statute that forbids disturbances or hindrances in Matters of Elections; And, by Consequence of Law, the Statute gives an Action to the Party injured, against the Person disturbing or hindering him in his Election. The Statute I mean is the 3, Ed. I. 5 cap. That is a positive Law whereby all Disturbances in Elections are forbid: Every Man is forbid to hinder or disturb by Force or Arms, by Malice, or menacing any Man, to make a free Election.

I shall only instance in one parallel Case, tho' I could in many more, the Statute in Rich. II's time, *de Scand. Mag.* which only forbids the speaking evil of great Men; there is not one word of an Action: yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, because it was prohibited by that Statute. So here, the Statute forbids the disturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants did, in this Case,

\* 1703 3 Ann.  
1704

maliciously disturb and hinder the Plaintiff from voting at the Election; and, by a like Consequence and Operation of Law, this Action is maintainable.

‘ Gentlemen say, this is a new Action never heard of before: It is true, this particular Action was never brought before; but Actions of the same kind and nature, and grounded on the same Principles and Reasons of Law, have been brought before. *Et ubi eadem est ratio, idem jus.* I could give you many Instances of this kind. Was it ever heard, till the 20th or 21st Car. II. that an Action lay against an Officer, for denying a Poll to one who stood Candidate, for a Bridge-Master? The Mayor denied the Poll, and said, he was judge of the Election: And upon this the Person injured brought his Action, and recovered. At the same time it was said, there was no such Action heard of before; ’tis true, not that Species, but the Genus was heard of. Another Action was brought 30 Car. II. (which was never heard of before) against a Mayor, for refusing the Plaintiff’s Vote for a succeeding Mayor.

‘ I believe every body knows, that all the Law-Books for 400 Years say, that the Reversioner has Liberty to go into an Estate of a Tenant for Life, to see if he commit waste. And no Action was ever brought till 16 Jac. I. by a Reversioner against a Tenant for Life, for refusing to let him in to see whether waste was committed. No Action was ever brought against a Master of a Ship, for the negligent keeping, and Loss of Goods on board his Ship, till about the 24 Car. II. and yet the Action lay.

‘ There was another Action, in K. Car. I. brought for a false and malicious Prosecution of an Indictment of a Man for Treason. There was the same Objection; and it was said, that this would deter People from prosecuting. And no body ever dreamt of it before, ’tis true, but it stood upon the general Reason of the Law; if you do me a wrong, I must have a Remedy. And as to what a worthy Gentleman hath said, that there are Instances at Common-Law, where a Man shall recover, and yet have no damages; ’tis true in real Actions, but let him give me an Instance of that in an Action of the Case. He recovers nothing there; if he does not recover Damages in real Actions, he recovers the Land itself.

*Members.* The Question, the Question.

‘ I find Gentlemen are very uneasy, I will trouble you no further.

*Members.* Go on, go on.

‘ I agree, the determining the Right of Election belongs to the House of Commons; and they ought to apply to the House of Commons in that Case: And I shall not depart from



from that, I think I cannot, without ruining the Constitution; but that which I say is, that this Action does not at all relate to the Right of Election. This Action is brought by a Man that hath an undoubted Right of voting, against an Officer for maliciously refusing his Vote. Put the Case this had happened in a County, (for the Law would have been the same) that a Freeholder, who had a Right to vote, had tendered his Vote to the Sheriff; and tho' he knew he was a Freeholder, yet, the Sheriff should maliciously refuse his Vote: hath the Sheriff done this Man an Injury, or no? This Man does not bring his Action, because the Person he would have voted for is not returned, but 'tis because there is an Injury done to his Franchise. If I thought the Right of Election was concerned in this Case, I would go as far as any, for I think that does belong to the House; but I do not think this is concerned in the present Case."

Anno 3 Ann.  
1704.

"I shall be shorter than some imagine. It has been discussed, whether this be a Privilege, or a Burden, &c. Let them think it a Burden that call it so: If it be a Burden 'tis such a Burden as some Men spend a great part of their Estate for, as if it was a Privilege. I think this Resolution which is proposed, tends to the encouraging one Man to injure another Man's Franchise without any Reparation, which I believe is not very consistent with Law or Reason. You have no doubt a Power of punishing the Offenders, but you cannot give Damages: I think this is a plain Case; here was a Man who had a Right to vote, and was not admitted.

Sir Thomas  
Littleton.

*Members.* No, no.

"That is admitted upon the Judgment: for the Case is made upon the Right; and if he had not proved his Right, he could not have recovered: Then if he was denied his Right, no body will say, we can give him Damages. What would you have a poor Man do, come with a Petition, and see Council, and attend the Parliament for a Month together? The Man 'it seems thought it better to go this way. I think if he had complained, we might have punished the Officer; but for Damages, he could have them no way but this.

Sir Thomas  
Littleton.

"Suppose the Judges in Westminster-Hall had been of Opinion, that this Action did lie, and the Constables had brought a Writ of Error; what would you have said in a Case where a Man had been denied his Privilege of voting, and the Law had given Damages, if the Lords had said no, there shall be no Action? I think the Lords have done what is right, I think they have relieved the Person injured according to Justice; and it does not interfere with your Rights, for he founds his Action upon your Determination.

*Members.* No, no.

"Mr.

Ann<sup>o</sup> 3<sup>o</sup> Ann<sup>o</sup>  
1704.

Mr. Walpole.  
Mr. Serjeant  
Hooper.

‘ Mr. Freeman, I desire to have the question read.’  
Accordingly Mr. Freeman in the Chair read the question  
again.

‘ A Gentleman that spoke last but one, was pleased to say, that if he thought the Right of electing Members was any ways concerned in this Question, he would come heartily in to it: I know not what that Gentleman means by it; but believe all future Elections will depend much upon the Determination you make now. If you give the Lords this Jurisdiction, to take cognizance of matters relating to Elections, we must come to them to know whether we have a Right to sit here. One Gentleman said, he could not tell whether the sitting there was a Burden, or a Privilege; I believe it is a Privilege to some, who by sitting here obtain a good Place; but I think as to others, it may be looked upon as a great Burden, to come up and spend a great deal of Money for the public Service; and all the Privilege that I know they have, is to protect their Estates, and serve their Country.’

‘ There is no extravagant thing but may be brought into the House of Lords, if you countenance them in the Jurisdiction they have now taken upon them. Any Action whatsoever, let it belong to any temporal Jurisdiction, may be there determined. I will still suppose, notwithstanding what is objected against the Judges, that they will do their Duty; but Westminster-Hall is now no Barrier: for whatever is there determined, may be brought by Writ of Error into the House of Lords, and they will determine it as they think fit. In the Case of Soame and Barnardiston, the Law was taken to be, that Westminster-Hall had not a Right to intermeddle in these matters. What then, hath since altered the Law, unless the Lords have the legislative Power in them? And that I dare say they will have, if you allow this.’

‘ This I must take notice of from the Report now before you, that here is a step made, which if it had been made in another Jurisdiction, I should have given a hard name to it.’

‘ I think, in the first place, the Party should be brought in by the Queen’s Process. When Errors are to be assigned, there ules to go out a *Scire Facias*, which is the Queen’s Writ; but here is only an Order made, and for what? That the Party shall join issue upon the Writ of Error. Suppose there had been a Release of Errors, must he have joined Issue upon the Errors? And yet it is here so ordered before the Party is heard. I say, if they have a Jurisdiction, the Party ought to be called in by *Scire Facias*: And no Judge, or Judicature, can grant Execution, or Process, but it must be in the Queen’s name. As for your Question, I come heartily into it.’

Sir William  
Strickland.

‘ Mr. Freeman, I think this Question depends upon two Parts, and I believe it the best way to divide your Question.

One

One Part of it concerns the Rights and Liberties of this House, and I think every body will come up to it: And as I would not lessen the Privileges that belong to the House of Commons, so I would not lessen any Privilege of the Commons of England, whom we here represent. As one are the Privileges of this House, so the other concerns the Liberties of the People of England, who can't otherwise come to a Remedy when they are abused in this Manner. The Gentleman that called it a hard Service, if he would tell his Country so, I believe he might be excused, and they would send another in his Room.

Anno 4 Annæ A  
1704.

I will trouble you very little at this time: I think the Point of Learning and Law hath been so well spoken to, by those learned Gentlemen that have been against the Question, that, if I was able, I should say nothing more to that. But I think the Question as it is going to be put, is not right; for as the Question stands, tho' I can't give my Negative to one Part, I think 'tis impossible to give my Affirmative to the other. The Matter before you comes to this single Question, Whether you will encourage, and give a Power to an Officer, be he whom he will, to act arbitrarily; or rather chuse, in such a Case, to do something in favour of the Electors? I am sure if I desire to be elected by those that had the Right, I would never give the Officer an Authority to the Prejudice of the Electors. Where you come to say, that the sole Judging of the Qualification of the Electors belongs to the House of Commons only, those, I apprehend, are Words of too large Extent and ill Consequence. Suppose there was an Action brought upon the last Act of Parliament, for a false or double Return.

Mr. Walpole.  
(afterwards Sir  
Robert, and  
Chancellor of  
the Exchequer.)

There is an Exception in the Question as to that.

Mr. Freeman.

I know there is; but suppose an Action is brought upon that Statute, the Officer may have proceeded with the greatest Impartiality, may have taken the Poll with the greatest Exactness and Justice, and there may appear to be an equal Number of Votes for each Candidate; whereupon he makes a Double-Return, and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman that had the Favour of the Committee, (tho' afterwards possibly it might be made appear, that by Bribery or Corruption, and at a great Expence, he procured himself to be elected,) after you have voted him duly elected, he hath nothing to do but to try his Action, and see if he can make his double Damages amount to his Expences. The first thing he is to do, is to produce the Vote of the House of Commons, that declared him duly elected, contrary, perhaps, to the last Determination in Parliament, which in every Place, is to be the Guide to the Returning-Officer. But shall there

Mr. Walpole.

Anno 3 Ann.  
1704.

there then be given in Evidence no Qualification of the Electors? Nothing to prove that the Persons admitted to vote were qualified according to such last Determination? Or shall that Vote of the House of Commons, that was intended only to bring him into this House, recover him 5 or 600*l.* Damages? I take it to be so as the Law stands. Now it ought to be seen who hath the greater Number of legal Votes, and whether duly qualified; and in that Case you must suffer the Matter again to be tried by the Court, and you do, in some measure, make them Judges of the Qualifications of the Electors; if it were otherwise, they could not enquire into the Majority of legal Votes.

‘ What happens in the Case of a Mayor, may be in the Case of a Sheriff: If a Mayor or a Constable may deny a Man his Vote, that hath an uncontroverted Right in a Corporation, a Sheriff may refuse a Freeholder, and strike off enough to make a Majority for whom he pleases. You had once the Case before you, Whether a Sheriff could refuse a Scrutiny, and one or two Gentlemen would have given that Power to a Sheriff: but a learned Gentleman thought it a dangerous Question, and he desired to come to the Merits of the Election; and that was determined, and you voted the worthy Member duly elected, and thought it a dangerous thing to determine whether the Officer had that Power one way or another? I think that Part of the Question, which concerns the Qualification of the Electors ought to be left out.’

Mr. Freeman. ‘ I will read the Question, (*which he did.*)

Marquis of  
Hartington.

‘ Sir, I think it is a constant Rule, where a Question is complicated, ’tis the Right of every Member, if he desire it, to have the Question divided, and I think it regular to do it by an Amendment; and therefore I second that worthy Gentleman, that you would leave out those Words that relate to the Qualification of the Electors.’

Mr. Solicitor-  
General.

‘ My Lord is undoubtedly right in what he desires; that if there be any Words in the Question to which Gentlemen have a dislike, that Question is not to be put; but, only Whether those Words shall stand Part of the Question: Therefore if those Words of the Qualification of the Electors do give Offence, it must be put, Whether they shall stand Part of the Question? But I hope at the same time Gentlemen will apprehend, that leaving out those Words, leaves out all you debated on.’

Sir Christopher  
Musgrave.

‘ No doubt, if any Question is complicated, Gentlemen do not know how to give an Affirmative or a Negative, and you must divide it: But I hope Gentlemen will consider the latter Part of the Question is the main thing whereon you have debated; for, if you do not assert that you have the  
Power

Power of Determining the Qualifications of the Electors you give up the Right of the Commons of England: I do agree that the Question may be divided.

Anno 3 Ann.  
1704.

That which is debated now, is, Whether these Words shall stand Part of the Question.

Mr. Freeman.

'Sir, I think the Question ought to be divided.'

Sir Thomas

Meres.

'The Question, as I have it upon my Paper, is this, That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, except, in such Cases as are specially provided for by Act of Parliament.

Mr. Freeman.

'But some Gentlemen are for leaving out these Words [neither the Qualification of any Elector, or] so that I must put a Question, Whether these Words shall stand Part of the Question'

*Members.* Aye, aye.

'Then Mr. Freeman put the Question, and the Committee divided.

'Teller for the Aye's, Mr. Gulston — — — — 215

'Teller for the No's, Mr. Wylde — — — — 97

So it was carried, that those Words should stand Part of the Question.

And the main Question being put,

Votes on the  
Question.

*Resolved*, That, according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament.

*Resolved*, That the Examining and Determining the Qualification or Right of any Elector, or any Person elected to serve in Parliament, in any Court of Law, or elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament, will expose all Mayors, Bailiffs, and other Officers, who are obliged to take the Poll, and make a Return thereupon, to Multiplicity of Actions, vexatious Suits, and unsupportable Expences, and will subject them to different and independent Jurisdictions, and inconsistent Determinations in the same Case, without Relief.

*Resolved*, That Matthew Ashby, having, in Contempt of the Jurisdiction of this House, commenced and prosecuted an Action at Common-Law against William White, and others, the Constables of Aylesbury, for not receiving his Vote at an Election of Burgesses to serve in Parliament for the said

Anno 3 Ann.  
1704.

Borough of Aylesbury, is guilty of a Breach of the Privilege of this House.

*Resolved*, That whoever shall presume to commence or prosecute any Action, Indictment, or Information at Common-Law, which shall bring the Right of Electors, or Persons elected to serve in Parliament, to the Determination of any other Jurisdiction than that of the House of Commons, except in Cases specially provided for by Act of Parliament, such Person and Persons, and all Attornies, Solicitors, Counsellors, Serjeants-at-Law, soliciting, prosecuting, or pleading in any such Case, are guilty of a high Breach of the Privilege of this House.

*Ordered*, The said Resolutions to be fixed up on Westminster-Hall Gate, signed by the Clerk.

These Resolutions, with this (to wit,

*Resolved*, That, according to the known Laws and Usage of Parliament, it is the sole Right of the Commons of England in Parliament assembled, except in Cases otherwise provided for by Act of Parliament, to examine and determine all Matters relating to the Right of Elections of their own Members)

Before passed in the Committee, were reported to the House.

' Jan. 26. When the first Resolution was not opposed, but, after the second Resolution (*viz.*

' That, according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament)

Was read the second time by the Clerk, the Question (according to Order) being proposed to agree with the Committee in that Resolution, the Marquis of Hartington stood up in his Place, and spoke to this effect:

' I do not expect the House will be of a different Opinion from the Committee; but I think it is my Duty, when I apprehend what you are doing will be of ill Consequence to the Constitution, to give my Dissent in every Step. I think it will be dangerous to the very Being of this House: If this Maxim had been allowed formerly, I think there would have been no need of taking away of Charters, and of *Quo Warranto's*: By the Influence of Officers they might have filled this House with what Members they had pleased, and then they could have voted themselves dily elected.'

' Mr. Speaker, I cannot agree to this Resolution: I think it deprives the People of England of their Birth-Right: For they who have Freeholds in any of your Counties, or Free-

doms

Debate on the  
Report.

Marquis of  
Hartington.

Sir William  
Strickland.

doms in any Corporation, have as much Right to vote in Elections to Parliament, as they have to their Estates. And if any Gentleman would subject them to such arbitrary Proceedings, that a Sheriff or any other Officer may deny them this Privilege, give me liberty to say, I must be always against any such thing; for tho' you can punish the Officer, you cannot give any Satisfaction to him that receives the Injury.

Anno 3 Ann.  
1704.

' Sir, I do not rise up to trouble you long, but to speak to one Point that was mentioned by a noble Lord over the way. I shall be as tender as any Man alive, of doing any thing against the Liberty of the People; but I am for this; because I take it to be the greatest Security for their Liberty. The noble Lord was pleased to take notice, that, in the consequence, the Crown would have a great Influence on those that are to return the Members of the House of Commons; and when they were in, they might vote for one another. I cannot think that the Liberties of the People of England are safer in any Hands below, or that the Influence of the Crown will be stronger here than in other Courts.'

Mr. St. John,

' I think that Gentleman hath not answered what I said: I shall never have any Suspicion of any that sit in the House now; but when those that have no Right are returned, and make a Majority, I think it will not be safe.'

Marquis of  
Hartington.

' I do not apprehend that Consequence from this Resolution. I think if it was so, this should have been offered before the first Resolution was passed, which hath passed in the House and Committee *Nemine Contradicente*; for you cannot determine the Right of any Members sitting here, without determining the Right of the Electors.'

Mr. Ward.

' I cannot but think it will be harder to influence this House to get an Ill-Vote, than it will be in another Place: However, if I am a Free-holder and have a Right to vote in a County; or a Freeman, and have a Right to vote in a Borough, by admitting Persons to vote that have no Right, it may be as much Prejudice to me; for that may make my Vote signify nothing: And there is as much Injury one way as the other. If all the People of England, who have a Vote, should go together by the Ears in Westminster-Hall, and dispute there who has a Right to vote, and who not, I believe the Judges of the Common-Law, and noble Peers of the other House, would be glad, in a little time, to restore the Right where it is, it would breed so much Confusion. If Gentlemen are not satisfied already, they may easily be so, that there is no Defect of Power in this House, but they have a Power to do justice in all Cases of Elections; and I hope every body will take care, not only to maintain the Rights of the People that sent them hither, but the Trust lodged in them, which they cannot depart from by the Rules of Justice.

Mr. Lowndes.

Anno 3 Ann.  
1704.

Proceedings a-  
gainst the Au-  
thor of the Ob-  
servator,

Then the second, with the other three Resolutions passed in the Committee, were agreed to by the House without a Division, with this Amendment only, of leaving out (*at Common-Law*) in the fifth Resolution.

In the mean time, the Author of a weekly Paper call'd the *Observator* having ventured to publish his Remarks on Occasional Conformity, a Complaint was made against him in the House of Commons; and, upon Examination of the Matter, it was resolved, That the *Observator*, from the 8th to the 11th of December 1703, contains Matters scandalous and malicious, reflecting upon the Proceedings of the House, tending to the promoting of Sedition in the Kingdom: And that Tutchin the Author, How the Printer, and Bragg the Publisher of that Paper, should be taken into Custody of the Serjeant at Arms attending the House. Thereupon Tutchin absconded, and notwithstanding the Censure pass'd upon him, went on in his way of Writing, and made sharp Reflections upon a Speech said to have been made by Sir John Packington, in the House of Commons, in favour of the Bill to prevent Occasional Conformity. A fresh Complaint being made again for this second Offence, the Commons resolved, That the Author, Printer, and Publisher of *the Observator*, having broke the Privilege of the House, and since absconded from Justice; an humble Address be presented to her Majesty, that she would please to issue her royal Proclamation for apprehending them, promising a Reward for Discovery of them.

Her Majesty, on the 7th of February, ordered the following Message to be delivered to the House of Commons.

Anne R.

Queen's Message  
about the poor  
Clergy.

' Her Majesty, having taken into her serious Consideration the mean and insufficient Maintenance belonging to the Clergy in divers Parts of the Kingdom, to give them some Ease, hath been pleased to remit the Arrears of the Tenth to the poor Clergy; and for an Augmentation of their Maintenance, her Majesty is pleased to declare, that she will make a Grant of her whole Revenue arising out of the First Fruits and Tenth, as far it now is, or shall become free from Incumbrances, to be applied to this purpose; and if the House of Commons can find any proper Method by which her Majesty's good Intentions to the poor Clergy may be made more effectual, it will be a great Advantage to the Public, and very acceptable to her Majesty.'

Upon which the House of Commons presented the following Address.

Commons Ad-  
dress upon it.

' Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, beg leave to present our most humble and hearty Thanks to your Majesty, for your most gracious Message, in which you



were pleased to declare your royal Bounty, in remitting the Arrears of the Tenths due from your poor Clergy; and in charitably designing for the future to apply your Majesty's whole Revenue, arising from the First Fruits and Tenths, in Augmentation of their Maintenance.

Anno 3 Ann.  
1704.

' We are justly sensible of your Majesty's pious Concern for the Church of England, and of the great Advantage it will receive from your Majesty's unparall'd Goodness, in giving up such a Part of your Majesty's Revenue towards the better Provision for the poorer Clergy, who were not sufficiently provided for at the happy Reformation of Religion under your Royal Ancestors.

' Your Majesty's faithful Commons will use their utmost Endeavours to render your Majesty's charitable Intentions most effectual; and will, upon this, and all other Occasions, readily apply themselves to such proper Methods, as may best conduce to the Support of the Clergy, and to the Honour, Interest, and future Security of the Church of England as by Law established.'

Her Majesty was pleased to give this gracious Answer :

' Gentlemen, I am very glad to find my Message has been so acceptable to you; I hope you will effectually improve it, to the Advantage of the Church of England as by Law established, for which no body can have a more true and real Concern than myself.'

Queen's Answer.

On the 23<sup>d</sup> the Prolocutor of the lower House of Convocation, and some more of the same House, attended the Speaker of the House of Commons with the following Order, which Mr. Speaker read next Day to the House.

*Ordered,* ' That Mr. Prolocutor, Mr. Dean of Winchester, Dr. Edwards, Dr. Smalldridge, and Dr. Atterbury, do attend Mr. Speaker of the honourable House of Commons, and acquaint him, That, after the Clergy's having waited on her Majesty, with their most humble Sense of her unexampled Bounty to her poor Clergy, the lower House of Convocation cannot but take Notice, with how much Kindness and Generosity yourself, Sir, and the honourable House of Commons, had prevented them, by your Address upon the same Subject: Wherein you have been pleased not only to express your Readiness to assist and further her Majesty's most charitable Intentions, but so far likewise to espouse the Interest of the Clergy, as to pay your own most hearty Thanks on their Behalf.

Order of Thanks of the lower House of Convocation to the Commons.

' Our House, Sir, commands me to return their most humble Acknowledgements to you and to that honourable House, for this so singular a Favour; which you have enlarged by promising to pursue such Methods as may best conduce to the Support, Interest and future Security of the Church

of

Anno 3 Ann.  
1704.

of England, as now by Law established: And they beg leave at the same time, with the most sensible Gratitude to profess, that they cannot have any greater Assurance of what your honourable House has now promised, than the constant Experience they have had of what it always has perform'd.

H. Aldrich, Prolocutor.

Next Day her Majesty came to the House of Peers, and was pleased to give the Royal Assent to the following Acts.

Queen signs  
Acts.

*An Act for granting an Aid to her Majesty for carrying on the War, and other her Majesty's Occasions, by selling Annuities at several Rates, and for such respective Terms or Estates as are therein mentioned.*

*An Act for the public registering of all Deeds, Conveyances and Wills, that shall be made of any Honours, Manors, Lands, Tenements, or Hereditaments, within the West-Riding of the County of York, after the nine and twentieth Day of September, one thousand seven hundred and four.*

*An Act for the erecting a Work-House in the City of Worcester, and for setting the Poor on Work there.*

*An Act for enlarging the Term of Years granted by an Act passed in the Session of Parliament held in the eleventh and twelfth of King William the third, for the Repair of Dover Harbour.*

*An Act to repeal a Proviso in an Act of the fourth Year of the Reign of King William and Queen Mary, which prevents the Citizens of the City of York from disposing of their Personal Estates by their Wills, as others inhabiting within the Province of York by that Act may do.*

*An Act for the Encrease of Seamen, and better Encouragement of Navigation, and Security of the Coal-Trade.*

And to twenty eight private Acts.

Books censured  
by the Com-  
mons.

In the mean time, the House of Commons having appointed a Committee to examine two Books, one entitled, *Second Thoughts concerning the human Soul, as believed to be a Spiritual, Immortal Substance, united to human Body, to be a plain heathenish Invention, and not consonant to the Principles of Philosophy, Reason and Religion*: The other, *The Grand Essay; or, A Indication of Reason and Religion against the Impostures of Philosophy*. And the Committee having reported such Passages out of those Books, as were offensive, the House resolved, That the said Books contain'd divers Doctrines and Positions contrary to the Doctrine of the Church of England, and tending to the Subversion of the Christian Religion; and ordered the said Books to be burnt by the Hands of the common Hangman.

April 3. The Queen came to the House of Peers, and was pleased to give the Royal Assent to

Queen signs  
Acts.

*An Act for granting to her Majesty an additional Subsidy of Tonnage and Poundage for three Years, and for laying a further Duty*

*Duty upon French Wines, condemned as lawful Prize, and for as- Anno 3 Ann.  
certaining the Values of unrated Goods imported from the East- 1704.  
Indies.*

*An Act for the better securing and regulating the Duties upon Salt.*

*An Act for the more regular paying and assigning the Annuities, after the Rate of three Pounds per Cent. per Annum, payable to several Bankers and other Patentees, or those claiming under them.*

*An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the poor Clergy, by enabling her Majesty to grant in Perpetuity the Revenues of the First Fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose.*

*An Act for raising Recruits for the Land-Forces and Marines, and for dispensing with part of the Act for the Encouragement and Increase of Shipping and Navigation, during the present War.*

*An Act for the further Explanation and Regulation of Privileges of Parliament, in relation to Persons in public Offices.*

*An Act for the Discharge out of Prison of such insolvent Debtors as shall serve, or procure a Person to serve, in her Majesty's Fleet or Army.*

*An Act to enlarge the Time for the Purchasers of the forfeited Estates in Ireland to make the Payments of their Purchase-Money.*

*An Act for prolonging the Time by an Act of Parliament made in the first Year of her Majesty's Reign, for importing thrown Silk of the Growth of Sicily, from Leghorn.*

*An Act for raising the Militia of the Year one thousand seven hundred and four, notwithstanding the Month's Pay formerly advanced be not repaid.*

*An Act for better charging several Accomptants with Interest-Monies by them received, or to be received.*

*An Act for punishing Mutiny, Desertion and false Musters, and for the better paying of the Army and Quarters, and satisfying divers Arrears: and for a further Continuance of the Power of the five Commissioners for examining and determining the Accounts of the Army.*

And to 22 Private Acts.

After which her Majesty made a most gracious Speech to both Houses, which follows:

‘ My Lords and Gentlemen,

‘ **I** Cannot put an end to this Session, without returning Queen's Speech  
‘ you Thanks for the Willingness which you have all in Parliament.  
‘ expressed to support and assist me in continuing the present  
‘ War.

‘ And I must thank you, Gentlemen, of the House of Com-  
‘ mons, very particularly, for the great Forwardness and  
Zeal

Anno 3 Ann.  
1704.

‘ Zeal which you have shewn, both in the early Dispatch  
‘ of the Supplies, and in making them so effectual for carry-  
‘ ing on the Public Expence, without any additional Burdens  
‘ upon the Country: It shall be my Care to improve this  
‘ to the best Advantage.

‘ My Lords and Gentlemen,

‘ At the opening of this Session I did earnestly express  
‘ my Desires of seeing you in perfect Unity among your  
‘ selves, as the most effectual means imaginable to disap-  
‘ point the Ambition of our Enemies, and reduce them to an  
‘ honourable and lasting Peace; and though this has not  
‘ met with all that Success which I wish’d and expected, yet  
‘ being fully convinced, that nothing is so necessary to our  
‘ common Welfare, I am not discouraged from persisting in  
‘ the same earnest Desires, that you would go down into your  
‘ several Countries, so disposed to Moderation and Unity, as  
‘ becomes all those who are joined together in the same Re-  
‘ ligion and Interest.

‘ This, I am persuaded, will make you sensible that no-  
‘ thing, next to the Blessing of God, can so much contri-  
‘ bute to our Success abroad, and to our Safety at home.’

Third Session  
of Q. Anne’s  
first Parliament.

Octob. 29. The Parliament met for the Dispatch of Bu-  
siness, when her Majesty made the following Speech to both  
Houses.

‘ My Lords and Gentlemen,

‘ **T**HE great and remarkable Success with which God  
‘ hath blessed our Arms in this Summer, has stir’d up  
‘ our good Subjects in all Parts of the Kingdom, to express  
‘ their unanimous Joy and Satisfaction: And I assure myself  
‘ you are all come dispos’d to do every thing that is necessary  
‘ for the effectual Prosecution of the War; nothing being  
‘ more obvious, than that a timely Improvement of our pre-  
‘ sent Advantages will enable us to procure a lasting Founda-  
‘ tion of Security for England, and a firm Support for the Li-  
‘ berty of Europe: This is my Aim. I have no Interest,  
‘ nor ever will have, but to promote the Good and Happiness  
‘ of all my Subjects.

‘ Gentlemen of the House of Commons,

‘ I must desire such Supplies of you, as may be requisite  
‘ for carrying on the next Year’s Service, both by Sea and  
‘ Land, and for punctually performing our Treaties with all  
‘ our Allies; the rather, for that some of them have just Pre-  
‘ tensions depending ever since the last War: And I need  
‘ not put you in mind of what Importance it is to preserve the  
‘ Public Credit, both abroad and at home.

‘ I believe you will find some Charges necessary next  
‘ Year, which were not mentioned in the last Sessions, and  
‘ some extraordinary Expences incurr’d since, which were  
‘ not then provided for.

‘ I

‘ I assure you, that all the Supplies you give, with what I  
 ‘ am able to spare from my own Expences, shall be carefully  
 ‘ applied to the best Advantage for the Public Service : And  
 ‘ I earnestly recommend to you a speedy Dispatch, as that  
 ‘ which, under the good Providence of God, we must chiefly  
 ‘ depend upon, to disappoint the earliest Designs of our  
 ‘ Enemies.

Anno 3 Ann.

1704.

‘ My Lords and Gentlemen,

‘ I cannot but tell you how essential it is for attaining  
 ‘ those great Ends abroad, of which we have so hopeful a  
 ‘ Prospect, that we should be entirely united at home.

‘ It is plain, our Enemies have no Encouragement left,  
 ‘ but what arises from their Hopes of our Divisions; ’tis  
 ‘ therefore your Concern not to give the least Countenance  
 ‘ to those Hopes.

‘ My Inclinations are to be kind and indulgent to you all :  
 ‘ I hope you will do nothing to endanger the Loss of this  
 ‘ Opportunity, which God has put into our Hands, of secu-  
 ‘ ring ourselves and all Europe; and that there will be no  
 ‘ Contention among you, but who shall most promote the  
 ‘ public Welfare.

‘ Such a Temper as this, in all your Proceedings cannot  
 ‘ fail of securing your Reputation both at home and abroad.

‘ This would make me a happy Queen, whose utmost En-  
 ‘ deavours would never be wanting to make you a happy and  
 ‘ flourishing People.’

The next day the Commons presented their Address, as follows:

‘ We your Majesty’s most dutiful and loyal Subjects, the  
 Knights, Citizens and Burgesses in Parliament assembled,  
 do beg leave to return to your Majesty our most humble and  
 hearty Thanks for your Majesty’s most gracious Speech from  
 the Throne; and to congratulate your Majesty upon the great  
 and glorious Success, with which it has pleased God to bless  
 your Majesty, in the entire Defeat of the united Force of France  
 and Bavaria, (at Blenheim) by the Arms of your Majesty, and  
 your Allies, under the Command, and by the Courage and  
 Conduct of the Duke of Marlborough; and in the Victory ob-  
 tain’d by your Majesty’s Fleet, (off Malaga) under the Command,  
 and by the Courage and Conduct of Sir George Rooke.

Commons Ad-  
 dress to the  
 Queen.

‘ Your Majesty can never be disappointed in your Ex-  
 pectation from us, your faithful Commons, who all come dis-  
 posed to do every thing necessary for the effectual Prosecu-  
 tion of the War: and therefore your Majesty may depend  
 upon our providing such Supplies, and giving such speedy  
 Dispatch to the Public Business, as may enable your Majesty  
 to pursue these Advantages so happily obtained over the

Anno 3 Ann.  
1704

Common Enemy; which we can never doubt but your Majesty's Wisdom will improve, to the procuring of a lasting Security for England, and a firm Support for the Liberty of Europe

' We are truly sensible, that nothing can be more essential for the attaining those great Ends, than to be entirely united at home; we shall therefore use our utmost Endeavours, by all proper Methods, to prevent all Divisions among us; and will have no Contention, but who shall most promote and establish the Public Welfare both in Church and State. Thus your Majesty's Reign will be made happy, and your Memory blessed to all Posterity.'

Her Majesty's most gracious Answer to this Address, is as follows:

Queen's Answer.

' Gentlemen, I return you my hearty Thanks for this Address, and the Assurances you give me of dispatching the Supplies, and avoiding all Divisions; both which, as they are extremely acceptable to me; so they will be advantageous to yourselves, and beneficial to the Public.'

One of the first things we find the Commons go upon at home (to say nothing of the usual Methods of Supplies) was an unanimous Resolution to address her Majesty, ' That she would be pleased to bestow her Bounty upon the Seamen and Land-Forces who had behaved themselves so gallantly in the late Action both by Sea and Land.' And the Address being ordered to be presented by those of that House who were of her Privy-Council, her Majesty return'd Answer, ' That she was always so desirous to give Encouragement to those who did great Services to the Public, that she could not but be well-pleased with the notice they had taken of them in their Address, and that she would take care to give Directions accordingly.'

Queen's Answer to the Commons Address about rewarding Soldiers, &c.

Lord Hallifax's Case.

We are here to observe, that the Right Honourable Charles Lord Hallifax having, by Order of the Commons last Session, been prosecuted for some Defects in passing Accounts as Auditor of the Exchequer, it was done accordingly at the Exchequer-Bar, in Trinity-Term: when the Cause, upon a full Hearing, seem'd to turn in favour of his Lordship. But before the Verdict could be given, a *Noli Prosequi* was produced, and the Matter rested there. But the Commons, Nov. 3. having ordered the Queen's Serjeant and Solicitor-General, and others her Majesty's Council concern'd in his Prosecution, to lay before them an Account in Writing of what Proceedings had been against him, and the State of that Matter, the same was done on the 7th. and the Consideration thereof being referr'd to the 14th, they then ordered

ordered the Exception taken by my Lord's Council to the Information exhibited against him, and allow'd by the Court of the Exchequer, to be laid before them. After which, they refer'd the Matter to the 18th, when the Information and Proceedings, with the Certificate of the Attorney-General, being read, upon a Motion made, it was carried for Adjourning till the 20th, and the Matter afterwards lay dormant.

Anno 3 Ann.  
1704.

We are likewise to take notice, that, though the Lords had rejected the Occasional-Conformity Bill the two last Sessions, another was notwithstanding brought in, and read the first time on Novemb. 23. and carried, not without warm Debates, to be read a second time on the 28th; at which time it was debated, with more Vigour than before: but the Question being put, that it should be committed to the Committee of the whole House, to whom the Bill for granting an Aid to her Majesty by a Land-Tax and otherwise, was committed, the House divided: And it pass'd in the Negative. Yeas 134. Noes 251.

Divisions on the  
Occasional-Conformity Bill.

The Report of the Bill was made on Decemb. 5. and a Debate arising, Whether it should be engross'd or not, it was carried in the Affirmative, Yeas 145, Noes 118. The Bill was read a third time, and pass'd on the 14th, Yeas 179, Noes 131.

During this Interval, a Complaint being made to the House, that Robert Mead, an Attorney-at-Law, had proceeded in the Cause of Ashby and White, and others, since the last Session of Parliament, and taken the Defendants in Execution, in Breach of the Privilege of this House:

Farther Proceedings in the  
Case of Ashby  
and White.

And likewise, that, since the Resolutions of this House the last Session, upon the Case of Ashby and White, there had been several new Actions brought by John Paty, John Oviat, John Paton junior, and Henry Basse, and prosecuted by the said Robert Mead, against the Constables of Aylesbury, in Breach of the Privilege of this House:

*Ordered*, That the Matter of the said Complaint be heard at the Bar of this House upon Tuesday sevensnight. Accordingly all the said Persons having been then examin'd at the Bar of the House, it was *Resolved*, That it appears to this House, that John Paty, J. Oviat, J. Paton jun. Henry Basse and D. Horne, of Aylesbury, have been guilty of commencing and prosecuting an Action at Common-Law, against William White, and others, late Constables of Aylesbury, for not allowing their Votes in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

And that it appears to this House, that Robert Mead has been guilty of soliciting and prosecuting (as Attorney at Law) divers Actions at Common-Law, against William White

Anno 3 Ann.  
1704.

and others, late Constables of Aylesbury, for not allowing divers Votes in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

After which it was ordered, that all the said Persons should be committed to Newgate, except R. Mead, who was taken into Custody by the Serjeant at Arms.

Feb. 24. The House being informed, that there have been Endeavours to bring a Writ of Error on the Proceedings in the Court of Queen's-Bench, upon a Habeas Corpus granted there, for the Persons committed by this House to Newgate, for Breach of their Privilege, and thereby to bring the Commitments of this House under the Examination of the House of Peers.\*

*Resolved*, That an humble Address be presented to her Majesty, humbly to lay before her Majesty the undoubted Right and Privilege of the Commons of England, in Parliament assembled, to commit for Breach of Privilege; and that the Commitments of this House are not examinable in any other Court whatsoever: And that no such Writ of Error was ever brought, nor doth any Writ of Error lie in this Case. And that, as this House hath expressed their Duty to her Majesty, in giving dispatch to all the Supplies, so they have an entire Confidence in her Majesty's Goodness and Justice, that she will not give leave for the bringing any Writ of Error in this Case; which will tend to the overthrowing the undoubted Rights and Privileges of the Commons of England.

*Ordered*, That the said Address be presented to her Majesty, by such Members of this House as are of her Majesty's most honourable Privy-Council.

*Resolved*, That whoever has abetted, promoted, countenanced or assisted the Prosecution of the several Writs of Habeas Corpus, brought for the Prisoners committed by this House, and since their being remanded, have endeavoured the procuring Writs of Error, are guilty of conspiring to make a difference between the Lords and Commons in Parliament assembled, are Disturbers of the Peace of the Kingdom, and have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament assembled.

*Ordered*,

\* *What intensed the Commons yet more, was the Behaviour of John Paty and John Oviat, two of the Prisoners, who, thinking themselves wronged in their being remanded to Newgate, humbly petitioned the Queen for a Writ of Error, in order to bring the Judgment of the Court of Queen's-Bench before her Majesty in Parliament. The Commons were no sooner informed of these Petitions, but they made the above Votes. Annals of Queen Anne, Vol. 3. p. 188.*



*Ordered*, That a Committee be appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading, upon the Writs of *Habeas Corpus*, or Writs of Error, on the Behalf of the Persons committed to Newgate for Breach of the Privilege of this House; or what other Persons have promoted or abetted the same. And a Committee was accordingly appointed.

Anno 3 Ann.  
1704.

The 26th, Mr. Secretary Hedges acquainted the House, that their Address of Saturday last, in relation to the Writs of Error therein mentioned, having been presented to her Majesty, according to the Order, her Majesty was pleased to give this gracious Answer, *viz.*

‘ Her Majesty is much troubled to find the House of Commons of Opinion that her granting the Writs of Error mentioned in their Address, is against their Privileges; of which her Majesty will always be as tender as of her own Prerogative; and therefore the House of Commons may depend, her Majesty will not do any thing to give them any just Occasion of Complaint: But this Matter, relating to the Course of judicial Proceedings, being of the highest Importance, her Majesty thinks it necessary, to weigh and consider very carefully what may be proper for her to do, in a thing of so great a concern.’

*Resolved*, That this House will take her Majesty’s gracious Answer into Consideration to-morrow morning.

The Earl of Dysert reported, from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to Newgate for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same, the matter as it appeared to them; which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk’s Table, where the same was read: Upon which it was ordered, that all the said Persons so concerned should be taken into Custody for Breach of Privilege.

And tho’ the Commons had resolved before to take her Majesty’s Answer into Consideration, yet being apprehensive lest her Majesty should grant the Writs of Error, whereby the five Aylesbury-Men might be discharged from their Imprisonment, they ordered them to be removed from Newgate, and taken into the Custody of the Serjeant at Arms; which Order was executed at midnight, with such Circumstances of Severity and Terror, as have been seldom exercised towards the greatest Offenders.

The 28th, Mr. Bromley reported, That the Members appointed to search the Journals of the House of Lords, what

Pro-

Anno 3 Ann.  
1704.

Proceedings have been in that House, in relation to the five Persons committed to Newgate for Breach of the Privilege of this House, had searched the same accordingly, and had taken thereout what they found relating to the same; and also Copies of two Petitions of the said Persons; which he read in his Place, and afterwards delivered in at the Table, where the same were read, and are as follow, viz.

Feb. 26. Upon reading the Petition of Daniel Horne, Henry Basse, and John Paton jun. as also the Petition of John Paty, and John Oviat, Prisoners in Newgate, in relation to some Proceedings for obtaining the Writs of Error, and praying (amongst other things) the Protection of this House for their Counsel and Agents;

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Petitions shall be taken into Consideration to-morrow at twelve o'clock, and all the Lords summoned to attend; as also the Judges in Town, who are to come prepared to speak to the point, whether a Writ of Error be a Writ of Right or a Writ of Grace? And that the Petitioners have notice, that when they send to this House the names of their Council and Agents they desire to be protected, they shall have the Protection of this House for them.

In pursuance of the Order of this day made, Daniel Horne, Henry Basse, John Paton, jun. John Paty, and John Oviat, Prisoners in Newgate, sent the Names of their Council and Agents, viz.

|                      |                       |
|----------------------|-----------------------|
| James Mountague Esq; | } Counsellors at Law. |
| Nicholas Lechmere,   |                       |
| Alexander Denton,    |                       |
| Francis Page,        |                       |
| William Lee,         | } Attorneys at Law.   |
| John Harris,         |                       |

Whereupon, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, that James Mountague, Esq; Nicholas Lechmere, Alexander Denton, and Francis Page, Counsellors at Law, and William Lee, and John Harris, Attorneys at Law, shall, and they have hereby the Protection and Privilege of this House, in the advising, applying for, and prosecuting the said Writs of Error; and that all Keepers of Prisons, and Jaylors, and all Serjeants at Arms, and other Persons whatsoever, be, and they are hereby (for, or in respect of any of the Cases aforesaid) strictly prohibited from arresting, imprisoning, or otherwise detaining or molesting, or charging the said James Mountague Esq; Nicholas Lechmere, Alexander Denton, Francis Page, William Lee, and John Harris, or any or either of them, as they and every of them will answer the contrary to this House

The

The Serjeant at Arms being called upon to give an Account what he had done pursuant to the Orders of the House on Monday last, since the Account he gave yesterday:

Anno 3 Ann.  
1704.

He gave the House an Account accordingly; that he had found Mr. Denton at his own Chamber, and had him in Custody; but that he could not find the other Persons.

A Message from the Lords, by Mr. Justice Tracy, and Mr. Baron Smith:

‘ Mr. Speaker, The Lords desire a present Conference with this House in the painted Chamber, about some antient fundamental Liberties of the Kingdom.’ Which was agreed to, and the Managers being return’d; the Lord Marquis of Hartington reported the Conference, and that it was managed by the Earl of Sunderland, who expressed himself as followeth:

Conference be-  
tween the two  
Houses.

‘ That the Lords have desired this Conference with the House of Commons, in order to a good Correspondence between the two Houses, which they will always endeavour to preserve. When either House of Parliament have apprehended the Proceedings of the other to be liable to exception, the ancient parliamentary Method has been to ask a Conference; it being ever supposed, that when the Matters are fairly laid open, and debated, that which may have been amiss will be rectified, or else the House that made the Objections will be satisfied, that their Complaint was not well grounded.

‘ Such Hopes as these have induced the Lords to command us to acquaint you, that, upon the Consideration of the Petition of Daniel Horne, Henry Basse, and John Paton junior, and also of the Petition of John Paty, and John Oviar, complaining to the House of Lords, that they have been Prisoners in Newgate for about twelve Weeks, upon several Warrants, signed by the Speaker of the House of Commons, bearing date the 5th of December last, for their having commenced and prosecuted Actions at Common-Law, against the late Constables of Aylesbury, for not allowing their Votes, at an Election of Members to serve in Parliament; which Actions, they alledged, they were encouraged to bring, by reason of a Judgment given in Parliament upon a Writ of Error, brought in the last Session by one Astby against White, and others; and also representing by the same Petitions, what had been done by them respectively since their said Commitment, in order to obtain their Liberty, and praying the Consideration of the House of Peers upon the whole Matter; and also upon Consideration of a printed Paper, entitled, *The Votes of the House of Commons*, signed with the Speaker’s Name, and dated the 24th of this instant February; the House of Lords found themselves obliged to  
several

Anno 3 Ann.  
1704.

several Resolutions, which they have commanded us to communicate to you at this Conference; and are as follow:

‘ 1. It is *Resolved* by the Lords Spiritual and Temporal in Parliament assembled, That neither House of Parliament hath any Power, by any Vote, or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament.

‘ 2. *Resolved*, That every Freeman of England, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the commencing and prosecuting an Action at Common-Law, against any Person (not entitled to Privilege of Parliament,) is no Breach of the Privilege of Parliament.

‘ 3. *Resolved*, That the House of Commons, in committing to Newgate, Daniel Horne, Henry Basse, and John Paton junior, John Paty and John Oviat, for commencing and prosecuting an Action at Common-Law, against the late Constables of Aylesbury, for not allowing their Votes in Election of Members to serve in Parliament, upon pretence that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege of that House, have assumed to themselves alone a legislative Power, by pretending to attribute the Force of a Law to their Declaration, have claimed a Jurisdiction, not warranted by the Constitution, and have assumed a new Privilege, to which they can shew no title by the Law and Custom of Parliament: and have thereby, as far as in them lies, subjected the Rights of Englishmen, and the Freedom of their Persons, to the Arbitrary Votes of the House of Commons.

‘ 4. *Resolved*, That every Englishman, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by the due Course of Law.

‘ 5. *Resolved*, That for the House of Commons to censure, or punish any Person, for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or by Vote, or otherwise, to deter Men from soliciting, prosecuting, and pleading upon such Writ of *Habeas Corpus*, in behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

‘ 6. *Resolved*, That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject,

ject, when duly applied for, (tho' at the Request of either House of Parliament,) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.' Anno 3 Ann.  
1704.

' In these Resolutions, the House of Lords have expressed that Regard and Tenderneſs which they have always had, and will ever maintain for the Rights of the People of England, and for the Liberties of their Persons; and also their Zeal against all Innovations to the Prejudice of the known Course of Law, whereupon the Happiness of our Constitution depends; and they hope that, upon Recollection, the House of Commons will be of the same Opinion in all the Particulars resolved by the Lords, and agree with their Lordships therein.'

*Ordered*, That the said Report be taken into Consideration to-morrow Morning: When the Managers of the last Conference were appointed to draw up a proper Answer.

March 6. The Serjeant at Arms attending this House, acquainted the House, that a Person had this Morning brought him a Writ of *Habeas Corpus*, under the the great Seal, for Mr. Mountague (in his Custody by order of this House) to be brought (as he was informed) before the Lord-Keeper of the great Seal of England: And he delivered the Writ (under Seal) in at the Table. And it appearing by the Label to be returnable *immediatè*, but not before whom he was to be brought, nor any Officer's name thereto, the Writ was opened by the Clerk, and read, and is as followeth.

*Anna dei gratia Ang' Scø Franc' & Hibern' Regina, fidei defensor, &c. Samueli Powel Ar' serv' ad arma attenden' Honorab' Dom' commun' ejus deputato & deputatis salutem. Precipimus vobis & cuilibet vestrum quod corpus Jacobi Mountague Ar' nuper capt' & in custod' vestra vel alicujus vel unius vestrum ut dicitur detent' sub salvo & securo conduct' una cum die & causa captionis & detentionis pred' Jacobi Mountague quocunque nomine idem Jacob' Mountague censeatur in eadem habeatis seu aliquis vel unus vestrum habeat cor' predilecto & fidel' nostro prebonorab' Nathan Wright Mil' Dom' custod' Mag' sigil' nostri Angl' apud Dom' Mansional' suam in parochia sancti Egidii in campis, in com' Mid' immediatè post reception' hujus brevis ad faciend' subjiciend' & recipiend' ea omnia & singula que dictus dominus custos magni sigil' nostri Angl' de eo ad tunc ibidem cons' in hac parte & habeatis seu aliquis vel unus vestrum habeat ibi hoc breve. Teste meipsa apud Westm' sexto die Martii Anno regni nostri tertio.*

The Label.

*Samuel' Powel Ar' servien' ad arma, &c. H. corp' pro Mountague Ar' R immediatè.*

*Endorsed, Per statutem tricesim' prim' Caroli secundi Regis.*

N. WRIGHT, C.S.

TOMB III.

Ecc

The

Anno 3 Ann.

1704.



The Serjeant also acquainted the House, that he heard there was another *Habeas Corpus* granted for Mr. Denton, in his Custody also.

While the matter (upon Occasion of the said forementioned Writ) was debating, the Serjeant acquainted the House, that the other Writ of *Habeas Corpus*, was just served upon his Deputy, who had Mr. Denton in his Custody: And he also delivered the same in at the Clerk's Table, where it was read and was the same, *mutatis mutandis*, with the former.

And the Precedents of what was done in the Year 1675 were (by order) read: And several Members mentioned, upon their Memory, what was done in the Year 1680, in the \* Case of one Mr. Sheridan.

But the House were of Opinion, that any Person committed by the House of Commons was not bailable, within the Act of *Habeas Corpus* of 31 Car. II. but came not then to any Resolution.

The same day Mr. Bromley reported, from the Committee appointed to draw up what is proper to be offered to the Lords at the next Conference, that they had drawn up the same accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and (with some Amendments) agreed unto by the House: And the same is as follows, *viz.*

Reasons of the  
Commons to be  
offered at a se-  
cond Confe-  
rence.

' The Commons have desired this Conference with your Lordships, in order to preserve that good Correspondence between the two Houses, which the House of Commons shall always sincerely endeavour to maintain, and which is so particularly necessary at this time of common Danger, that the Commons would not engage in any thing that looks like a Dispute with your Lordships, were it not for the necessity of vindicating, from a manifest Invasion, the Privileges of all the Commons of England, (with which the House of Commons is entrusted) even those Privileges which are essential not only to the well being, but to the very being of an House of Commons, and the preventing of the ill Consequences of those misunderstandings, which, if they are not speedily removed, must otherwise interrupt the happy Conclusion of this Session, and the Proceedings of all future Parliaments.

It was this Consideration alone has so long prevailed with the House of Commons, not to insist on due Reparation for those violent and unparliamentary Attempts, made by your Lordships upon their Rights and Privileges, at the end of the last Session of Parliament, but to apply themselves to the giving the speediest Dispatch, to those Supplies which her Majesty so earnestly recommended from the Throne, which

are

\* *Vid. Tome II. p. 60.*

are so necessary to enable her Majesty to pursue the Advantages that have been obtained against the common Enemy, by the great and glorious Success of her Majesty's Arms: And which are now delayed in your Lordships House, in so unusual a manner.

Anno 3 Ann.

1704.

' The Commons do agree to your Lordships, that when either House of Parliament have apprehended the Proceedings of the other to be liable to Exception, the ancient parliamentary Method has often been to ask a Conference; because it ought to be supposed, that when the Matters are fairly laid open and debated, that which may have been amiss will be rectified, or else the House that made Objections will be satisfied that their Complaints was not well grounded. But your Lordships seem so little to desire to have Matters fairly laid open and debated, that, to the great Surprise of the Commons, when your Lordships have invited them to a Conference, about some antient fundamental Liberties of the Kingdom, they found only the antient and fundamental Rights of the House of Commons, and their Proceedings, censured, and treated in a manner unknown to former Parliaments; and that your Lordships had anticipated all Debates, by delivering positive Resolutions; and these Proceedings of your Lordships, grounded only upon the Petitions of Criminals, that had fallen under the just Censure and Displeasure of the Commons, and upon a printed Paper, which was not regularly before your Lordships.

Tho' this manner of Proceeding, as well as the Matters of your Lordships Resolutions, might have justified the House of Commons in refusing to continue Conferences with your Lordships, as their Predecessors have done upon less Occasions; and tho' the Commons cannot submit their Privileges to be determined or examined by your Lordships, upon any Pretence whatsoever; yet, that nothing may be wanting on their Part to induce your Lordships to retract these Resolutions, they proceed to take them into their Consideration.

' Your Lordships first Resolution is, *viz.* That neither House of Parliament hath any Power, by any Vote or Declaration, to create to themselves any new Privilege that is not warranted by the known Laws and Customs of Parliament.

' As the Commons have guided themselves by this Rule, in asserting their Privileges, so they wish your Lordships had observed it in all your Proceedings. This had entirely taken away all Colour for Disputes between her Majesty's two Houses of Parliament, and many just Occasions of Complaint from those the Commons represent. This would effectually put an end to that Encroachment in Judicature, so lately assumed by your Lordships, and so often complained of by the

Anno 3 Ann.  
1704.

Commons; we mean the hearing of Appeals from Courts of Equity, in your Lordships House. This would have hindered the bringing of original Causes before your Lordships, and your \* unwarrantable Proceedings upon the Petition of Thomas Lord Wharton, complaining of an Order of the Court of Exchequer, bearing date the 15th of July, 1701. for filling the Record of a Survey of the Honour of Richmond and Lordship of Middleham in the County of York; an Attempt which (contrary to the ancient, legal Judicature of Parliament heretofore exercised, for the Relief of the Subject oppressed by the Power of the great Men of the Realm) was, in favour of one of your own Body, to suppress a public Record, which all her Majesty's Subjects had an undoubted Right to make use of; an Attempt that tends to render all Fines and Recoveries, and other Records (upon which Estates and Titles depend) precarious; and consequently subjects the Rights and Properties of all the Commons of England to an illegal and arbitrary Power.

' A due Regard to the same Rule, would have prevented your Lordships entertaining the Petitions mentioned at the last Conference, which set forth,

' That the Lords having given Judgment in the Case of Ashby and White, viz. That, by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Elections of Members to serve in Parliament, and being wilfully denied or hindered so to do, by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts, against such Officer, to assert his Right and recover Damages for the Injury: The Petitioners thereupon brought the like Actions in their own Cases.

' Whereby an extrajudicial Vote of your Lordships is stated as a Judgment of Parliament, and standing Law in that Case, your Lordships having no Foundation for the entertaining such Petitions, unless, that, after having assumed to yourselves the hearing of Appeals from Courts of Equity, you would now bring Appeals to your Lordships from the Proceedings of the Commons, who are not accountable to your Lordships for them.

' Your Lordships second Resolution is, That every Freeman of England, who apprehends himself to be injured, has a Right to seek Redress by Action at Law: And that the commencing and prosecuting an Action at Common-Law, against any Person (not entitled to Privilege of Parliament) is no Breach of the Privilege of Parliament.

' To which the Commons say that every Freeman, and every Subject of England, has a Right to seek Redress for an Injury; but then such Person must apply for that Redress

to

\* Vid. 303.



to the proper Court, which hath, by antient Laws and Usage, the Cognizance of such Matters: For, should your Lordships Resolution be taken as an universal Proposition, all Distinction of the several Courts, *viz.* Common-Law, Equity, Ecclesiastical, Admiralty, and other Courts, will be destroyed; and, in this Confusion of Jurisdiction, the high Court of Parliament is involved in your Lordships Resolution.

Anno 3 Ann.  
1704.

‘ However, the Commons conceive it no wonder your Lordships should favour the universal Proposition, that all Rights whatsoever are to be redressed by Actions at Law, when your Lordships pretend to have the last Resort in Cases of Judicature by Writs of Error; so that your Lordships are, in this, only extending your own Judicature, under the Colour of a Regard and Tenderneſs for the Rights of the People, and Liberties of their Persons.

‘ The Commons are surprized to find your Lordships assert, that the commencing and prosecuting an Action against a Person, not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament, since it is most certain, that to commence and prosecute an Action which would bring any Matter or Cause solely cognizable in Parliament, to the Examination and Determination of any other Court, is more destructive to the Privileges of Parliament, than to commence and prosecute an Action against a Person only who is entitled to such Privilege.

‘ That some Matters and Causes are solely cognizable in Parliament, hath ever been allowed by the sage Judges of Law, and is evident from many Precedents; and to bring such Causes to the Determination of other Courts, strikes at the very Foundation of all Parliamentary Jurisdiction, which is the only Basis and Support, even of that personal Privilege to which the Members of either House of Parliament are entitled; and consequently to commence and prosecute any Action, whereby to draw such Causes to the Examination of any other Courts, is equally a Breach of the Privilege of Parliament, whether the Defendant, against whom such Action is brought, is entitled to the Privilege of Parliament, or not, which, besides the Nature and Reason of the thing, is fully evident from the constant Usage of each House of Parliament, in committing for Contempts only against their respective Bodies, as appears from many Precedents upon the Journals of both Houses.

‘ Your Lordships third Resolution is this, *viz.* That the House of Commons, in committing to Newgate, Daniel Horne, Henry Basse, and John Paton, junior, John Paty, and John Oviat, for commencing and prosecuting an Action at Common-Law against the Constables of Aylesbury, for not allowing their Votes in Election of Members to serve in Par-

Anno 3 Ann.  
1704.

Parliament, upon Pretence, that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege of that House, have assumed to themselves alone a legislative Authority, by pretending to attribute the Force of a Law to their Declaration: have claimed a Jurisdiction not warranted by the Constitution, and have assumed a new Privilege, to which they can shew no Title, by the Laws and Customs of Parliament; and have thereby, as far as in them lies, subjected the Rights of Englishmen, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

\* In answer to which, the Commons affirm, that the said Commitment is justified by ancient Precedents, and by the Usage and Customs of Parliament, which is the Law of Parliament, and the Rule by which either House ought to govern their Proceedings; and that the terms of assuming to themselves alone a legislative Authority, of attributing the Force of Law to their Declaration, of claiming a Jurisdiction not warranted by the Constitution, of assuming a new Privilege, to which they can shew no Title by the Law and Custom of Parliament; and of arbitrary Votes; are more applicable to this Resolution of your Lordships, which hath no one Precedent to justify it.

\* According to the known Laws and Usage of Parliament, it is the sole Right of the Commons of England, in Parliament assembled, (except in cases otherwise provided for by Act of Parliament,) to examine and determine all Matters relating to the Right of Election of their own Members.

\* And, according to the known Laws and Usage of Parliament, neither the Qualification of any Elector, nor the Right of any Person elected, is cognizable, or determinable elsewhere, than before the Commons of England in Parliament assembled, excepting such cases as are especially provided for by Act of Parliament.

\* And were it otherwise, the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be exposed to multiplicity of Actions, vexatious Suits, and unsupportable Expences; and such Officers would be subjected to different and independant Jurisdictions, and inconsistent Determinations, in the same Case, without Relief.

\* And the Exercise of this Power by the House of Commons, is warranted by a long, uncontested Possession, and confirmed by the Act that passed 7 & 8 *Guil. III.* cap. 7. and the House of Commons must be owned to be the only Jurisdiction that can allow the Elector his Vote, and settle and establish the Right of it; the last Determination in that House being, by the Act of Parliament, declared to be the  
stand-

standing Rule for the Right of Election in each respective Place. Nor can any Elector suffer either Injury, or Damage, by the Officers denying his Vote; for when the Elector hath named the Person he would have to represent him, his Vote is effectually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election; and is ever allowed, when it comes in question in the House of Commons, whether the Officer had any regard to it or no.

Anno 3 Ann.  
1704.

In the Beginning of the Parliament held 28 Eliz. Mr. Speaker acquaints the House, that he had received, by the Lord Chancellor, her Majesty's Pleasure; that she was sorry the House was troubled with the Matter of determining the chusing and returning of Knights for the County of Norfolk; that it was improper for the House to meddle in it, which was proper for the Lord Chancellor, whence the Writs issued out, and whither they were returnable: That her Majesty had appointed the Lord Chancellor to confer therein with the Judges; and upon examining the same, to set down such Course as to Justice and Right should appertain.

Nov. 9. A Committee was appointed to examine and state the Circumstances of the Return of the Knights for the County of Norfolk.

And on the Friday, Nov. 11. Mr. Cromwell reports the Case of the Norfolk Election very largely, in which Report are these Resolutions.

1. That the said Writ really was executed.
2. That it was a pernicious Precedent that a new Writ should issue without the Order of this House.
3. That the discussing, or judging of this, and such like Differences only belonged to the said House.
4. That tho' the Lord Chancellor and Judges are competent Judges in their Courts, they are not so in Parliament.
5. That it should be enter'd in the Journal-Book of the House, that the first Election is good; and that the Knights then chosen were received and allowed as Members of the House; not out of any respect the House had, or gave to the Lord Chancellor's Judgment therein passed, but merely by reason of the Resolution of the House itself, by which the said Election had been approved.
6. That there should be no Message sent to the Lord Chancellor, nor so much as to let him know what was done therein, because it was derogatory to the Power and Privilege of the said House.

It also appears, that Sir Edmund Anderson, Lord Chief Justice of the Common-Pleas, was acquainted, that the Explanation and ordering of the Cause appertained only to the Censure of the House of Commons, not the Lord Chancellor and the Judges; and that they should take no notice of their having done any thing in it.

Ac

Anno 3 Ann.  
1704.

Accordingly Mr. Farmer and Mr. Gresham were received into the House; and took the Oaths; being admitted only upon the Censure of the House, not as allowed by the Lord Chancellor, or the Judges; and so ordered to be set down and entered by the Clerk.

And this Right of the Commons to determine their own Elections, has never been disputed since the Case of Sir Francis Goodwin, 1 Jac. I. when the Lords would have enquired into the Proceedings of the House of Commons upon his Election; but the Commons then told their Lordships, it did not stand with the Honour of the House to give account to their Lordships of any of their Proceedings or Doings.

And in the Reasons of their Proceedings in that Case, which they laid by Petition before the King, among other things, they say, they are a Part of the Body to make new Laws; yet, for any Matter or Privileges of their House, they are and ever have been a Court of themselves, of sufficient Power to discern and determine without the Lords, as the Lords have always used to do theirs without them.

In which Reasons, as well as in their Apology afterwards to that Prince, the House of Commons did, above a hundred Years since, so clearly, and with so much Strength of Reason, assert their Right in the Matter of the Election of their Members. The Commons think it their Duty to resist all Attempts whatsoever to invade them.

And upon this Occasion, it may not be improper to cite the Opinion the House of Commons had of the Judges intermeddling in Matters of their Elections, as they have delivered it in the aforesaid Apology, in these Words, *viz.*

Neither thought we that the Judges Opinions, (which yet, in due place, we greatly reverence, being delivered with the Common Law,) which extend only to inferior and standing Courts, ought to bring any Prejudice to this high Court of Parliament; whose Power, being above the Law, is not founded on the Common Laws, but they have their Rights and Privileges peculiar to themselves.

When the Earl of Shaftsbury was Lord Chancellor, Writs were issued, during a Prorogation of Parliament, for electing Members in the room of those that were dead: The King himself was so cautious, as to the Regularity of this Proceeding, and had so much Regard to the Privileges of the House of Commons, that at the next Session of Parliament, Feb. 5, 1672, he spoke to the Commons, from the Throne, in these Words.

‘ One thing I forgot to mention, which happened during this Prorogation; I did give orders for the issuing some Writs, for the Election of Members instead of those that are dead, that the House might be full at their Meeting: And I

am

m mistaken, if this be not according to former Precedents. Anno 3 Anna.  
1704.  
But I desire you will not fall to other Business 'till you have examined that Particular; and I doubt not but Precedents will justify what is done; I am as careful of all your Privileges as of my own Prerogative.

Feb. 6, 1672. The House of Commons took that Matter into Consideration; and several Precedents being cited, and the Matter at large debated, and the general Sense and Opinion of the House being, ' That, during the Continuance of the High Court of Parliament, the Right and Power of issuing Writs for electing Members to serve in this House, in such Places as are vacant, is in this House, who are the proper Judges also of Elections, and Returns of their Members.

Thereupon it was Resolved, That all Elections upon the Writs issued since the last Session are void, and that Mr. Speaker do issue out his Warrant to the Clerk of the Crown, to make out new Writs for those Places. Which was done accordingly.

No other Court than the House of Commons, hath ever had the Determination of the Elections, or any Cognizance of such Causes, except where by Acts of Parliament directed: and such an Action as that against the late Constables of Aylesbury, to bring the Right of voting in an Election, in question in the Courts of Law, is a new Invention never heard of before; which (as new Devices in the Law are generally attended with Inconveniences and Absurdities) was plainly to subject the Elections of all the Members of the House of Commons to the Determination of other Courts.

This undoubted Privilege and Jurisdiction, the Commons think will warrant these Commitments, if the late Declaration, (which is agreeable to, and cannot lessen their antient Right,) had never been made.

For it is the antient and undoubted Right of the House of Commons to commit for Breach of Privilege: And Instances of their committing Persons, not Members of the House, for Breach of Privilege, and that to any of her Majesty's Prisons, are antient, so many and so well known to your Lordships, that the Commons think it needless to produce them.

And it being the Privilege of the House of Commons, to have the sole Examination and Determination of all Causes relating to their Elections, as aforesaid:

It follows, that any Attempt to draw any such Causes to the Determination of any other Court, is a Breach of the Privilege of the House of Commons; for which the Person offending may be committed by the Commons.

And here we cannot but take notice of that unreasonable, as well as unnatural Insinuation, whereby your Lordships

Anna 3. Ann.

1704

endeavour to separate the Interest of the People from their Representatives in Parliament, who pretend to no Privileges, but upon their Account, and for their Benefit; and are sorry to say, they are thus severely reflected on by your Lordships, for no other reason, but for their interposing to preserve the Rights of the People, and their Liberties, from your Lordships arbitrary Determinations.

Your Lordships fourth Resolution is, ' That every Englishman, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due course of Law.'

The Commons do not deny that every Englishman, who is imprisoned, by any Authority whatsoever, has an undoubted Right to apply, by his Agents, or Friends, in order to procure his Liberty by due course of Law, provided such Application be made to the proper Place, and in a proper Manner; as, upon the Commitments of the House of Commons, (which sometimes are not, as other Commitments, in order to bring to Trial; but are, in Cases of Breach of Privilege and Contempt, the proper Punishment of the House of Commons,) the Application ought to be to that House.

The Commons are so willing to allow and encourage every Englishman to apply, by his Friends, or Agents, to obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due course of Law, that they have not censured any Person merely for applying for such Writ of *Habeas Corpus*, even in Cases where by due Process of Law the Prisoners cannot be discharged. For the Commons must observe, that, in many Cases, a Prisoner cannot, upon a Writ of *Habeas Corpus*, obtain his Liberty; as in Cases of Commitment in Execution, or for Contempt to any Court of Record, or by virtue of mesne Process, or the like: And in the Act of *Habeas Corpus*, several Cases are expressly excepted; and that no Person, committed for any Contempt, or Breach of the Privilege, by the House of Commons, can be discharged upon a Writ of *Habeas Corpus*, or by any other Authority, than that of the House, during that Session of Parliament, is plain from the following Precedents.

May 23. 1 Jac I. Order'd, Jones, the Prisoner, to be sent for hither, and to attend his Discharge from the House.

That the Prisoner committed by us, cannot be taken from us, and committed by any other.

In May 1675, the House of Commons having resolved, That there lay no Appeal to the Judicature of the Lords, from Courts of Equity; and that no Member of the House should prosecute any Appeal from any Court of Equity, before the House of Lords; \* Serjeant Pemberton, Serjeant Peck,

1

Sir

\* Vid. Tom. I. p. 223.

Sir John Churchill, and Charles Porter, Esq; were committed to the Custody of the Serjeant of the House, for a Breach of Privilege, in having been of Council at the Bar of the House of Lords, in the Prosecution of a Cause depending upon an Appeal, wherein Mr. Dalmahoy, a Member of the House of Commons, was concerned.

Anno 3 Ann.  
1704.

But the Serjeant having been by Force prevented from keeping them in Custody, the Commons did, the 4th of June 1675, acquaint the Lords, at a Conference, as followeth, *viz.*

We are further commanded to acquaint you, that the Enlargement of the Persons imprisoned by Order of the House of Commons, by the Gentleman Usher of the Black-Rod; and the Prohibition, with Threats, to all Officers, and other Persons whatsoever, not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons. And they have therefore caused them to be retaken into the Custody of the Serjeant at Arms, and have committed them to the Tower.

The said Council were afterwards committed to the Tower for a Breach of Privilege, and Contempt of the Authority of the House: And the House being informed, that the Lords had ordered Writs of *Habeas Corpus* for bringing the Council to the Bar of their House.

The Commons then passed the following Resolutions.

June 7. *Resolved, Nemine Contradicente*, That no Person, committed for Breach of Privilege by Order of this House, ought to be discharged, during the Session of Parliament, but by Order, or Warrant of this House.

*Resolved, Nemine Contradicente*, That the Lieutenant of the Tower, in receiving and detaining in Custody Sir John Churchill, Serjeant Peck, Serjeant Pemberton, and Mr. Porter, performed his Duty according to Law; and, for so doing, he shall have the Assistance and Protection of this House.

*Resolved, Nemine Contradicente*, That the Lieutenant of the Tower, in case he hath received, or shall receive any Writ, Warrant, Order, or Commandment, to remove or deliver any Person or Persons committed for Breach of Privilege, by any Order or Warrant of this House, shall not make any Return thereof, or yield any Obedience thereunto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

*Ordered*, That these Resolutions be immediately sent to the Lieutenant of the Tower.

Afterwards the Lieutenant of the Tower gave the House an Account, that he had refused to deliver the Council, upon the Lords Order, signified to him by the Black-Rod, because they were committed by this House; and that after he had received the Votes of this House, he had Writs of *Habeas*

Anno 3 Ann.  
1704.

*Corpus* brought him, to bring the Council to the House of Lords at Ten o'Clock the next Morning, and humbly craved the Direction of the House what to do.

Mr. Speaker intimated to him, he should forbear to return the Writs.

And the House came to several other Resolutions.

June 9. *Resolved, Nemine Contradicente*, That no Commoner of England, committed by Order or Warrant of the House of Commons, for Breach of Privilege, or Contempt of that House, ought, without Order of that House, to be, by any Writ of *Habeas Corpus*, or other Authority whatsoever, made to appear, and answer, and do, and receive a Determination in the House of Peers, during the Session of Parliament wherein such Person was committed.

*Resolved, Nemine Contradicente*, That the Order of the House of Peers, for the issuing out of Writs of *Habeas Corpus* concerning Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, is insufficient and illegal; for that it is general, and expresses no particular Cause of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the said House of Peers.

*Resolved, Nemine Contradicente*, That the Lord-keeper be acquainted with these Resolutions, to the end that the said Writ of *Habeas Corpus*, may be superseded, as contrary to the Law and the Privileges of this House.

*Resolved, Nemine Contradicente*, That a Message be sent to the Lords, to acquaint them, that Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, were committed by Order and Warrant of this House, for Breach of the Privilege, and Contempt of the Authority of this House.

March 22. 1697. Charles Duncomb, Esq; having been committed by Order of this House, and afterwards discharged by Order of the House of Lords, without the Consent of this House.

*Resolved*, That no Person committed by this House can, during the same Session, be discharged by any other Authority whatsoever.

*Resolved*, That the said Charles Duncomb be taken into the Custody of the Serjeant at Arms attending this House.

These are some Instances, among many others, that might be produced upon this Occasion; and the last cannot but be particularly remembered by some noble Lords that then sat in the House of Commons, and strenuously asserted this Privilege of the Commons.

Your Lordships fifth Resolution, *viz. Resolved*, ' That for the House of Commons to censure or punish any Person for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or by

Vote,



Vote, or otherwise, to deter Men from soliciting, prosecuting, and pleading upon such Writ of *Habeas Corpus*, in behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

Anno 3 Ann.

1704.

The Commons take this to be another Instance of your Lordships Breach of your own Rule, your Lordships being no Judges of their Privileges; tho' by this Resolution you seem to make a Judgment without having heard, and knowing what the Commons have to alledge for them.

This Attempt, therefore of your Lordships is of dangerous Consequence, tending to a Breach of the good Understanding between the two Houses, and of most pernicious Example. The Commons late Proceeding, in censuring and punishing the Council that have pleaded upon the Return of the Writs of *Habeas Corpus*, in behalf of the Prisoners, if duly consider'd, is a great Instance of the Temper of the House of Commons: For this House did not interpose when the Prisoners applied to the Lord-keeper, and the Judges to be bailed; and, had the Lawyers shewn so much Modesty, as to have acquiesced in the Opinion of the Lord-keeper, and all the Judges, that these Prisoners were not bailable by the Statute of *Habeas Corpus*, the Commons had never taken any notice of it: But they would not rest satisfied without bringing on again this Case; and the Privileges of the Commons were, with great Licentiousness of Speech, denied, and insulted in public Court; not with any hope or prospect of Relief of the Prisoners, (who in this whole Proceeding have apparently been only the Tools of some ill-designing Persons, that are contriving every way to disturb the Freedom of the Commons Elections) but in order to vent these new Doctrines against the Commons of England, and with a Design to overthrow their fundamental Right. And, after so much Inveteracy shewn to the Commons, they could do no less than declare the Abettors, Promoters, Countenancers, or Assisters, of a Prosecution so carried on, to be guilty of conspiring to make a Difference between the two Houses of Parliament, to be Disturbers of the Peace of the Kingdom; and to have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament assembled.

And the Commons, in committing the Lawyers, have only done that Right to their Body which your Lordships have frequently practised, in Cases of personal Privilege, where any single Member of your Lordships House is concerned.

Your Lordships last Resolution, viz. 'That a Writ of Er-

rot

Anno 3 Ann.  
1704.

ror is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for; (tho' at the Request of either House of Parliament) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.

The Commons shall not enter into any Consideration, whether a Writ of Error is of Right, or of Grace; they conceiving it not material in this Case, in which no Writ of Error lies, nor was ever any Writ of Error brought or attempted in the like Case before; and the allowing it in such Cases would not only subject all the Privileges of the House of Commons, but the Liberties of all the People of England, to the Will and Pleasure of the House of Lords.

And, when your Lordships' Exercise of Judicature upon Writs of Error is considered, how unaccountable is it in its Foundation; how inconsistent is it with our Constitution, which, in all other Respects, is the wisest and happiest in the World, to suppose the last Resort in Judicature, and the Legislative to be differently placed?

And, when it is considered how that Usurpation, in hearing of Appeals from Courts of Equity, so easily traced, tho' often denied and protested against, is still exercised, and almost every Session of Parliament extended, it is not to be wondered, that, after the Success your Lordships have had in those great Advances upon our Constitution, you should now at once make an Attempt upon the whole Frame of it, by drawing the Choice of the Commons Representatives to your Determination; for that is a necessary Consequence, from your Lordships encouraging the late Actions, and your countenancing a Writ of Error; which, if allowed upon such a Proceeding, might as well be introduced upon all Acts and Proceedings of Courts or Magistrates of Justice: And, tho' the present Instance has been brought on under the specious Pretence of preserving Liberty, it is obvious the same will as well hold to controul the bailing and discharging Prisoners in all Cases.

And the Commons cannot but see how your Lordships are contriving, by all Methods, to bring the Determination of Liberty and Property, into the bottomless and insatiable Gulph of your Lordships Judicature, which would swallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which your Lordships must give the Commons leave to say, they have the greater reason to dread, when they consider in what manner it has been exercised: The Instances whereof they forbear, because they hope your Lordships will reform; and they desire rather to compose the old, than to create any new Differences.

Upon the whole, the Commons hope, that, upon due Consideration of what they have laid before your Lordships, you will

will be fully satisfied they have acted nothing in all these Proceedings, but what they are sufficiently justified in from Precedents, and the known Laws and Customs of Parliament; and that your Lordships have assumed and exercised Judicature contrary to the known Laws and Customs of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of England.

Atto 3 Feb.  
1704.

The next Day the said Report was left with the Lords at a Conference; after which the Lords desired a free Conference, which was agreed to.

The Serjeant at Arms, attending the House, having acquainted the House, that he had received two Writs of *Habeas Corpus* under the Great Seal of England, to bring before the Lord-keeper the Bodies of James Mountague, Esq; and Alexander Denton, Esq; (who are committed to his Custody by Warrants from the Speaker of this House for a Breach of Privilege.)

The House again assumed the Consideration of that Matter: And after Debate,

*Resolved*, That no Commoner of England, committed by the House of Commons for Breach of Privilege, or Contempt of that House, ought to be, by any Writ of *Habeas Corpus*, made to appear in any other Place, or before any other Judicature, during that Session of Parliament wherein such Person was so committed.

*Resolved*, That the Serjeant at Arms attending this House, do make no Return of, or yield any Obedience to the said Writs of *Habeas Corpus*; and, for such his Refusal, that he have the Protection of the House of Commons.

*Resolved*, That the Lord-keeper be acquainted with the said Resolutions, to the end, that the said Writs of *Habeas Corpus* may be superseded, as contrary to Law, and the Privileges of this House.

*Ordered*, That the Clerk of this House do acquaint the Lord-keeper of the Great Seal of England with the said Resolutions.

The 13th, the Report of what pass'd at the free Conference was delivered by Mr. Bromley, as follows:

That the Lords who appeared as Managers, and spoke at this free Conference, were, the Earl of Sunderland, the Lord Ferrers, the Bishop of Salisbury, the Lord Hallifax, the Lord Wharton, and the Duke of Devonshire Lord Steward.

Free Conference.

That the free Conference was begun by the Managers for the Lords, who said, this Conference was desired to maintain a good Correspondence between the two Houses, which was never more necessary than at this Time.

That the delivering Resolutions at their first Conference was parliamentary; and instanced the Resolutions 3 Car. I. which produced the Petition of Right.

That

Anno 3 Ann.

1704.



That the Lords look upon the Commons to be a great Part of the Constitution, which cannot be preserved but by doing right to both Houses.

That every Part of the Body politic, as well as the Body natural, ought to be kept within due Bounds; an Excess in any Member will weaken the whole.

That this Constitution is the Wonder of the World, and Glory of this Nation; 'tis founded upon Liberty and Property: And the House of Commons hath been a great Fence and Bulwark of Liberty.

That the Lords Resolutions are very well founded, and justified by the Laws of the Land, as is their Judicature in this Case.

That it was proper for them to receive the Petitions, and make these Resolutions thereupon.

That the Lords are the great Court of Judicature; and when the Courts below have differed in Opinion, there has been Resort to the Lords for their Judgment, as in the Case of Kindred of half-blood claiming Shares of Intestates Estates.

That when such a Complaint comes before the Lords, they ought to give their Opinion as to the Law of the Land; and that was the Foundation of their present Resolutions.

1. That the first Resolution was, in effect, agreed to by the Commons, tho' they go off to foreign Matters, of which the Lords take no notice.

That the Law of the Land can be altered only by the Legislature.

2. That the second Resolution asserts the Subjects Redress by Action at Law, &c.

That all Constitutions have reckoned this their Safety; that every Man, from the highest to the lowest, hath the Protection of the Law.

That, according to our Constitution, the Subject may contest his Right with the Crown, and upon equal Terms, with that Respect which is due.

That this Resolution only asserts the Right, does not state the respective Courts, where the Redress is to be had: If the Party mistakes the Court, he is punished by Costs of Suit.

The Term of privileged Causes is new, and the Distinction unknown.

3. To support the said Resolution, it was urged, That the Breach of Privilege was not well grounded.

That it belongs to the Crown to make Declarations; the Commons did indeed make Ordinances; and when their Prince was murdered, they came to Declarations.

That a Law, without Promulgation, cannot have Force to make an Offence.

The Liberty of Men's Persons is the greatest Privilege,  
and

and not to be taken away, but in known Cases; the invading Anno 3 Ann.  
of it has shook the best Constitutions. 1704.

‘ That the taking away the Liberty of one mean Person, once endangered the Government of Rome.

‘ That both Houses may commit for Breach of Privilege, but cannot declare any thing to be a Privilege, without good Grounds, nor consequently make any thing a Contempt, that is not known to be so.

‘ That Commitments, or Censures, have not been usual upon Actions at Law, tho’ such Actions have brought the Proceedings or Privileges of either House in question.

‘ That, in the Case of Freedom of Speech, which is the greatest Privilege, there was a Judgment in King Charles the First’s Reign, in the Heat of those Times, against some Members, for Speeches in Parliament: This the Commons first condemned; and then by Conference brought it before the Lords, who came to a Resolution, that it was erroneous, and desired the Lord Hollis to bring his Writ of Error; and thereupon it was reversed by the Lords, in the Time of Charles the Second; which shews the Care the Lords had of the Commons Privileges.

‘ That in Soame and Barnardiston’s Case, the Commons did not concern themselves, only in support of the Action, when in 1678, they examined the Judgment of Reversals as a Grievance.

‘ That the Lords had not interposed in any Suits, which concerned the Proceedings of their House.

‘ That the Earl of Banbury (as he was called) was, by the Lords, adjudged to be no Peer: This was examined in the King’s Bench, where, in Abatement of an Indictment of Murder against him, as Charles Knolles, Esq; he pleaded his Title of an Earl; and in Avoidance of that, the Order of the Lords was replied, and was examined by the Court, and disallowed.

‘ That the late Bishop of St. David’s was prosecuted in the Spiritual Court, and deprived, tho’ a Member of that House; and the Lords did not interpose.

‘ That it is the Wisdom of all Governments, to have the Law open; and that’s the Difference between a legal and an arbitrary Government.

‘ That the Lords do not meddle with the Commons Right of determining their own Elections; they have a settled Possession of it, which is a Right: But if all the Rights of Subjects concerned in those Elections are to be determined there, that will bring all Questions of Freehold, and the Allowance of all Charters, and all Liberty and Property before them.

‘ That a Freeholder of forty Shillings *per annum* has a Right of Inheritance, to which he is born; and if his Vote is denied,

Anno 3 Ann.  
1704.

nied, he is damnified, and loses the Credit of his Vote; and if he shall only come to the House of Commons, they can neither give him Damages nor Costs of Suit.

‘ That a Freehold cannot be determined by any Court which cannot give an Oath.

‘ That the Precedents produced concern only the Right of determining Elections in general.

‘ And an Action by an Elector, for his Right of Voting, does not avoid the Election.

‘ 4. To maintain the fourth Resolution, they said, That it may be lawful for a Man to apply for his Liberty, when he cannot have it.

‘ That the Proceedings in 1675, produced as a Precedent in this Case, were upon a Matter contested between the two Houses, and resolved differently in the Lords House: Topham and the Lieutenant of the Tower were both turned out; and the Ferment was so high, that the Parliament was prorogued, and soon after dissolved.

‘ The fifth Resolution is a Consequence of the fourth :

‘ That the Commitment of the Lawyers was not for licentious Speech, as was insinuated at the last Conference, but for pleading upon the Return of the Writs of *Habeas Corpus*.

‘ That ’tis the particular Character of that odious Court called the Inquisition, that no body dares appear for, or resort to a Person imprisoned there, but he is left to the Mercy of that Court.

‘ The Lawyers are not to be answerable for every thing they argue ; they are to do their Duty for their Clients, and the Court is to judge of it.

‘ 6. The Commons declining the last Resolution is an agreeing to it, though not so parliamentary as it would have been to have agreed to it directly.

‘ That the Lords are the only proper Judges, whether the Writ of Error lies before them.

To these Arguments the Managers for the Commons answered :

‘ That they agreed the necessity of a good Correspondence between the two Houses, especially at this time of common Danger : and that the Commons had fully shewn their Desire to maintain that good Correspondence, by condescending to meet their Lordships at this free Conference, altho’ their antient and fundamental Privileges had been called in question, and denied by their Lordships, and that in an extraordinary and very unparliamentary Manner.

‘ That the delivery of Resolutions is so far from being the only Method of Conferences, that the more usual Method has been to offer Reasons, without Resolutions; and it would be  
very

very difficult to give any Instance (before this) of either House delivering positive Resolutions at a Conference, without the Reasons, at the same time, to support them, and that induce them to make such Resolutions.

Anno 3 Ann.  
1704.

‘ 1. That the Commons Answer to the Lords first Resolution, is not foreign to the Subject-Matter of the Conference: Because the Commons apprehended the Subject-Matter to be their Lordships denying the Privileges of the Commons, on the one hand, and their extending their own Judicature beyond its proper Limits, on the other: And therefore the Commons could not but take notice, how far their Lordships had transgressed in the Exercise of an unwarrantable Judicature, in Contradiction to that very Rule they had laid down for the Test of the Proceedings of the Commons, and by which the Commons had strictly governed themselves.

‘ That tho’ the Commons cannot create new Privileges; yet, in Coke’s 13 Reports, fo. 63. ’tis said, the Privilege of Parliament, either of the upper House, or of the House of Commons, belongs to the Determination or Decision only of the Court of Parliament; for every Court hath a Right to adjudge their own Privileges, according to the Book of Ed. 4. Sir John Paston’s Case.

‘ 2. To their Lordships Arguments for their second Resolution your Managers answered:

‘ That every Person injured, hath a Right to seek Redress; but then that Redress must be sought in the Place where the Matter is properly cognizable.

‘ 3. To what the Lords offered upon the third Resolution, your Managers answered:

‘ That Matters of Election do not belong to the Courts below, but only to the House of Commons, which hath been in long Possession of them: That there was an Act of Parliament made in the time of King Henry the Sixth, to give an Action for a false Return of Members to serve in Parliament, because no such Action lay at Common-Law, it relating to Elections.

‘ That double Returns not being within that Statute, no Action lay in the Courts of Common-Law, for making any double Return, ’till the Statute 7 and 8 William III.

‘ That, besides the Instances given, in the Answers the Commons gave to the Lords Resolutions, at the last Conference, this Distinction, as to privileged Cases, is fully and undeniably warranted by the Statute made in the first Year of King William and Queen Mary, entitled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; where, among other Endeavours of the late King James, to subvert and extirpate the Laws and Liberties of the Kingdom, these are mentioned, by violating the Freedom of Election of Members to serve in Parliament,

Anno 3 Ann.  
1704.

and Prosecutions in the Court of King's-Bench, for Matters and Causes only cognizable in Parliament.

‘ Besides, that there are privileged Cases as well as privileged Persons, appears from hence: A Prohibition, and afterwards Attachment, lies, for suing in the Spiritual Court for a Temporal Cause determinable in the Temporal Court. There are divers Laws within this Realm, of which the Common-Law is but one, as appears in Coke's 1 Inst. Fo. 2. B. where he mentions *Lex & consuetudo Parliamenti*, & *lex communis*, as distinct Laws.

‘ As there are several Laws, so there are several Courts and Jurisdictions, and several Causes proper for those several Laws and several Jurisdictions: Of these the high Court of Parliament is the first: *Lex & consuetudo Parliamenti* is a great Branch of the Law of England; and many Causes are to be determined only by that Law, as appears in the Inst. Fo. 23.

‘ With such Causes as are in their nature parliamentary, and to be determined by the Law of Parliament, the Common-Law, and Common-Law Judges have nothing to do; as further appears, 4 Inst. Fo. 14, 15. where the Expressions are very suitable to the present Controversies.

‘ That the Persons assisting in the Prosecution of such Actions, after a Prohibition by the Commons, for that such Causes belong to their Jurisdiction, the committing them for the Breach of their Privileges in that particular, is no more than is done by the Common-Law Courts for a like Contempt, when Persons will sue, after a Prohibition, to the Spiritual Courts: And the Commons usual way to defend their Privileges against such invasions, has been by committing the Tools and Instruments thereof.

‘ It is a fundamental Maxim of the Law and Custom of Parliament, which is the highest and noblest Part of the Law of England, and particularly adapted to the Preservation of the Liberties of this Kingdom, that the two Houses are independent of one another, and sole Judges of their Rights and Privileges: That their Lordships did admit, the Commons have a Privilege to judge of the Rights of their own Elections, to one Intent, but not to another: But if the Commons have such a Privilege to one Intent, they must be Judges of it to all Intents and Purposes whatsoever; and, being sole Judges thereof, their Judgment cannot be legally called in question, either by Writs of *Habeas Corpus*, Writs of Error, or otherwise, in any other Court; and consequently the Proceedings in Westminster-Hall, and in the House of Peers, and the Judgment given there, are all null and void, & *coram non iudice*.

‘ The Commons Commitment for commencing these Actions, is no more than what they and their Predecessors have in all times practised, in Cases of Breach of Privilege.



‘ 4. In answer to what the Lords had offered upon the fourth Resolution, your Managers insisted, that Application of Friends for the Liberty of any Person imprisoned, ought to be in a proper Place, and in a proper Manner, which in this Case ought to have been only to the House of Commons, and by the Petitions of the Persons they had committed.

Anno 4. Ann.  
1704.

‘ That the Proceedings in 1675, were so well grounded, that they must be Precedents to the Commons to follow at all times upon the like Occasions.

‘ 5. To what the Lords offered upon the fifth Resolution, your Managers answered ;

‘ The Licentiousness of Speech used by the Lawyers, was only mentioned among other Particulars of the Provocations they gave the House of Commons ; but they were committed for pleading upon the Returns of the Writs of *Habeas Corpus*, in behalf of the Prisoners committed by the House of Commons, which the Commons (who are the only Judges of their own Privileges) take to be a great Breach of the Privilege of their House.

‘ 6. To the last Resolution your Managers insisted, that no Writ of Error lies in that Case ; and that there may be Cases wherein no Writ of Error lies, was their Lordships Opinion in the Case of the late Bishop of St. David’s, who brought his Writ of Error upon the Courts not granting him a Prohibition.

‘ The Case of Sir Thomas Armstrong, mentioned by their Lordships, was particular, in that the Commons then apprehended he was entitled to a Writ of Error, within the meaning of the Statute of Edward the Sixth.

‘ Your Managers further urged the Novelty of the Action in the Case of Ashby and White, of which no Footsteps can be found in any Book of the Law, or in any Record, although we have faithful Reports of all memorable Cases for four hundred Years past ; and the Occasion of such an Action must frequently have happened.

‘ The Lords themselves (when they had no Design upon the Privileges of the Commons) were of Opinion, in the Case of Sir Samuel Barnardiston, in the first Year of the Reign of King William, that no such Action lay ; and there is no Reason can be offered to maintain this Action, but held more strongly in the Case of Sir Samuel Barnardiston, as Damages, Costs, &c. And it is an absurd Distinction to say, that in this Case the Right of Election cannot come in question, because the determining of the Right of the Electors doth generally determine the Right of the Elected ; and almost all controverted Elections depend upon the Qualifications of the Electors.

‘ That the Commons had shewn such a Disposition to maintain a good Correspondence with their Lordships, though their

Anno 3 Ann.  
1704.

Lordships in the Case of Ashby and White, had, contrary to the Judgment of the Courts below, allowed the Action, upon which the Plaintiff had taken out Execution, and levied the Money; that the Commons took no notice of it, and were willing to let the Matter fall, which might occasion any Contest in this Time of public Danger: But when other Actions of the like Nature were still commenced and prosecuted, whereby all Elections would be brought to the Determination of the Lords, or, at least, in time so influenced, as that the Lords would in Effect chuse the Commons, and thereby the Independency of the two Houses would be destroyed, which is the great Safety of the Constitution; then it concerned the Commons, who are the Representatives of the People, to oppose what would be so fatal to our Constitution.

‘ The bringing Writs of *Habeas Corpus* upon the Commitments of the Commons, and a Writ of Error thereupon before the Lords, would bring all the Privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon such Writs of Error.

‘ Nay, such Writs of Error upon every *Habeas Corpus*, would bring the Liberty of every Commoner in England, to the arbitrary Disposition of the House of Lords.

‘ And if a Writ of Error cannot be denied in any Case, and the Lords alone are to judge whether the Case be proper for a Writ of Error, then all the Queen’s Revenue, all her Prerogatives, and all the Lives and Liberties of the People of England, will be in the Hands of the Lords, for every Felon, Burglar, and Traitor, will be entitled to a Writ of Error before the Lords; and they will have even Power of Life and Death.

‘ And by Writs of Error and Appeals, as already exercised, they will have all our Properties; by such new-invented Actions they will have all our Elections; and by such Writs of *Habeas Corpus*, and Writs of Error thereupon, they will have all our Privileges, Liberties, and even Lives, at their Determination; who determine by Vote, with their Doors shut, and it is not certainly known who it is that hurts you.

‘ The Novelty of those things, and the infinite Consequences of them, is the greatest Argument in Law, that they are not of Right.

‘ The Commons are not contending for a small thing, but for their all:

‘ Especially since the Lords have found out a way to distress the Government, by detaining the Money given by the Commons, which must come last to them, because the Money-Bills must begin with the Commoners; and if by that means they can extort Writs of Error where they never were heard of, the Commons must commit the Persons employed in all such Innovations, or else they must lose, by such Contrivances, all that they have. ‘ In

‘ In the Case of Denzil Holles, Sir John Elliot, &c. in Anno 3. Ann.  
1667, the Commons declared the Judgment given in 5 Car. I.  
to be an illegal Judgment, and against the Privilege of Par-  
liament ; and this they did of themselves, before they ac-  
quainted the Lords therewith.

1704.

‘ Afterwards, because it concerned the Lords as well as the Commons, they imparted their Resolutions, to the Lords, who concurred with the Commons ; and the Writ of Error, which was afterwards brought at the Desire and Instance of the Lords, and not at all by the Desire of the Commons, they rested upon their own Resolution, that it was an illegal Judgment.

‘ The Lords, by way of Reply, said further, that this is a Cause of Liberty and Property, and judicial Proceedings, which the Commons had endeavoured to stop.

‘ That the Conference, therefore, asked by the Lords, upon the fundamental Rights and Liberties, was proper.

‘ That they are the same Terms the Commons used, 3 Car. when their Liberties were attack’d.

‘ That the true Method of Conference is not by way of Question and Answer, but by Resolutions ; which are not so binding, but if the Lords are convinced by Arguments, they may retract them.

‘ That the Lords, sure, may regularly take notice of this printed Paper, when it contains such Declaration, as all Persons are bound to take notice of at the Peril of Commitment.

‘ That the Right of the House of Commons to determine their own Elections is not in question, or intended to be changed ; but the two Precedents produced to support them are very much mistaken.

‘ That the Case of Sir Francis Goodwin is not fairly stated, the word Order being omitted in the Commons Answer to the Lords Message, relating to the Commons Proceedings in this Case ; which refers to a particular Order of the House of Commons, they having before determined that Election. That it is not taken notice that the Lords went with the Commons to the King, and were Mediators ; and that, at the last, a new Writ issued for a new Election.

‘ That, in the staring the Precedent 28 Eliz. the Commons have not taken notice, that the Election was in that Case determined by the Judges.

‘ That the Commons did not confine their Resolution to Armstrong’s Case ; But it is general and absolute, that a Writ of Error in Felony or Treason, is of Right and not of Grace.

‘ That by the Writ of Error brought in the late Bishop of St. David’s Case, upon the Denial of a Prohibition, and  
disallowed

Anno 3 Ann.  
1704.

disallowed by the Lords, it appears, when a Record comes improperly before them, they are so just as to dismiss it.

‘ That, instead, of proving the Law, the Consequences are urged, which is not right arguing.

‘ That the Question is, whether the Queen is bound to grant a Writ of Error? If she is, it will be hard for any Body of Men to interpose with the Crown, and stop it, to hinder that Fiar, which, by the Opinion of the Judges, she ought to give.

‘ She is obliged too, by *Magna Charta: Nulli negabimus, nulli deferemus, Justitiam.*

‘ That whether a Writ of Error lies or not, will afterwards be proper for the Judgment of this Court, as ’tis of any other Court where a Writ of Error is Returnable.

‘ That the Commons are very safe, and may depend the Lords will be as tender of their Privileges as of their own.

‘ That whatever Privileges accrue to the Commons, will accrue to the Lords also: If the Commitments of the Commons are free from the Cognizance of the Courts below, those of the Lords will be so too.

‘ That 3 Car. the Commons maintained, that the Measure of Persons being bailable, is not from the Authority which committed, but from the Cause of Commitment.

‘ Your Managers further observed, this Subject-Matter was scarce ever in Conference before, between the Lords and Commons, and will seem strange to Posterity.

‘ That the Lords Concern for Liberty and Property cannot be equal with that of the Commons; for the Lords Liberty is better fenced, and consequently their Property too, than that of the Commons.

‘ The Lords are less interested in the Event of this Conference than the Commons, who are the Trustees of those who sent them, and are bound in Duty and Interest to preserve their Liberty and Property; and having but a triennial Duration, which is at this time near expiring, it is not to be imagined they will infringe what they are entrusted with, and so much concerned to maintain; and that so notoriously, that the Lords should complain, who are much less concerned, but more to be feared, as their Designs as well as Honour may be hereditary.

‘ At the first Conference, six Resolutions were delivered, as Matters of undoubted Truth and Law.

‘ And the Proceedings of the Commons are to be tried by these Rules, though they were no Parties to the making them.

‘ 1. The first is not to be excepted against; only is an Insinuation, as if the Commons had practised the contrary, which they are not conscious of.

‘ 2. To the second, there are many Injuries for which no Action at Law is allowed; as if a Judge gives a wrong Judgment, the Redress by Writ of Error is no Satisfaction for the Damage.

Anno 3 Ann.  
1704.

‘ So for other Acts of a Judge, or Court of Justice, as denying a Writ of *Habeas Corpus*, or Bail, no Action lies, but upon the late Statute.

‘ That their Lordships, not making any Distinction between Matters and Causes, which were exempt from the Cognizance of the Common-Law Courts, as being solely cognizable in Parliament, and Causes which were exempt only in Respect of the Persons sued, being entitled to Privilege of Parliament, seems to be the Occasion of the mistakes their Lordships have entertained, in relation to the Proceedings of the Commons; that the House of Commons is a Court of Judicature in many Respects; and, as such, hath, as well as other Courts, Causes proper and peculiar to its Jurisdiction.

‘ That the Law-Books, and particularly the Lord Coke, speak of Matters of Parliament which are not to be determined by the Common-Law, but according to the Law and Usage of Parliament.

‘ That all Matters moved or done in Parliament, must be questioned and determined there, and not elsewhere, has been heretofore asserted by the House of Commons, as their antient and undoubted Right; and has been allowed both by the Judges of Law, and by their Lordships. And when the Judges of the King’s-Bench, in the fifth Year of King Charles the First, upon an Information against Sir John Elliot, Mr. Hollis, and others, held, that Matters done in the House of Commons, if not done in a parliamentary way, might be questioned elsewhere; that Judgment was afterwards reversed in Parliament.

‘ That their Lordships allowed all Matters relating to Elections, ought to be determined solely by the Commons: And tho’ their Lordships attempted to make a Distinction between the Right of Elections, and the Right of Electors, yet their Lordships cannot find room for such a Distinction, unless they would say, the Right and Qualification of the Electors was a Matter not relating to Elections.

‘ That by the Parliament Rolls, 11 Rich. II. it appears a Petition was exhibited by Parliament, and allowed by the King, that the Liberties and Privileges of Parliament should be discussed by the Parliament, and not by any other Courts, nor by Common or Civil Law; and, therefore, when the Judges have been asked their Opinions in Matters of Parliament, they have answered, that the Privileges of Parliament ought to be determined there, and not by any other; as they did in the Case of Thorp, Speaker of the House of Commons, 31 H. VI.

TOME III.

H h h

‘ That

Anno 3 Ann.  
1704.

‘ That these Matters are not exempt from the Determination of other Courts, in respect of the Persons sued; for then they might be determined there after the time of Privilege was expired; whereas it is evident, that such Matters and Causes cannot be determined, in any other Court than that of the Parliament, after the Expiration of the time of Privilege, any more than before.

‘ That these Matters are determinable in Parliament, although the Persons prosecuted are not entitled to the Privilege of Parliament, as appears by many Instances, particularly by that of the Mayor of Westbury, in the eighth Year of Queen Elizabeth, who, for taking four Pounds to get a Person elected a Burgess for that Borough, was fined and imprisoned by the House of Commons, although he was not a Person entitled to the Privilege of Parliament.

‘ That it may be as well said, that an Action is maintainable for refusing any of the Lords a Right of precedency in Parliament; yet it cannot be imagined the House of Peers would be content the same should be brought in question, in any of the Courts of Law, and decided by a Jury of Commoners.

‘ But the same Arguments will hold for maintaining such an Action, to recover Damage for refusing Precedency to him that hath Right to it, as for maintaining an Action to recover Damages, for refusing to take down upon the Poll the Vote of an Elector: For it may with equal Reason be said in both Causes, that the Plaintiff hath a Right, that the Defendant refused him that Right, that such Refusal is an Injury, and consequently ought to be repaired in Damages.

‘ 3. As to the third Resolution, the Commons are not accountable to the House of Lords, or any other Court, for what they did in that Matter.

‘ Their Privileges being Rights peculiar to that House, what is their Privilege, and the Breach of it, is only examinable, and to be judged by themselves.

‘ That the Courts of Westminster-Hall have that Deference for each other’s Judgment, that, in Commitments for Contempt or Misdemeanour, which are frequent every Term, another Court, though superior, will not redress the Prisoner by *Habeas Corpus*, or otherwise; but he must address to the Court which committed him, much less can an inferior Court do it.

‘ The House of Commons therefore expected the same Deference from those Courts which they pay each other; and also from the Lords House what is due to a co-ordinate Jurisdiction: The Commons taking themselves to be superior to any Court in Westminster-Hall, and not allowing any Court in this Government to be their superior, no more than their Predecessors have done.

‘ The

‘ The Commons do not intend by their Declaration to make a new Law, but barely declare what the Law was, and prohibit any Person to act contrary. Anno 3 Ann.  
1704.

‘ The Term Declaration is not peculiar to the Prince, but is a familiar Term in Westminster-Hall.

‘ The Commitment was not for acting contrary to the Vote of the Commons, but for acting contrary to Law, after the Law was notified to them by that Declaration, and they thereby prohibited to proceed in that Course.

‘ To set this in a true Light, if a Man sues in the Admiralty, or ecclesiastical Court, for a Matter properly cognizable at Common-Law, the Party shall not indeed be committed for commencing that Suit; but if the Defendant in such Suit obtains a Prohibition, which declares what the Law is, and gives the Plaintiff notice that his Suit is contrary to Law, and therefore prohibits him to proceed any further therein; if he does proceed, an Attachment will issue to arrest him for Breach of Prohibition, as it is said, though in truth, it is for acting contrary to Law, after he had been admonished what the same was.

Now there’s no Difference between the Declaration complained of, and the Prohibition mentioned, but in the Name only; both declare what the Law is; both admonish the Person offending, and both command him not to proceed; so that there is as much reason to complain of a Prohibition at Law, as of the Declaration mentioned in the Resolution.

‘ 4. To the fourth Resolution, if it respects the Prisoners committed by the Commons, they apprehend the Application ought to be to their House.

‘ 5. For the fifth Resolution, the Commons, have the same Exceptions to it as they had to the third Resolution: For if Council, Attorneys, or Solicitors, are prohibited, and act contrary to the Order of any Court, they are guilty of a Contempt of that Court, and for such Contempt they may be taken into Custody.

‘ To their Lordships last Resolution, it is very true, that in the last Reign the House of Commons did so resolve in the Cause of Sir Thomas Armstrong, as hath been cited, which Case was, that Sir Thomas Armstrong was indicted for High-Treason, and afterwards fled beyond Sea, where he was at the time of the Exigent awarded against him; and afterwards, within a Year after the Exigent awarded, he was brought Prisoner into England, and would have a Writ of Error, but it was denied him; upon which the House of Commons made the Resolution mentioned. At the Common-Law, if a Person had been guilty of a capital, or any other Crime, and had been in England at the time of the Indictment found against him, but was beyond Sea at the time of the Exigent awarded,

Anno 3 Ann.  
1704.

and thereupon an Outlawry was had, the Person outlawed might any time afterwards have reversed that Outlawry, for that Error in Fact; the Practice whereupon was, that Persons guilty of Treason, would fly beyond Sea, and there stay till the Witnesses against them were dead, and then return into England, reverse their Outlawry, and become safe. To remedy which Mischief, was the Statute of Edward VI. made, which takes away the Error in Treason, unless the Person outlawed rendered himself to the Chief Justice within a Year after the Outlawry: Within which Exception was the Case of Sir Thomas Armstrong, as the Commons apprehended, which was the Reason of the Resolution: And in other Cases the Practice since that Resolution has been otherwise; for in the Case of Salisbury, who was attainted of Felony for counterfeiting the Stamps, a Writ of Error was deny'd him, tho' he petitioned for the same. But if this Resolution is aimed at a Writ of Error for denying a *Habeas Corpus*. or denying to bail, or discharge Persons committed by the House of Commons, this Resolution is very wide from the Purpose; for, whether a Writ of Error be a Writ of Right, or a Writ of Grace, in all Cases where a Writ of Error does lie, yet their Lordships Resolution cannot be carried so far as to make a Writ of Error lie, in a Case where there is no Judgment pronounced, as there never is in the Case of an *Habeas Corpus*, or in any thing relating thereunto: for if a *Habeas Corpus* is denied, or if granted, and the Persons thereupon denied to be bailed or discharged, this is no such Judgment, but that the same, or any other Court, may grant an *Habeas Corpus*, and discharge or bail the Person committed.

' Your Managers added, The Commons hoped it would be no Difficulty to convince the Lords, that these Resolutions were both unreasonable and unparliamentary, and they have not been much justified; and certainly it cannot be parliamentary, or reasonable, for the Lords to condemn the Commons in the Case of their own Privileges, when the Lords are no Judges of them: And therefore, though the Commons have now entered into this Debate with their Lordships, it was never meant to subject their Proceedings to the Lords Examination, but only to satisfy the Lords, and all Mankind, that the Commons have not done an extravagant thing. That a noble Lord said, they did not intend to interrupt the Commons in the Determination of their Elections. The Commons are beholden to them for that; for otherwise, when they thought fit, they might as well meddle with that, as several other things they have of late taken upon them.

' The Commons hope their Lordships will consider what the Constitution is, and think it not reasonable, that any  
Part



Part should exceed its due Bounds: But there have been great Invasions made upon it by their Lordships, and some Instances of that kind have been delivered at the last Conference; and it would be easy to shew, that the Judicature which of late has been assumed by the Lords, is not consistent with the Constitution.

Anno 3 Ann.  
1704.

' A Writ of Error in this Case, the Commons take to be such: And the Commons would be blameable for admitting of it, since no such Writ does lie: and the Commons have done well in advising her Majesty not to grant it, since it is against the Law: The Commons find no such Writ ever brought.

' 'Tis said their Lordships will do Right to the Commons upon it; but the Commons can never think it reasonable to trust the Liberties of the People of England to their Lordships Pleasure, for they that have Power to do Right, have Power to do Wrong; and Power is so often abused, that the Commons can never suffer the Lords to assume this new Power to themselves. Were we certain Power could never be abused, an arbitrary, and what is called a tyrannical Power, would be the best in the World, for that not being tied to any Rule, would apply the Remedies proper in all Cases; but since this is not to be expected, the Commons were in the right to stop this Writ of Error: They find one thing has brought on another; and therefore, for the future, shall oppose any further Progress of this nature.

' It was further urged by the Lords, in Reply, that if such a Writ of Error wants a precedent, 'tis a new sort of Imprisonment has occasioned this.

' That the Consequences urged by Gentlemen cannot avail.

' That if the Law be so, nothing but the Legislature can alter it.

' That 'tis said, the Lords cannot judge of the Privilege of the House of Commons. They do not say they can; there may be no Occasion; but from Precedents it appears they have done it by Writ of Error, and at the Desire of the Commons.

' That not only the Lords, but all Mankind will judge of what is not their Privileges, if they claim that which neither Sense, nor Reason, nor Law will justify.

' That if the Commons say, to bring an Action at Law against Persons not privileged is a Breach of Privilege, all Mankind will say it is not.

' That this comes upon a Petition of five Men to the Lords, setting forth, they have been imprisoned by the Commons for bringing their Actions against the Constables of Aylesbury, and for suing out Writs of *Habeas Corpus*, and are at least delayed in a Writ of Error.

' The

Anno 3 Ann.

1704.



‘ The Question lies in a narrow Compass; Whether they have a Right to bring their Actions at Law; if so, it is Injustice to imprison them for doing it;

‘ A Hardship to deny them Writs of *Habeas Corpus*, and a greater to imprison their Council and Agents for endeavouring to procure them their Liberty.

‘ That their Right is settled by a Judgment of Law, which will ever remain, till altered by the Legislature.

‘ That a Declaration of one House, or both Houses, cannot alter the Law.

‘ That the Lords intend not to disturb the Commons in the Right of judging, only as to their own Members

‘ That the material Difference is between judging of the Right of the Electors, and the Right of the Elected.

‘ And there may be Cases, as here, where the Election is not in question, and yet the Electors receive great Damage in being denied their Vote.

‘ That the Right of Freehold is a Man’s Birth-right, and cannot be taken from him but by Law.

‘ That if any Person be injured by any Officer whatsoever, he may, by Law, seek for Reparation: otherwise, there is a Right without a Remedy, which is no Right at all.

‘ In answer to this, your Managers said, This Action is of the first Impression; and ’tis a good Argument no such Action lies, because none was ever brought before, and especially, because Occasions cannot be presumed to have been wanting in every new Election of Members to serve in Parliament, nay many more justifiable than in the late Case of Ashby and White, where the Plaintiff was a Person likely to become chargeable to the Parish, and therefore removed by the Order of two Justices: And this, by the way, brings in mind the printed Case of Ashby and White, from the Report of the Lords Committees, where ’tis given in Answer, no such Action before was brought, that few had such a true English Spirit as that Plaintiff, tho’ ’tis said he then was a Cocker, and formerly had been an Hostler; and his Breast, it seems, was first warmed with this true English Spirit, which was rather a Spirit of Faction;

‘ And it is worthy Observation, that in this Case, the Costs and Charges sustained by Ashby, or somebody for him, could not be less than 100*l.* more than the Costs and Damages he recovered; so that it was *infelix Victoria*, and no Benefit, but a Loss to him. A noble Lord was pleased to say further, that tho’ he would not pretend to judge of the Commons Privileges, yet he might of what was not their Privileges. That Argument appears very strange, since the Commons say the Matter in question is their Privilege; and if the Lords saying ’tis not, is sufficient to divest them of it, the same Method

thod may divest the Commons of all the rest. The Commons Anno 3 Ann  
1704. are not going about to create new Privileges, but continue the Possession of those which their Predecessors ever enjoyed and exercised; and which they think neither this or any other future House of Commons, can ever depart from.

‘ The Lords afterwards receded from the Generality of their second and last Resolutions.

‘ They said, the second, so far as that every one who apprehends himself injured has a Right to seek Redress, was general, but what followed of an Action at Law, was confined to the present Case.

‘ So the sixth, tho’ it was general, was to be understood in this particular Case.

‘ As to what was said, that none but a superiour Court can take cognizance of what another does, it was answered, That when the Earl of Shaftsbury was committed by the House of Lords for a Contempt, he was brought by a *Habeas Corpus* to the Court of King’s-Bench: This was complained of to the House of Lords, but they passed it over, being of Opinion a Man might seek for Liberty where he would.

‘ The Lords Judicature is too sacred a thing to be touched.

‘ Your Managers thereupon returned, They wished your Lordships had said that at the beginning, it would have saved much time and shortened the Debates; for the Commons think their Privileges as sacred as the Lords can their Judicature. Your Managers proceeded to say,

‘ That as nothing offered at this Conference, or the last, was meant to submit or lessen the Privilege of the Commons; much less had any thing in the Precedents, in the Time of Queen Elizabeth and James I, produced at the last Conference, any Tendency that way.

‘ And, in answer to some Objections made to those Precedents, your Managers said, the Commons did not take upon them to set forth the whole Proceedings which are very long; but tho’ they had not their Books there to make out the Quotations, can depend upon what they have stated to be true.

In the Precedent of Sir Francis Goodwin’s Case, cited by the Commons, there are no Omissions that, duly considered, can make that Case less to the Advantage of the Commons, on this Occasion; for if the Word Order be omitted, and taking the Answer to have been, that they did conceive it did not stand with the Honour and Order of the House, to give Account of any of their Proceedings or Doings, that will little alter the Case, since it is plain, from the Entry on the Journal, the Commons in returning this Answer, had regard chiefly to the Precedent then quoted, 27 Eliz. when the Commons refused to give the Lords any Reasons (tho’ the Lords desired them) for the rejecting, at the first reading, a

Anno 3 Ann.  
1704.

Bill the Lords had sent down to the Commons: The Reasons for the Commons Proceedings in this Case were prepared by themselves, which they did communicate to the Lords; but the Lords were not to add or diminish: And tho' some Lords were present at the Commons delivering their Reasons, there is a material Distinction, upon the Commons Journals, of those Lords being present as Lords of the Council, and not as Lords of the Parliament.

' And the noble Lord who took notice of the Commons Omission in the stating of this Case, and pretended to state it fully and truly himself, omitted, that the new Writ was ordered to issue at the Request of Sir Francis Goodwin, by his Letter; which, for the Satisfaction of the House, was read and entered on the Journal, before any Question for the new Election was made.

' In that of the 28th of Eliz. the Commons did not, at the last Conference, omit to take notice of the Judges Determination; but it is justly stated as a Matter the Commons, in the Examination of that Case; were informed of, but did not respect; the Commons then asserting themselves to have the sole Determination of that Case.

' Your Managers further urged, Tho' the Commons do not submit their Privileges, it may be proper to ascertain what they claim, with the Reasons why they are at this time the more concerned to oppose all Attempts upon them.

' They do agree the Right of voting may be grounded upon Freehold, Charter, or Prescription; and they do not pretend to draw them from the Courts of Common-Law, when, as such, they come there originally, immediately and directly in question.

' But it is as plain, when the Right of voting in an Election is the thing originally, immediately and directly in question, that is solely cognizable in the House of Commons, whose Determination is the standing Rule for all Places: And if the Elections only were examinable by the Commons, and every Elector's Vote was examinable elsewhere, the Consequence of such different Determinations is fully stated, as delivered at the last Conference; which common and known Difference of coming originally, or collaterally and incidentally in question, will answer the Case of the Earl of Banbury, where the Order of the House of Lords came only incidentally in question, upon an Indictment for Murder; nor is there any Injury in this case that requires an Action, much less Damages: The Elector's Vote, upon every Election, depends upon its own true Foundation, as the Elector then stands entitled by Freehold, Charter, or Prescription, whether he was entitled, or was allowed, or refused at any former Election, or not.

' Nor

‘ Nor is Damage always necessary to a Remedy; that which is specific and gives the Right, is the most noble and compleat Remedy; Damages being only secondary, substituted by way of Recompence where the other cannot be had, as appears by many Instances in the Law. Anno 3 Ann.  
1704.

‘ The Commons had great reason to assert their ancient Right, and withstand these late and new Attempts upon the Constitution, which in every step have been unprecedented; viz. the Action, the *Habeas Corpus*, and the Writ of Error.

‘ The Action was never known, tho’ the like Occasions have been as frequent as Elections, unless these Aylesbury Men have more refined Notions of their Rights and Privileges than others ever had.

‘ As to the *Habeas Corpus*, the Argument is so much stronger as Liberty is dearer than Property.

‘ As to the Writ of Error, tho’ the Lords Resolution is general, they now assert it to be of right only in this Case.

‘ As the Commons, at the last Conference, waved the Point of a Writ of Error being of Right or of Grace, so they do now, not by way of Admission, but as ’tis not material in this Case.

‘ But thus much may be observed, that this is not the common Case, where the Question arises and falls under the Determination of the Judges of the Law, which is of Petitions of Right, and Writs of Error in the Courts of Westminster, (as that of Sir Thomas Armstrong was) where the Queen is Party; there it is in the room of a Suit against the Crown, and if denied, the Party has no Remedy.

‘ This Petition to the Queen, for a Writ of Error in Parliament, is properly a Parliamentary Case, and is the same when the Queen is Party or not; and seems some Remnant of our ancient Constitution, where all Petitions were to the King in Parliament. or to the King and his great Council, which was distinct from the House of Peers, and were examined by Triers, whether fit for the Parliament to proceed upon, or not; and to say, that upon such Examination, they could not be rejected, is to say, that Examination was insignificant. And, if in this Case no Writ of Error lies, it cannot then be said, that the denying of it is an Obstruction of Justice, or contrary to *Magna Charta*.

‘ That a Writ of Error lies not in any Proceeding on any *Habeas Corpus*, has been the uniform Opinion of former times, as appears in the Case of the City of London, 7 Jac. reported by the Lord Chief-Justice Coke, in his eighth Report, where one under an Arrest, for the Penalty in a By-Law, brought his *Habeas Corpus*, and the Judges took it for a Ground, that no Issue or Demurrer could be joined upon the Return, nor could any Writ of Error lie upon their

Anno 3 Ann.  
1704-

Award; and upon that, as a Principle, grounded their Resolution, *Fol.* 128.

‘ And that this never came directly in question, is because a Writ of Error in such Case was never asked, much less had, upon a bare Commitment of any Court whatsoever: And it is hard to imagine that there is any lawful Resort or Appeal for Liberty, left untried at this Day, when so many, in all times, have had Occasion to apply for it; especially considering the frequent Commitments of both Houses of Parliament.

‘ That the Commons are not surprized, to find the Lords make such a Shew of submitting their Privileges to the Courts of Westminster, when it is in order to draw all the Rights and Privileges of both Houses to their own final Determination; and much less when they consider how insignificant all Courts of Justice are rendered, while their Lordships exercise the last Resort in Judicature.

‘ The several Attempts in the Way of Judicature, which have been made upon the Constitution, are so many Reasons for the Commons at last to make a Stand.

‘ The very Form of the Writs of Error in Parliament is altered in a most material Part.

‘ It is still returnable into Parliament generally; and the Judgment is entered, *per Cur’ Parliamenti*.

‘ But where the ancient Form, which appears in *Rosall’s Entries, Fol.* 302. was, *Ut de concilio & advisamento dominorum spiritualium & temporalium ac communitatum in Parlamento nostro existantium ulterius pro errore corrigendo fieri faciamus quod de jure, &c.*

‘ Of late, as appears by a Writ of Error, printed in the Lord Chief-Justice Saunders’s second Report, *Fol.* 223. (and agreeable to that are all the modern ones) that Word (*communitatum*) is omitted.

‘ This is only touched for an Instance, that even the highest Records, which ought to derive to us our Laws and Constitution pure and entire, have been corrupted.

‘ And to proceed to instance some modern Innovations upon our Constitution, in point of Judicature:

‘ In December 18. Jac. 1. It appears by the Lords Journal, that an Appeal to the Lords from a Court of Equity, was by them acknowledged to be as new and unprecedented, as any of the Attempts which occasion the present Conference. —

‘ Here the Lords interrupted your Managers, affirming, That they were restrained from entering into Debate of their Judicature of Appeals from Equity, as foreign from the Subject-Matter of the last Conference. But it was answered, and insisted by your Managers, that this was Part of the Matter offered at the last Conference.

‘ And

‘ And your Managers declared, That they had more to offer, and were ready to proceed upon the Subject-Matter of the last Conference, in such Manner as they thought their Duty to the Commons of England required, if their Lordships thought fit to hear them: Whereupon the Lords did rise, and broke off the Conference.’

anno 3 Ann.  
1704.

*Resolved*, That the Proceedings of this House, in relation to the Aylesbury Men, committed by this House for a Breach of Privilege, and the other Proceedings of this House in that Matter, are in Maintenance of the ancient and undoubted Rights and Privileges of the Commons of England.

*Ordered*, That all Proceedings, in relation to the Aylesbury Men, committed by this House, and the Report of the Lords Journal, and Reports of the Conference, and of the free Conference, be printed.

We must now return back to the Month of December, on the 8th of which, Her Majesty was pleased to give the royal Assent to the following Bill, *viz. An Act for granting an Aid to her Majesty by a Land-Tax to be raised in the Year one thousand seven hundred and five.*

And afterwards her Majesty was pleased to make a gracious Speech to both Houses; which is as followeth:

‘ My Lords and Gentlemen,

‘ **I** Am glad of this Occasion, to return you my hearty Thanks for your making good the Assurances you gave me in your several Addresses, of your Zeal and Readiness to promote the public Business. Queen's Speech  
in Parliament.

‘ And I must thank you, Gentlemen of the House of Commons, in particular, for your early Dispatch of so great a Part of the necessary Supplies, which cannot fail of being a very essential Advantage, both in the Forwardness of our own Preparations, and in the great Encouragement it will give to all our Allies.

‘ My Lords and Gentlemen,

‘ I look upon this good Beginning to be so sure a Pledge of your Affections for my Service, and for our Commonwealth, That I have not the least Doubt, but you will continue with the same Zeal to dispatch what remains of the Public Business, and to bring this Session to a happy and speedy Conclusion.’

The 11th, being the Day appointed by the Commons, for taking into Consideration the great Services that had been performed by the Duke of Marlborough, the last Summer, and to consider of some Means to perpetuate the Memory of them; they came to this unanimous Resolution, ‘ That an humble Address be presented to her Majesty,

Anno 3 Ann.  
1704.

Vote in favour  
of the Duke of  
Marlborough.

expressing the great Sense this House hath of the glorious Victories obtain'd by the Forces of her Majesty, and her Allies, under the Command of his Grace the Duke of Marlborough; and humbly desir'd her Majesty, That she would be graciously pleas'd to consider of some proper Means to perpetuate the Memory of the great Services performed by the said Duke." This Address being presented to her Majesty by the whole House, Her Majesty was pleas'd to give this gracious Answer.

Queen's Answer  
to their Address,  
upon it.

' Gentlemen, I am very well pleas'd with your Address;  
' And I will take it into Consideration, as you desire, and  
' send you my Thoughts upon it, in a little time.'

Resolves in  
relation to  
Scotland.

The 13th, the House resolv'd, ' That a Bill should be brought in, for the effectual securing the Kingdom of England, from the apparent Dangers that might arise from several Acts lately pass'd in the Parliament of Scotland: And about a Month after, Mr. Conyers reported, from the Committee of the whole House, to whom it was referr'd to consider of Heads for that Bill, the Resolutions which they had taken, and which were as follows, ' That it be one Head of the Bill to enable her Majesty to nominate and appoint Commissioners for England, to treat with Commissioners for Scotland, for an Union between the two Kingdoms. 2. That all Natives of the Kingdom of Scotland, except such as are settled and shall continue Inhabitants of England, or the Dominions thereunto belonging, or at present in Service in the Army or Navy, shall be reputed as Aliens, unless the Succession to the Crown of Scotland be settled on the Princess Sophia of Hanover, and the Heirs of her Body, being Protestants. 3. That a more effectual Provision be made to prevent the Exportation of Wool from England and Ireland into Scotland. 4. That Provision be made to prevent the Importation of Scotch Linnen into England or Ireland; and to permit the Exportation of the Linnen Manufactures of Ireland, in English Bottoms, into her Majesty's Plantations in the West Indies. 5. That immediate Provision be made to prevent the conveying of Horses, Arms and Ammunition from England or Ireland into Scotland. 6. That all the Protestant Freeholders of the six northern Counties of England, be permitted to furnish themselves with Arms.' These Resolutions being read twice, all, except the last, were agreed unto by the House; who appointed a Committee, to prepare and bring in a Bill accordingly, and on the 16th, upon the second Reading of the Lords Bill to the same Purpose, ordered it to lie upon the Table.

The



The 14th, It was unanimously resolved to give the Duke of Marlborough the Thanks of their House, for the eminent Services he had performed to her Majesty and this Kingdom, as well in the glorious Victories he had obtained by the Arms of her Majesty and her Allies under his Command, as for his prudent Negotiations with several Princes and States; and, having appointed a Committee to attend his Grace for that End, Mr. Comptroller reported on the 15th, That they had congratulated his Arrival, as they were directed, and that thereupon his Grace was pleased to say to this Effect: 'It's a great Satisfaction to me to find, that my faithful Endeavours in discharging my Duty to the Queen and to the Public are so favourably accepted. I beg leave to take this Opportunity of doing Justice to a great Body of Officers and Soldiers who accompanied me in this Expedition, and all behaved themselves with the greatest Bravery imaginable. And I am sure this Honour done us by the House of Commons, in taking so much notice of it, will give a general Satisfaction and Encouragement to the whole Army.'

Anno 3 Ann.  
1704.

Thanks given  
to the Duke of  
Marlborough.

His Grace's  
Answer.

On the 16th, her Majesty was pleas'd to give the Royal Assent to the two following Acts, viz. *An Act for raising Monies by Sale of several Annuities for carrying on the present War: And an Act for continuing the Duties upon Malt, Mum, Syder and Perry, for one Year: And also to five private Bills.* The next day Mr. Chancellor of the Exchequer acquainted the House, that he had a Message sign'd by her Majesty: And he delivered it to Mr. Speaker, who read the same to the House, and was as followeth.

ANNE R.

'Her Majesty having taken into her Consideration the Address of this House, relating to the great Services perform'd by the Duke of Marlborough, does incline to grant the Interest of the Crown in the Honour and Manor of Woodstock, and Hundred of Wootton to him and his Heirs; and desires the Assistance of this House upon this extraordinary Occasion.

Message from  
the Queen re-  
lating to the  
Manor of  
Woodstock.

'The Lieutenancy and Rangerhip of the Parks, with the Rents and Profits of the Manor and Hundred, being granted for two Lives, her Majesty thinks it proper that Incumbrance should be cleared.'

Upon which the House resolved, 'that a Bill be brought in to enable her Majesty, to grant the Honour and Manor of Woodstock and hundred of Wootton, to the Duke of Marlborough and his Heirs.' And it was further resolved, 'That an humble Address be presented to her Majesty, that she would be graciously pleased to advance the Money for clear-

A Bill order'd  
in, thereon.

Ann. 3. Ann.  
1704.

Place-Bill lost.

Address relating  
to the Earl of  
Ranelagh.

clearing the present Incumbrance upon the Lieutenancy and Rangerſhip of the Parks, Rents, and Profits of the Honour and Manor of Woodſtock and Hundred of Wootton, in order to the preſent Settlement thereof upon the Duke of Marlborough and his Heirs.' About the ſame time the Party that prevailed in the Houſe of Commons, both to make themſelves Popular by a Self-Denying Act, and to mortify ſome eminent Members, who had left them, and were now in Places of Profit and Truſt, brought in a *Bill for excluding out of the Houſe of Commons, all Perſons in any Offices or Employments erected ſince the 6th Day of February, 1684. or to be erected.* This Bill had a quick and eaſy Paſſage through the Houſe of Commons, but being ſent up to the Houſe of Lords, the latter made ſeveral Amendments to it, which were diſagreed to by the Commons, and ſo that Bill was loſt. There was alſo another Bill ſet on foot by the Commons, about the 16th, to prevent Perſons who were entitled by their Offices to receive any Benefit by public annual Taxes, to be granted, from being Members in Parliament, while they were in ſuch Offices, which being levelled againſt many brave and deſerving Members who ſerved the Nation, both by Sea and Land, occaſioned ſome Murmurings, to ſtifle which, the Commons on the 20th, empower'd the Committee to receive a Clause to except out of that Bill, all Flag-Officers in the Navy, and Captains of Ships, and all the General-Officers in the Army, and all Colonels of the Land-Forces, and Marines; but, notwithſtanding this Allay, when the Bill came to a third reading, it was reſolved it ſhould not paſs.

The 22d. the Houſe reſolved, ' That an Addreſs ſhould be preſented to her Maſteſty, that ſhe would be pleaſed to give directions to oblige the Earl of Ranelagh to bring his Accounts to a final Determination; and what ſhall appear to be due from him upon the Balance of his ſaid Accounts, that his Lordſhip be obliged to pay the ſame to the Uſe of the Public;' which being preſented accordingly, her Maſteſty was pleaſed to ſay. ' That ſhe had not omitted to give the neceſſary Directions in this Particular; and ſhould always be deſirous to do every thing that may bring the public Accounts to a final Determination.'

And having alſo reſolved, ' That an Addreſs ſhould be preſented to her Maſteſty, that ſhe would be pleaſed to give Direction for the obliging Mr. Parkhurſt and Mr. Paſchall, and the reſt of the Commiſſioners of Prizes during the late War, to make up their Accounts according to the Courſe of the Exchequer;' and the ſame being preſented to her, ſhe answer'd, ' That ſhe would order, that the moſt proper Methods be taken of having the Accounts of the Prizes during

‘ during the late War made up and perfect, according to  
 ‘ the Course of the Exchequer.’

Anno 3 Ann.  
 1704.

On the 8th of January the House of Commons took into Consideration the Treaty with the King of Prussia lately concluded by the Duke of Marlborough, and unanimously resolved, ‘ That an humble Address be presented to her Majesty. Returning the Thanks of this House to her Majesty, for concluding the late Treaty with the King of Prussia, which was so seasonable a Support to the Duke of Savoy, and so great an Advantage to the Common Cause: And also to assure her Majesty, that her faithful Commons would effectually enable her Majesty to make good the Treaty with the King of Prussia, who, upon so many Occasions, hath signaliz’d his Zeal for the Protestant Religion and Liberty of Europe.’ The next Day Mr. Secretary Hedges acquainted the House, That their Address having been presented to her Majesty, her Majesty was pleased to make the following Answer.

Address in  
 praise of the K.  
 of Prussia.

‘ Her Majesty returns you many Thanks for the Assu-  
 ‘ rances you have given her in your Address, and is very  
 ‘ well pleased to find you have so just a Sense of the King  
 ‘ of Prussia’s Zeal for the Protestant Religion, and the Li-  
 ‘ berty of Europe.’

Queen’s An-  
 swer.

The 26th of the same Month, Mr. Speaker reported to the House, ‘ That the House had attended her Majesty with their Address, That her Majesty would be graciously pleased to use her Interest with her Majesty’s Allies, that they may the next Year furnish their several compleat Quota’s, both by Sea and Land, according to their respective Treaties; and that her Majesty will be graciously pleased to continue her Endeavours for an Accommodation between the Emperor and his Subjects now in Arms in Hungary, in order to the better and more effectual carrying on the present just and most necessary War: And that her Majesty was pleased to give this gracious Answer.’

Address relating  
 to the Allies  
 and the Hunga-  
 rian Malecon-  
 tents.

‘ Gentlemen, I will continue to use my best Endeavours to  
 ‘ obtain a Compliance from the Allies with what is desired  
 ‘ in your Address. As to the Accommodation with the Male-  
 ‘ contents in Hungary, I have made Application to the Em-  
 ‘ peror several times upon that Point, and shall continue to  
 ‘ press him in it with all the earnestness imaginable.’

Queen’s An-  
 swer.

Towards the end of the Session, the Lords passed a Bill for  
*the further preventing the Growth of Popery*, which being sent  
 down to the Commons, it was generally wished, that so  
 wholesome an Act might meet with no Obstruction. But  
 the Commons made such Amendments to it, on the 7th of  
 March, as came little short of the Bill for preventing Oc-  
 casional

Bill against  
 Popery.

Anno 3 Ann.  
1704.

casional Conformity; The said Amendment ran thus: 'Provided always that all Persons, who, by Virtue of this Act shall be obliged to take the Oaths of Allegiance and Supremacy, and subscribe the Declaration, shall at the same time declare himself to be a Member of the Church of England, as now by Law established; such Declaration to be entered on the same Roll, where the said Oaths and Declarations, so to be taken and subscribed, are to be entered. And in Case any such Persons shall, after their taking such Oaths, and making such Declarations as aforesaid, knowingly or wilfully resort to, or be present at any Conventicle, Assembly, or Meeting, under Colour or Pretence of any Exercise of Religion, in other manner than according to the Liturgy and Practice of the Church of England, in any Place within this Kingdom, shall forfeit the Sum of 100*l.* for every time he shall be present at such Assembly, Conventicle or Meeting.

The Question was putting, the 14th, that the said Bill be read the third time, when Mr. Aston, Deputy Gentleman Usher of the Black-Rod, summoned the Commons to attend the Queen in the Lords House.

And the Commons being come thither accordingly, her Majesty was pleased to give the Royal Assent to

Bills pass'd by  
the Queen.

*An Act for continuing Duties upon Low-Wines, and upon Coffee, Tea, Chocolate, Spices and Pictures, and upon Hawkers, Pedlars and Petty-Chapmen, and upon Muslins; and for granting new Duties upon several of the said Commodities, and also upon Callicoes, China-Ware and Drugs.*

*An Act for granting to her Majesty a further Subsidy upon Wines and Merchandizes imported.*

*An Act for the better enabling her Majesty to grant the Honour and Manor of Woodstock, with the Hundred of Wootton, to the Duke of Marlborough, and his Heirs, in Consideration of the Eminent Services by him performed to her Majesty and the Public.*

*An Act for the Relief of Fulke Emes, Gent. and others, who had elapsed their Times, either for paying their Money, or naming their Nominees for purchasing Annuities: And also for Relief of Sir John Mead, Knt. and Bar. who had elapsed his time for paying part of his Purchase-Money for a forfeited Estate in Ireland; and also for Relief of Dorothy Ireland, and others, in respect of several Tickets for Payment of Annuities, and of several Million-Lottery and Malt-Lottery Tickets, and Exchequer-Bills, and Debentures of the Army, which have been burnt or lost.*

*An Act for encouraging the Importation of Naval Stores from her Majesty's Plantations in America.*

*An Act for the effectual securing the Kingdom of England, from the apparent Dangers that may arise from several Acts lately passed in the Parliament of Scotland.*

*An Act for giving like Remedy upon promissory Notes, as is now used upon Bills of Exchange, and for the better Payment of Inland-Bills of Exchange.*

Anno 3 Ann.  
1704.

*An Act to permit the Exportation of Irish-Linnen Cloth to the Plantations, and to prohibit the Importation of Scotch-Linnen into Ireland.*

*An Act for the better recruiting her Majesty's Land-Forces and the Marines for the Year One Thousand Seven Hundred and Five.*

*An Act for prohibiting all Trade and Commerce with France.*

*An Act for the Relief of the Creditors of Thomas Pitkin, a Bankrupt, and for the apprehending of him, and the Discovery of the Effects of the said Thomas Pitkin, and his Accomplices.*

*An Act for making perpetual an Act for the more easy Recovery of small Tythes; and also an Act for the more easy obtaining Partition of Lands in Coparcenary, Joint-Tenancy and Tenancy, in Common; and also for making more effectual and amending several Acts relating to the Return of Jurors.*

*An Act to prevent all Traiterous Correspondence with her Majesty's Enemies.*

*An Act for raising the Militia for the Year One Thousand Seven Hundred and Five, altho' the Months Pay formerly advanced be not repaid.*

*An Act for punishing Mutiny and Desertion and false Musters; and for the better Payment of the Army and Quarters.*

And to 52 private Bills.

And her Majesty afterwards made a most gracious Speech to both Houses, which follows:

' My Lords and Gentlemen,

' I Cannot put an end to this Session, without doing you the Justice to Acknowledge, you have fully made good the Assurances you gave me at the beginning of it, by the great Readiness you have shewn in the Dispatch of the public Business; and I make no doubt, but this Dispatch will prove a real Advantage to us, and a great Discouragement to our Enemies.

Queen's Speech  
in Parliament.

' Gentlemen of the House of Commons,

' I return you my hearty Thanks in particular, for the great Supplies with which you have enabled me to carry on this necessary War, I assure you they shall be carefully applied to the Uses for which they have been given; and I persuade myself I shall always have the cheerful Assistance of my dutiful and loving Subjects in the Prosecution of the present War, till our Enemies are obliged to such a Peace as shall be a lasting Advantage and Security to us, and to our Allies.

' My Lords and Gentlemen,

' We have, by the Blessing of God, a fair Prospect of  
Toms III. K k k ' this

Ann<sup>d</sup> 4 Ann.  
1705.

‘ this great and desirable End, if we do not disappoint it  
‘ our unreasonable Humour and Animosity, the fatal Effects  
‘ of which we have so narrowly escaped in this Session, that  
‘ it ought to be a sufficient Warning against any dangerous  
‘ Experiments for the future.

‘ I conclude therefore with exhorting you all to Peace and  
‘ Union, which are always commendable, but more parti-  
‘ cularly necessary at this time, when the whole Kingdom  
‘ being shortly to proceed to new Elections, it ought to be  
‘ the Care of every body, especially of such as are in public  
‘ Stations, to carry themselves with the greatest Prudence  
‘ and Moderation: Nothing will contribute more to our Re-  
‘ putation abroad, and our Security at home.’

Then the Lord-Keeper (by her Majesty’s Command) pro-  
rogued the Parliament to Tuesday the first of May next.

Second Parlia-  
ment of Q. Anne.

The Parliament met on Thursday the 25th, and her Ma-  
jesty being come to the House of Peers, and seated on the Throne  
in her royal Robes, a Message was sent to the Commons requiring  
their Attendance in the House of Peers, whither they came ac-  
cordingly. The Lord-Keeper then, by her Majesty’s Command,  
signified to them her royal Pleasure, that they should forthwith  
proceed to the Choice of a fit Person to be their Speaker, and  
present him to her Majesty the 27th. The Commons being re-  
turned to their own House, it was scarce ever known in any Age  
there should be so many Members present, as at this Time; and  
the Nation was at a gaze, about the good or ill Success of this  
Parliament, by the Choice they would make of their Speaker;  
the Candidates were the Right Honourable John Smith Esq;  
and William Bromley, Esq; many smart Speeches were made  
upon the Occasion; but, upon the Division of the House, the  
former carried it by a Majority of upwards of forty; who  
being the 27th, presented to her Majesty, seated on her  
Throne in the House of Peers, her Majesty was graciously  
pleased to approve the Choice of a Person so well qualified  
for that high Employment: and then made a most gracious  
Speech to both Houses, as follows;

J. Smith Esq;  
chosen Speaker.

Queen’s Speech  
in Parliament.

‘ My Lords and Gentlemen,  
‘ I Have been very desirous to meet you as early as I thought  
‘ you might be called together without Inconvenience to  
‘ yourselves.

‘ And it is with much Satisfaction I observe so full an Ap-  
‘ pearance at the opening of the Parliament, because it is a  
‘ Ground for me to conclude you are all convinced of the  
‘ Necessity of prosecuting the just War, in which we are  
‘ engaged, and therefore are truly sensible that ’tis of the  
‘ greatest Importance to us to be timely in our Preparations.

‘ Nothing

‘ Nothing can be more evident, than that, if the French King continues Master of the Spanish Monarchy, the Balance of Power in Europe is utterly destroyed, and he will be able, in a short time, to engross the Trade and the Wealth of the World.

‘ No good Englishman could at any time be content to sit still and acquiesce in such a Prospect: And at this time we have great Grounds to hope, that, by the Blessing of God upon our Arms, and those of our Allies, a good Foundation is laid for restoring the Monarchy of Spain to the House of Austria; the Consequences of which will not only be safe and advantageous, but glorious for England.

‘ I may add, We have learnt by our own Experience, that no Peace with France will last longer than the first Opportunity of their dividing the Allies, and of attacking some of them with Advantage.

‘ All our Allies must needs be so sensible, this is the true State of the Case, that I make no doubt but Measures will soon be concerted, as that, if we be not wanting to ourselves, we shall see the next Campaign begin offensively on all sides against our Enemies, in a most vigorous Manner.

‘ I must therefore desire you, Gentlemen of the House of Commons, to grant me the Supplies which will be requisite for carrying on the next Year’s Service, both by Sea and Land, and at the same time to consider, that the giving all possible Dispatch will make the Supply itself much more effectual.

‘ The Firmness and Conduct which the Duke of Savoy has shewn, even amidst extreme Difficulties, is beyond Example.

‘ I have not been wanting to do all that was possible for me, in order to his being supported. I ought to take notice to you, that the King of Prussia’s Troops have been very useful to this End. Your Approbation of that Treaty last Sessions, and the Encouragement you gave upon it, leave me no doubt of being able to renew it for another Year.

‘ I take this Occasion to assure you, that not only whatever shall be granted by Parliament for bearing the Charge of the War, shall be laid out for that Purpose, with the greatest Faithfulness and Management; but that I will continue to add, out of my own Revenue, all I can reasonably spare beyond the necessary Expences for the Honour of the Government.

‘ My Lords and Gentlemen,

‘ By an Act of Parliament passed the last Winter, I was enabled to appoint Commissioners for this Kingdom, to treat with Commissioners to be empower’d by Authority of Parliament in Scotland, concerning a nearer and more compleat Union between the two Kingdoms, as soon as an Act should be made there for that Purpose; I think it proper for

Anno 4 Ann.  
1705.

me to acquaint you, that such an Act is lately passed there, and I intend in a short time to cause Commissions to be made out, in order to put the Treaty on foot, which I heartily desire may prove successful, because I am persuaded that an Union of the two Kingdoms will not only prevent many Inconveniencies which may otherwise happen, but must conduce to the the Peace and Happiness of both Nations, and therefore I hope I shall have your Assistance in bringing this great Work to a good Conclusion.

There is another Union I think my self obliged to recommend to you in the most earnest and affectionate manner, I mean, an Union of Minds and Affections amongst ourselves: It is that which would, above all things, disappoint and defeat the Hopes and Designs of our Enemies.

I cannot but with Grief observe, there are some amongst us, who endeavour to foment Animosities; but I persuade myself they will be found to be very few, when you appear to assist me in discountenancing and defeating such Practices.

I mention this with a little more warmth, because there have not been wanting some so very malicious, as even in Print to suggest the Church of England, as by Law established, to be in danger at this Time.

I am willing to hope, not one of my Subjects can really entertain a Doubt of my Affection to the Church, or so much as suspect that it will not be my chief Care to support it, and leave it secure after me, and therefore we may be certain, that they who go about to insinuate things of this nature, must be mine and the Kingdom's Enemies, and can only mean to cover Designs which they dare not publicly own, by endeavouring to distract us with unreasonable and groundless Distrusts and Jealousies.

I must be so plain as to tell you the best Proofs we can all give at present of our Zeal for the Preservation of the Church, will be to join heartily in prosecuting the War against an Enemy, who is certainly engaged to extirpate our Religion, as well as to reduce this Kingdom to Slavery.

I am fully resolved, by God's Assistance to do my Part.

I will always affectionately support and countenance the Church of England, as by Law established.

I will inviolably maintain the Toleration.

I will do all I can to prevail with my Subjects to lay aside their Divisions, and will study to make them all safe and easy.

I will endeavour to promote Religion and Virtue amongst them, and to encourage Trade, and every thing else that may make them a flourishing and happy People.

And they who shall concur zealously with me in carrying on



‘ on these good Designs, shall be sure to find my Kindness and Favour.

Anno 4 Ann.  
1705.

October 6. The House presented their Address as follows.

Commons Ad-  
dress to the  
Queen.

‘ Most gracious Sovereign, Your Majesty’s most dutiful and loyal Subjects, the Commons of England in Parliament assembled, are met together with Minds fully disposed to assist your Majesty in compassing the great and glorious Designs mentioned in your most gracious Speech to both Houses of Parliament; for which we beg leave to return our most hearty Thanks, and at the same time, to congratulate the glorious Success of Your Majesty’s Arms, and those of your Allies.

‘ We are fully convinc’d, that the Balance of Power in Europe can never be restor’d, till the Monarchy of Spain is in the Possession of the House of Austria; and that no Peace with France can be secure and lasting, whilst the French King shall be in a Condition to break it; and therefore your faithful Commons are fully resolv’d effectually to enable your Majesty to carry on the War with Vigour, to support your Allies, and make good such Treaties as your Majesty shall judge necessary to reduce the exorbitant Power of France.

‘ It is no small Encouragement to your Commons, cheerfully to grant the Supplies necessary for those great ends, to find a frugal Management, and a just and prudent Application of the public Money.

‘ We cannot omit, upon this Occasion, most thankfully to acknowledge your Majesty’s Goodness in continuing to contribute out of your own Revenue to the Expenses of the War.

‘ We want words to express the deep Sense we have of the many Blessings we enjoy under your Majesty’s happy Government. We are thoroughly sensible of your affectionate Care to support and countenance the Church of England as by Law established, your Resolution to maintain the Toleration, and to encourage the Trade, Union, and Welfare of your People.

‘ This being the happy Condition of all your Subjects, it is the greatest Concern imaginable to us to find your Majesty has so just Reason to resent the Ingratitude of some, who endeavour to foment Animosities and Divisions amongst us: And we cannot without Indignation reflect, that there should be any so malicious as to insinuate that the Church of England, as by Law established, is, or ever can be in Danger for want of your Majesty’s Care and Zeal to support and maintain it: Your Majesty’s exemplary Piety, your steady Adhearence to the Church of England, leave no room to doubt but that these Suggestions proceed from your Majesty’s and the Kingdom’s Enemies; who, to cover their Disaffection to the present Establishment and Administration, endeavour to distract your Subjects with unreasonable and groundless Distrusts and Jealousies.

‘ Your

Anno 4 Ann.  
1705.

‘ Your Majesty may be assured, that your Commons will zealously concur in every thing that may tend to discourage and punish such Incendiaries, and to disappoint your Enemies both at home and abroad.’

Queen’s Answer.

‘ Her Majesties gracious Answer.

‘ Gentlemen, I take very kindly the Confidence you express in my Care of the Public, and your Concern for the Occasion I have had to complain.

‘ I return you my hearty Thanks for the Assurances of your Support and Assistance, which, by God’s Blessing, I shall always endeavour to improve for the Advantage and Happiness of my People.’

Another Address

This done the Commons went vigorously on with the necessary Supplies and other Matters; and on the 13th, resolved that an Address should be presented to her Majesty, to return her the Thanks of the House, for her great Regard of the Good and Welfare of both her Kingdoms of England and Scotland; for her great Care and Endeavour to settle the Succession of the Kingdom of Scotland in the House of Hanover; for preserving the Peace and promoting the Union of the two Kingdoms; and to assure her that they would, to the utmost of their Power, assist her Majesty to bring that great Work to a happy Conclusion, and likewise that she would be graciously pleased to direct, that the whole Proceedings of the last Sessions of Parliament in Scotland, relating to the Union of the two Kingdoms, and the Settlement of the Succession of Scotland, in the House of Hanover might be laid before that House; and, having ordered an Address to be presented to her accordingly by such Members of that House as were of her Privy-Council, Mr. Secretary Harley acquainted them, That that having been done accordingly, her Majesty was pleased to answer, ‘ That she took very kindly the Sense they express of her Endeavours, to promote the Protestant Succession, and the Treaty of Union with Scotland; and that she had given Direction for complying with their Address, and that they should have the State of that Matter, as soon as it could conveniently be sent them.’

Queen’s Answer.

Proceedings on the Supply.

Proceeding afterwards upon the Supply they resolved, 357,000 l. be granted for Guards and Garrisons, including 5000 Marines for the Fleet. That 886,233 l. 18 s. 6 d. be for the maintaining the 40,000 Men. That 177,511 l. 3 s. 6 d. be for the additional 10,000 Men. That the Proportion with Portugal be 10,210 Men and 222,379 l. 5 s. 10 d. to maintain them. That 5000 Land Forces be maintain’d in Catalonia, and 96,729 l. 11 s. 4 d. be for them. That 414,166 l. 13 s. 6 d. be for her Majesty’s Proportion to the Allies.

Allies. That 48,630 l. be for payment, for Bounty-Money to the Forces that were in Germany, 7,047 l. to make good the additional Troops of Hanover and Zell, and 5,296 l. for Levy-Money to recruit the Horses in Flanders.

Anno 4 Ann.  
1705.

On the 27th of November her Majesty came to the House of Peers; and being in her Royal Robes seated on the Throne, with the usual Solemnity, Mr. Acton, Deputy-Gentleman-Usher of the Black-Rod, was sent with a Message from her Majesty to the House of Commons, requiring their Attendance in the House of Peers. The Commons being come thither accordingly, her Majesty was pleased to make a most gracious Speech to both Houses, which is as follows:

‘ My Lords and Gentlemen.

‘ **H**AVING newly receiv’d Letters from the King of Spain, and the Earl of Peterborough, which contain a very particular Account of our great and happy Successes in Catalonia; and shewing at the same time the Reasonableness of their being immediately supported: I look upon this to be a Matter of so much Consequence in itself, and so agreeable to you, that I have ordered a Copy of the King of Spain’s Letter to myself; a Letter from the Junto of the Military Army of Catalonia; and another Letter from the City of Vich; as also an Extract of the Earl of Peterborough’s Letter to me, to be communicated to both Houses of Parliament.

Queen’s Speech  
in Parliament.

‘ I recommend the Consideration of them to you, Gentlemen of the House of Commons, very particularly, as the speediest way to restore the Monarchy of Spain to the House of Austria; and therefore I assure myself you will enable me to prosecute the Advantages we have gained in the most effectual manner, and to improve the Opportunity, which God Almighty is pleased to afford us, of putting a prosperous end to the present War.

‘ My Lords and Gentlemen,

‘ I must not lose this Occasion of desiring you, to give as much Dispatch to the Matters before you, as the nature of them will allow, that so our Preparations for next Year may be early, which cannot fail of being of great Advantage to us.

The same Day an Address of the Commons was presented to her Majesty, to congratulate the glorious Success of her Arms, and those of her Allies in Catalonia; and to assure her Majesty, that the House would, to the utmost of their Power, enable her Majesty to prosecute the great Advantages already obtain’d there. And her Majesty return’d them many Thanks for the Assurances they had given her, which she did not doubt

Address  
thereon.

Anno 4 Ann.  
1705.

Parliament's  
Address to the  
Queen about  
her Allies.

Queen's An-  
swer.

doubt but would have a very good Effect both at home and abroad.

This done, the Commons, on the 28th, resolved, ' That 250,000 l. be allowed for the Charge of her Majesty's Proportion, to prosecute the Successes of King Charles. That 120,000 l. be for Land Service, and 120,000 l. more to transport Land-Forces; 3,500 l. for circulating Exchequer-Bills, and 57,000 l. for another Year's Interest of unsatisfied Debentures; and next Day, the 29th, the Lords and Commons presented the following Address to her Majesty.

' We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled; being justly alarm'd by the many Artifices which the Emissaries of France have put in Practice this last Year, in order to raise Jealousies, and create Misunderstandings amongst the Allies engaged in this necessary War for the Support of the Liberties of Europe; and being apprehensive lest such malicious Insinuations, if they should pass unobserv'd, might in time so far take place, as to abate the Spirit, and slacken the Zeal of the Confederacy, do most humbly beseech your Majesty to use all possible Endeavours to preserve a good Correspondence amongst all the Confederates, and in a most particular manner, to maintain and cultivate a strict Friendship with the States-General of the United Provinces.

' And we most humbly entreat your Majesty, that as in your own way of acting you have set before your Allies a great and noble Example, so you would be graciously pleased; by all other proper means to excite the whole Confederacy to make early and effectual Preparations, and to exert their utmost Vigour in the Prosecution of the War against France.'

Her Majesty's most gracious Answer to the Address of both Houses of Parliament, was to this Effect.

' My Lords and Gentlemen, Your joining in this Address, is a very particular Satisfaction to me.

' The Opinion of both Houses of Parliament will always be of the greatest Weight with me. I shall readily comply with your Desire; and I make no Question but it will meet with a just Regard from all our Allies.'

December 3. Her Majesty was pleased to give the Royal Assent to *An Act for exhibiting a Bill for naturalizing the most excellent Princess Sophia, Electress and Duchess Dowager of Hanover, and the Issue of her Body.*

On the 8th, The Lords having resolved the Church to be in no Danger, and sent down their Vote, to the Commons for their Concurrence, the Question was put, Whether they should refer the same to a Committee of the whole House, and it was carry'd for the latter, Yeas 220, Noes 157, and agreeing

ing with the Lords to fill the Blank their Lordships had left for the Word Commons, in the Resolve, they likewise agreed with them upon an Address to her Majesty. They presented it on the 14th, to this Effect.

Anno 4 Ann.  
1705.

‘ We your Majesty’s most dutiful and loyal Subjects, the Lords spiritual and temporal and Commons in Parliament assembled, having taken into Consideration your Majesty’s most gracious Speech at the Opening of this Parliament, have, upon mature Deliberation, come to the following Resolution.

Parliament’s  
Address to the  
Queen.

‘ *Resolved*, By the Lords spiritual and temporal, and Commons in Parliament assembled, That the Church of England, as by Law Established, which was rescued from the extremest Danger by King William the Third of glorious Memory, is now, by God’s Blessing, under the happy Reign of her Majesty, in a most safe and flourishing Condition: and that whoever goes about to suggest and insinuate, That the Church is in Danger under her Majesty’s Administration, is an Enemy to the Queen, the Church, and the Kingdom.

‘ Which we humbly beg leave to lay before your Majesty, and as your Majesty has been pleased to express a just Indignation against all such wicked Persons, so we assure your Majesty, That we shall be always ready, to the utmost of our Power, to assist your Majesty in Discountenancing and Defeating their Practices: And we humbly beseech your Majesty to take effectual Measures for the making the said Resolution public, and also for punishing the Authors and Spreaders of these seditious and scandalous Reports; to the end that all others may, for the future, be deterr’d from endeavouring to distract the Kingdom with such unreasonable and groundless Distrusts and Jealousies.’ To this her Majesty was pleased to answer.

‘ My Lords and Gentlemen, I shall readily comply with your Address, and am very well pleased to find both Houses of Parliament so forward to join with me in putting a Stop to these malicious Reports.’

Queen’s Answer.

The 19th, an engrossed Bill from the Lords, entitled, *An Act for the better Security of her Majesty’s Person and Government, and of the Succession to the Crown of England in the Protestant Line*, was read a second time, and Charles Cæsar Esq; upon the Debate of the said Bill, standing up in his Place, and saying the Words following, (which were directed by the House to be set down in Writing at the Table) ‘ There is a noble Lord, without whose Advice the Queen does nothing, who, in the late Reign, was known to keep a constant Correspondence with the Court at St. Germain’s.’ And the said Mr. Cæsar endeavouring to excuse himself, and being called upon to withdraw, and he being withdrawn accordingly,

Mr. Cæsar gives  
Offence.

Anno 4 Ann.  
1705.

And is com-  
mitted Prisoner  
to the Tower.

Royal Assent  
given to several  
Acts.

ingly, and a Debate arising thereupon; the House *Resolved*, That the said Words are highly dishonourable to her Majesty's Person and Government. And, That the said Charles Cæsar Esq; should for his said Offence be committed Prisoner to the Tower.

On the 21st, Her Majesty was pleased to give the Royal Assent to, *An Act for granting an Aid to her Majesty by a Land-Tax, to be raised in the Year one thousand seven hundred and six: An Act to Repeal several Clauses in the Statute made the third and fourth Years of her present Majesty's Reign, for securing the Kingdom of England from several Acts lately passed in the Parliament of Scotland: An Act for the Naturalization of the most Excellent Princess Sophia, Electress and Duchess Dowager of Hanover, and the Issue of Her Body: And to three private Acts.*

After which her Majesty made the following most gracious Speech to both Houses.

Queen's Speech  
in Parliament.

‘ My Lords and Gentlemen,  
‘ **T**HE Unanimity of your Proceedings in this Parlia-  
‘ ment, has already had so good an Effect all over  
‘ Europe, that I can't but take notice of it to you with great  
‘ Satisfaction. The good Disposition you have shewn in do-  
‘ ing your Part, so fully towards an Union with Scotland, is  
‘ also very acceptable to me; and I hope it will prove for  
‘ the Advantage and Quiet of both Kingdoms.

‘ Gentlemen of the House of Commons,  
‘ I must not omit to take this Occasion of returning you  
‘ my hearty Thanks for the great Dispatch of this seasonable  
‘ Supply, which you have given me: I look upon it as a  
‘ sure Pledge, That the same Zeal and Affection for my Ser-  
‘ vice, and the Good of the Kingdom, will carry you through  
‘ all the necessary Parts of the public Business in this Session.

‘ My Lords and Gentlemen,  
‘ In case you now think of some Recess, as is usual at this  
‘ Season, I make no doubt you will afterwards return with  
‘ the same good Disposition, to give all possible Dispatch to  
‘ the public Affairs still depending, and bring this Session  
‘ of Parliament to a happy Conclusion.’

The Commons  
give the Duke  
of Marlborough  
Thanks.

The same Day the House adjourn'd to the 7th of January: When they met again, and *Resolved*, That the Thanks of their House should be given to his Grace the Duke of Marlborough, for his great Services perform'd to her Majesty, and the Nation, in the last Campaign, and for his prudent Negotiations with her Majesty's Allies, and appointed a Committee for that Purpose: Who having attended his Grace, his Grace said, ‘ He was so sensible of the great Honour that

was

was done him by this Message, that he could not have the least Concern at the Reflections of any private Malice, while he had the Satisfaction of finding his faithful Endeavours to serve the Queen, and the Kingdom, so favourably accepted by the House of Commons.

Anno 4 Ann.  
1705.

His Grace's  
Answer.

The next day it was *Resolved*, ' That towards the Supply granted to her Majesty, a Tax should be laid upon all Grants of Lands, Tenements, Hereditaments, and Pensions, made since the 6th day of February 1684; That the said Tax should be a fifth Part of the Value of the Grant, at the time of the Grant made: That the Duties upon Malt, Mum, Cyder and Perry, granted by an Act of the first Year of her Majesty's Reign, and continued by several subsequent Acts till the 24th of June 1706, should be further continued from the 23d of June 1706, till the 24th of June 1707: And that a further Duty should be laid upon all Low-Wines, or Spirits of the first Extraction, made, or drawn from any foreign Materials, or any Mixture with foreign Materials: And *Order'd* a Bill to be brought in upon the said Resolutions.'

Votes about  
the Supply.

On the 21st it was farther voted, ' That the Duties upon Coals, Culm and Cinders, which, by an Act of the first Year of her Majesty's Reign, entitled, *An Act for further Continuing the Duties upon Coals, Culm and Cinders*, were to continue until the 15th day of May 1708, (Charcoal made of Wood being always excepted) should be further continued from the 14th day of May 1708, until the 30th day of September 1710.

The same day, Mr. Secretary Harley acquainted the House, ' That her Majesty, in pursuance of the Address of both Houses, put out a Proclamation, in which was An Encouragement for Discovery of the Author or Authors of *The Memorial of the Church of England*, &c. the \* Printer of which Book, being now in Custody, and other Persons be-

The Queen's  
Message to the  
Commons  
about the Au-  
thors of the  
Memorial.

L 112.

ing

\* It must be observ'd, That on the 15th of January, David Edwards, Printer of the Memorial, who had a long time absconded, and was left without any Support by that Party that had employ'd him, was, by his own Consent, taken into Custody of a Messenger, upon a Promise in Writing, from Mr. Secretary Harley, ' That he should have his Pardon, provided he discover'd the Author or Authors of that Pamphlet.' Three Days after, being examin'd before the same Secretary, he pretended he could fix it upon three Gentlemen, Members of the House of C——, viz. Mr. Poley, Mr. Ward, and Sir Humphrey Mackworth; and related, That a Woman in a Mask, with another barefaced, brought the Manuscript to him, and made a Bargain with him to have 250 Printed Copies for it; which he deliver'd to four Porters sent to him by the Persons concern'd. But though the Woman that came to Edwards without a Mask, and some of the Porters

were

Anno 4 Ann.  
1705.

Their Address  
about it.

The Queen's  
Answer.

Acts passed by  
the Queen.

ing examin'd, in whose Depositions there appear'd the Names of some Members of this House: Her Majesty's Tenderness for any thing which had the Appearance of the Privileges of this House, had inclin'd her to command him to acquaint the House therewith, before she directed any further Proceedings in the said Examination. Thereupon the Commons Order'd the Serjeant to go with the Mace into Westminster-Hall, the Court of Requests, and Places adjacent, and summon the Members there to attend the Service of the House. And the Serjeant being return'd the House *Resolved*, ' That an humble Address should be presented to her Majesty, returning the Thanks of the House, for her gracious Message that Day, and her tender Regard to the Privileges of that House; and to desire, that she would be pleased to give Order for a further Examination into the Authors of the Libel mentioned in the said Message.' Which Address being presented accordingly, Her Majesty was pleas'd to answer, ' That she was glad to find this House express so much Resentment against the Libel mention'd in her Message, and took very kindly the Confidence this House reposed in her, which she would make the best Use of, for the Advantage of the Public.'

On the 16th of February the Queen came to the House of Peers, in the usual State, and the Commons being sent for up, her Majesty gave the Royal Assent to *An Act for continuing the Duties upon Malt, Mum, Cyder and Perry, for the Service of the Year, One Thousand Seven Hundred and Six; An Act for continuing the additional Subsidy of Tonnage and Poundage, and certain Duties upon Coals, Culm and Cinders, and additional Duties of Excise; and for settling and establishing a Fund thereby, and by other Ways and Means, for Payment of Annuities, to be sold for raising a further Supply to her Majesty, for the Service of the Year, One thousand Seven Hundred and Six, and other Uses therein mentioned; An Act for making the Town of New-Rosse in the County of Wexford, in the Kingdom of Ireland, a Port for the exporting Wool from Ireland into this Kingdom; An Act for making the River Stower Navigable, from the Town of Maningtree in the County of Essex, to the Town of Sudbury in the County of Suffolk; and to 13 private Bills.*

And then her Majesty made the following Speech to both Houses:

' My

were found out and taken up, yet it was impossible to carry on the Discovery any farther. Which gave Occasion to a Member of the House of Commons (Mr. Poley) to say, ' That it was not usual to accuse Members of their House, of being concern'd in any thing to the Prejudice of the Government, without naming their Names.



‘ My Lords and Gentlemen,

‘ I Cannot but take this Occasion to return you My hearty  
‘ Thanks, for the great Care and Concern you have  
‘ shewn to promote every thing in this Session, that may tend  
‘ to the public Good.

‘ Gentlemen of the House of Commons,

‘ I must thank you in particular for your having so fully  
‘ complied with your Assurances to me, at the opening of  
‘ this Parliament, that you would give all possible Dispatch  
‘ to the public Supplies. There is scarce any Instance to  
be given, where so great, and I hope, effectual Supplies,  
have been perfected in so short a Time.

‘ I look upon this to proceed not only from your great  
‘ Zeal for the public Service, but from a just Impression  
‘ upon your own Minds, that there is a necessity of making  
‘ extraordinary Efforts, to support and encourage our Allies,  
‘ and to be early in endeavouring to disappoint the Designs  
‘ of our Enemies.

‘ My Lords and Gentlemen,

‘ It will be convenient to make a Recess in some short  
‘ time, I hope therefore you will continue to give all Necess-  
‘ sary Dispatch to what may yet remain unfinished of the  
‘ public Business before you.’

Anno 4 Ann.  
1705.

The Queen's  
Speech to both  
Houses.

The Lords having, by the Regency-Bill, entitled, *An Act for the better Security of her Majesty's Person and Government, and of the Succession to the Crown of England, in the Protestant Line*, repealed the Clause inserted in an Act passed some Years before, for settling the Succession, by which all Civil and Military Officers were made incapable to sit or vote as Members of the House of Commons, after her Majesty's Decease; and having sent down that Bill to the House of Commons for their Concurrence, the latter, who saw the Dike against the future Power, and Influence of the Court thrown down, resolved in some Measure, to repair it, by admitting only 47 Civil and Military Officers into their House; and amongst them, ten Privy Councillors, five Flag-Officers, and as many Land-Generals. The Bill, thus amended, was sent up again to the Lords, who made some Alterations to the Clause inserted by the Commons, their Lordships excluding only the Commissioners of the Prize-Office, and all such new Officers, as the Court might create for the time to come. Two Conferences were held about these respective Amendments, between the two Houses; and the Report of the latter Conference being made in the House of Commons, on the 15th Instant, the same occasioned a long and warm Debate. ‘ The Court Party endeavoured to shew the Injustice of excluding from the House, such as were actually performing Service to the Nation: urging, that as all Coun-  
ties,

An Account of  
the Regency-  
Bill.

Debate about  
Civil and Mi-  
litary Officers.

Anno 4 Ann.  
1705.



ties, and Corporations of England have by their Charters, liberty to elect such as they thought best qualified to represent them in Parliament, they should in great Measure, be deprived of that Liberty, by this Exclusion of several Officers Military and Civil, who, by Reason of the great Estates they had in those Corporations, seldom fail'd, and had more Right than any others, to be chosen; and that the Exclusion of those Officers would very much abate the noble Ardour which several Gentlemen shewed at this Juncture, to serve the Nation, in this just and necessary War; since they should not but look upon it as a Disgrace to be made incapable of serving likewise their Country in Parliament.' The opposite Party, which consisted of those called High-Church Men, with whom not a few Low-Church Men joined, on this Occasion, ' shewed the ill Use a bad Prince might make of a Parliament, in which there should be many of his Creatures, such as generally were all those that had Employments immediately depending on the Crown; and their Arguments had such Weight, that the other Party foreseeing they should lose the Question, agreed to the Postponing of three of the Lords Amendments, having already agreed to one of them.' But three days after, the Court Party being reinforced, by the return of those, who for some time, had voted on the contrary side, the Lords Amendments were approved with some few Alterations, to which the Lords agreed, on the 19th.

The Queen's  
Answer to the  
Address about  
Newfoundland.

The same Day, Mr. Secretary Hedges acquainted the House, that their Address relating to the Newfoundland Trade, having been presented to the Queen, her Majesty was pleased thereupon to say, ' That she was fully sensible ' of the great Importance of the Trade and Fishery of Newfoundland, and would be very careful to encourage and ' protect it.' Two days after the House of Commons, (according to order) proceed to take into further Consideration the Accounts of the Revenues and Debts ever since her Majesty's happy Accession to the Crown; and resolved, ' That it appeared to the House, That the public Revenues granted, or arisen since her Majesty's happy Accession to the Crown, had been duly applied to the happy Uses, under a prudent Management, to the Advancement of the public Credit, and for the Advantage and Honour of the Nation.

The public Re-  
venues voted to  
have been duly  
applied.

On the 27th, the Commons read a third time, a Bill, Intituled, *An Act for naturalizing Vincent de Laymerie, and others*; and divided, upon the Question, whether the Persons naturalized by that Act, should have Right to vote for Parliament-Men? Which was carried in the Affirmative, by a Majority of 169 Voices against 126; and so the Bill pass'd that House, as it did that of the Peers. The same Day, ' A Petition of the Gentry and Clergy of the South parts of Lancashire,

eshire, at their Monthly-Meeting, February the 12th, 1705. in the Borough of Wigan, for suppressing Prophaneness and Immorality, pursuant to her Majesty's gracious Proclamation, and by and with the Bishop of Chester, their Diocesan's Allowance, offer'd jointly and unanimously to the honourable Knights, Citizens and Burgeses in this present Sessions of Parliament, was presented to the House, complaining of several Grievances they labour'd under, from the Priests, Romish Gentry, and Popish Emissaries, and praying for Relief therein. And after the reading of this Petition, it was unanimously resolved, ' That an humble Address should be presented to her Majesty, that she would be pleased to issue out her Royal Proclamation for the putting in Execution the Laws which were in force against such Persons as had or should endeavour to pervert her Majesty's Subjects to the Popish Religion; and order'd, that a Bill be brought in for making more effectual the Act of the eleventh Year of his late Majesty's Reign, *For the further preventing the Growth of Popery.*' This Bill was accordingly presented the next day, by Sir James Montague, and read the first time.

Anno 4 Ann.  
1705.

A Complaint  
against the Pa-  
pists in Lanca-  
shire.

On the first of March the Commons gave it a second Reading, and went through it in a grand Committee. By the Act of the eleventh Year of King William III. *For the further preventing the Growth of Popery*, it was provided, ' That all Papists should, within six Months after they had reach'd the Age of eighteen, take the Oaths of Allegiance and Supremacy, or declare themselves Protestants; in default whereof, their Estates were to go to the next Heir, being Protestants.' Now this Clause was so lamely express'd, that the Roman Catholics found two Means to evade it. First, there being in several Families, a Gradation of Age among the several Heirs to the same Estate, it happen'd, that though the Person that was come to the Age of eighteen, did not take the Oaths prescribed by that Law, yet the Title of the Protestant-Heir remain'd undecided, as long as any next Popish-Heir was under Age. Secondly, (and this was the main Inconveniency) It lying, by that Clause, upon the next Heir to him, who, at the Age of eighteen, refused to declare himself a Protestant, to prove that he had not made the said Declaration, it was impossible for the said next Heir to prove such a Negative. Now to make that Clause binding effectual, it was enacted, in this Bill, ' That all Papists or reputed Papists, should within six Months after they had reach'd the Age of eighteen, not only declare themselves Protestants, but prove also, that they had made such a Declaration. On the 3d, when Sir James Montague was to report to the House the Amendments made to the Bill by the Grand-Committee, the Duke of Norfolk (the Chief among the Roman-Cathol-

A Bill to pre-  
vent the  
Growth of  
Popery.

lics

Anno 4 Ann.  
1705.

The Method to  
put it off.

Arguments  
against the Bill.

The Bill re-  
jected.

Sir Rowland  
Gwynne's Let-  
ter to the Earl  
of Stamford.

lics in England) petition'd, ' That he might be heard by his Council for Explanation of some Words in the Bill, and for such Relief to him, as to the House shall seem meet.' Upon the Reading of this Petition, the Commons order'd that the Duke of Norfolk be heard by his Council, as to his Property in the Office of Earl-Marshal of England only: But his Council not being then ready, the House heard Sir James Montague's Report, and then order'd the Bill with the Amendments to be engross'd. It's very remarkable, that this happen'd on a Saturday, with all which Proceedings the Roman-Catholics were strangely alarm'd and confounded, as well they might; however, having the Opportunity of the Sunday to try what they could do to ward off the fatal Blow, they may heartily thank the Foreign Ministers of their own Communion, for the Representations made in their Behalf, who did not want Arguments to shew how such a Law might be prejudicial to the Common-Cause, at such a Conjunction: Insomuch that when the Bill came to be read the third time, on the 4th, which was the very next Day, several other Amendments were made to it: After which, the Question was put, That the Bill do pass? This occasion'd a great Debate, wherein Colonel Godfrey, Mr. Boscawen, and Mr. Asgil, endeavour'd to shew the Injustice of such a Law; urging, ' That the depriving Papists of their Estates, was almost as hard as taking away their Lives: That it would look as if they approv'd the Persecution exercis'd by the French King, and other Catholic Princes, over their Protestant Subjects, if they should imitate their violent Proceedings: And that this Act would certainly disoblige the Roman-Catholic Powers in Alliance with us, some of whom, out of Respect to the English Nation, had lately shew'd some favour to their Protestant Subjects.' There was little said against these Reasons, and so the Bill was rejected, by a Majority of 119 Votes against 43.

March 8, a Complaint was made to the House of Commons of a printed Pamphlet entitled, A Letter from Sir Rowland Gwynne to the Right Honourable the Earl of Stamford; which was read at the Table, and some of the most remarkable Passages are as follow.

' My Lord, I did long since receive the Letter your Lordship was pleas'd to honour me with, of the 9th of November; and have hitherto delay'd returning any Answer to it, that I might with more Deliberation tell you my thoughts upon a matter of so great Importance.

' I did also expect, that some Friends would have discover'd to us the wicked Designs you suspected to lie hid under the Advice to the Queen, to invite the Electores over into England;

England; and shew'd us better Reasons than I have yet seen, why they were not for it. Anno 5 Ann.  
1705.

' But I must own, that I am hitherto at a loss in this Matter, and not a little surpriz'd to see them act so contrary to the Opinion they were formerly of.

' The Occasion of my last Letter to your Lordship, was to communicate to you a Letter writ by the Electores to my Lord Archbishop of Canterbury, in answer to one that her Royal Highness had received from his Grace; wherein she thought fit to declare her Respect for the Queen's Majesty, and the good Intentions she hath always had for the Good of England.

' Her Royal Highness being informed, from several Persons of Credit, that her good Inclinations for the Queen and the Nation, were misrepresented; some having reported, that she did not think of England; others that she might give arise to Intrigues against the Queen and the Public, if she came thither:

' She thought herself therefore obliged to declare to my Lord Arch-Bishop and others she wrote to, and also to tell the Duke of Marlborough and the Earl of Sunderland, when they were here, that she would always most sincerely maintain a true Friendship with the Queen; and also be ready to comply with the Desires of the Nation in whatever depends upon her, tho' she should hazard her Person in passing the Seas, if they thought it necessary towards the Establishment of the Protestant Succession, and for the Good of the Kingdom: But that, in the mean time, she lived in great Quiet and Content there, (without meddling with Parties or Cabals) and left it to the Queen and Parliament to do whatever they should think fit.

' I did therefore believe I should please your Lordship by sending you so desirable a Declaration, by recommending you as a fit Person to be consulted upon it, and by entreating you to communicate it to our Friends, being well assur'd of your Zeal for the Protestant Succession, and Friendship for me.

' But I was very much surpriz'd when I found, by your Answer, that you did attribute her Royal Highness's Declaration, which was so necessary in itself, to the Artifices of the Jacobites.

' What, my Lord, would you then be pleas'd that the Electores should not think of England, and that the People should believe so? or that she would countenance Cabals against the Queen? Or ought one to be called a Jacobite for undeceiving the World of so gross and wicked a Misrepresentation?

' The Electores hath been often desir'd to declare, that she

Anno 5 Ann.  
1705.

was willing to come into England; but she never thought fit to give any Answer to it (further than she submitted herself and Family to the Pleasure of the Queen and Parliament) till she was press'd to declare, That she would not approve of the Motion to be invited to come over.

' This was such Advice that it gave her just Reason to suspect, that there were some secret Designs against the Succession, or at least tending to alienate the Affections of the People from her Person: And this was a further Reason for the Declaration she made, that she might not be misrepresented.

' Your Lordship farther tells me, That you will not dip in any thing of this kind, (I use your own Words, that I may not mistake your Meaning) which tends, in your Lordship's Opinion, to set up two Courts in England, in opposition to each other?

' Did I propose any thing to your Lordship but to do justice to Truth by making known to our Friends her Royal Highness's good Intentions? And can you complain of me for desiring a thing so just in itself, and which every honest Man ought to do? How then can your Lordship imagine, that this tends to set up two Courts in opposition to each other?

' It is plain, by the Electress's Declaration, that she hath said nothing therein, either to desire her being invited over, or to hinder it; but she leaves all to the Queen and Parliament. I told you this and you seem'd to take it ill, or at least otherwise than I intended it.

' Whoever did represent this to your Lordship as a thing that may disturb our present Quiet and future Peace, must be an Enemy to both.

' Do you think, my Lord, that the Electress ought to declare, That she would not come into England? or that she herself should obstruct any Invitation that the Queen and the Parliament may give her? This might be taken as an Abdication of her Right to the Succession. But I can assure your Lordship, that she will not betray the Trust and Confidence the People of England have reposed in her, nor injure her Family.

' It is true, that she is much advanced in Years, and, according to the Course of Nature, may not live long; but the Elector and Prince-Electoral have many Years to come, in all appearance, and have Vertues that deserve the Crown of England, whenever it shall please God that the Reversion shall come to them.

' Can you approve of such Advice? Or can you think the Authors of it Friends to her, or her Family, or, which is more, Friends to England?

' Must we say, that those who speak against her, are her Friends;

Friends; and those who speak for her, are her Enemies? *Anno 5 Ann.*  
 This seems to me to change the Name and Nature of things. *1705.*

‘ When your Lordship considers what I have said, and reflects upon it in your Heart, I doubt not, but you will see that you have been imposed upon by those who are Jacobites themselves in their Hearts, or something worse, if it be possible, and certainly design to subvert the Protestant Succession establish’d by Law, or so to weaken it, that it may depend upon Accidents, or upon the Humour and Interest of particular Men: For none but such can have the Malice to invent, and insinuate to others, that the Presence of the Successor is dangerous.

‘ This is a thing that hath not been heard of in other Countries and is directly against Common-Sense.

‘ This is a \* new Paradox, which cannot be conceived in England, by any but those, who are very weak, or corrupted.

‘ We ought to maintain the contrary; since we know that we have secret and dangerous Enemies at home, and an irreconcilable and powerful Enemy abroad, who may have both the Will and the Power to hinder the Passage and Establishment of the Successor, at the time when it may be most necessary; and totally thereby to subvert our Constitution, if it does not please God once more, to preserve us by his manifest Providence.

‘ You go on, my Lord, and desire that I would advise the Electress to take care that she is not imposed upon by the Jacobites: But this Caution is very unnecessary; for I can assure you that her Royal Highness does not consult them in any thing, and much less will she do it in what relates to the Succession: For if she did, she must act against all Rules of good Reason and Sense.

‘ You may say that they are Jacobites who give these Advices: But her Royal Highness did not want any Advice to express and declare herself, as she hath done, in a manner so suitable to her former Conduct.

‘ If we will suppose that this proceeds from the Jacobites, we must, at least, think that it is for their Interest.

‘ But can you believe, my Lord, that it is, in any manner, for their Interest to persuade the Protestant Successor to declare her Esteem and Affection for the Queen and Nation? And yet this is all that her Royal Highness hath express’d in her Letter to the Lord Arch-Bishop.

‘ Such Jacobites must be very silly, and not to be fear’d, who should advise that which must destroy all their Hopes. For the Electress’s Declaration was to take off all the groundless Suspicions, to unite all honest Men and to secure our Con-

M m m 2

stitution:

\* If Sir Rowland had recollected the Conduct of Q. E. on a like Occasion he would have hardly called this a new Paradox.

Anno 5 Ann.  
1705.

stitution: And therefore your Lordship, and all our Friends, ought to have desired her Royal Highness to explain herself after this manner; and all that wish well to their Country, ought to thank her for having done it.

' We Whigs would have been formerly very glad to have seen such a Declaration from her Royal Highness. I pray then, my Lord, judge what Opinion the Electores ought to have, at present, of our Steadiness and Principles, if she should receive Advice from us, so contrary to what she ought to have expected.

' But I do not apply this to your Lordship: For I am persuaded that you will be one of the first that will quit this Mistake, and condemn the strange Notions that have been imposed upon you by others.

' We have been proud to say, that the House of Hanover, the People of England, and our Posterity, were most obliged to the Whigs, next to the King, for settling the Succession upon that most Serene House: And how much should we be to be blamed, if we should lose this Merit, by parting with our Principles, that were so well grounded upon Honour, and the public Good; and by destroying the Work of our own Hand, for a base and uncertain Interest; or for a blind Obedience to those, who lead others where they please, and yet are led themselves by their Passions, or imaginary Prospects, of which they may be disappointed?

' For if they hope to get into Favour by such Methods, they cannot be long Serviceable nor preserve the Favour they seek; for they will soon be cast off, when it is found that they have lost the Esteem and Affection of the People, by their weak or mercenary Conduct.

' They cannot do any thing that will better please their Enemies; for, while they think to keep down the Tories by a Majority, and oppose them, even in things so reasonable and just; they will raise their Reputation, instead of lessening it.

' If others think fit to quit their Principles, yet I will never part with Mine; for I am still of the same Opinion that the best Englishmen profess'd themselves to be of, in the late King's time; and I find no reason for any honest Man to change.

' I am sorry for those who suffer themselves to be imposed upon; but they who have wicked Designs, may one Day repent of them. And I will be bold to say, that they must either plunge the Nation in the greatest Confusion to make it unable to punish them; or that they will be answerable for the Dangers into which they are like to bring it.

' Those who betray their Country, will have little Satisfaction or Assurance of enjoying their hoped-for Advantages, which will be embitter'd by their Guilt, and the perpetual Appre-



Apprehensions they will have; and nothing but a timely Death can deliver them from being punish'd as they deserve; whether the Nation continues to flourish, and escapes the Designs laid to enslave it, or whether it be ruin'd by Popery and Tyranny; which may happen by their artful Conduct, in making us neglect our own Safety.

Anno 5. Ann.  
1705.

' For if Tyranny and Popery prevail, many of them will suffer under the French and Jacobite Cruelties, which will not be less, than those we have read of in Queen Mary's time; and they, that may think themselves the most secure among us, will be happy if they can save only their Lives.

' So terrible a Revolution is, perhaps, more to be apprehended, than People think.

' But if it does not happen at present, yet it may come to pass, even in the Life-time of those who believe they may contribute towards it with Impunity.

' They themselves may feel those Miseries which they would carry down to Posterity, and even to their own Children, if they have any; and this only to satisfy their own present Passions, at the Expence of their Country, and contrary to their Duty both to God and Man.

' These, my Lord, are the Sentiments and Measures that are wicked in themselves, and that we ought to abhor; and not the Thoughts of endeavouring better to secure the Protestant Succession, by having the next Heir of the Crown in the Kingdom.

' But your Lordship is told, that the coming of the Electors into England, will set up two Courts, that will oppose each other.

' I cannot conceive how any body could tell you such a thing, or what colour they cou'd have for so base an Insinuation.

' For the Electors declares, ' That she will be entirely united with the Queen; and that all those, who imagine she will countenance any Intrigues against her Majesty, will be very much deceiv'd in their Expectations.' Yet, notwithstanding, it seems there are some People, who endeavour to persuade your Lordship, that even this sincere Declaration tends to raise Confusion.

Is not this, in plain terms, to contradict what the Electors hath said, and to put an Affront upon this great Princess, and your Lordship, as well as upon all others, who have had the Honour to converse with her Royal Highness, and must have done her justice?

' The World knows that she is a Princess, whose natural Temper is generous, and obliging, and sincere, and of a public Spirit,

' Are not you, my Lord, then obliged as much as any Man

Anno 5 Ann.  
1705.

Man living, boldly to contradict these malicious Calumnies which you know to be false, to set them right who are mis-inform'd, and to oppose those who endeavour to impose upon others?

‘ But let us suppose what you say, and allow, that (contrary to all appearance) discontented or ill Men may impose upon the Electress’s Good-nature, and incline her to do such things, as may displease the Queen.

‘ What hurt can that do? Since her Royal Highness’s Court can have no Power in England, and must be subject to the Queen’s Court, who is the Sovereign.

‘ I will not touch upon things that have pass’d in our time, and confirm what I say.

‘ So that it is most absurd, to make People believe, that this pretended Opposition of the two Courts, can bring us into so great Dangers, as those we may avoid, by having the Protestant Heir in the Kingdom. Let us, in the mean time, examine these Pretences, how absurd soever.

‘ If we will keep the next Protestant Heir at a distance, it must be allowed to be grounded upon two Suppositions: First, that the Queen is against the Electress’s coming over; and Secondly, that her being in England during the Queen’s Life, is a thing ill in itself.

‘ These two Propositions are wicked and criminal in themselves: For to say, that the Queen would take away, from the presumptive Heir, the right of coming into England, is to cast a great Reflection upon her Majesty, and to create a misunderstanding between her Majesty, and the Person in the World she ought to be most united with.

‘ But to maintain, That the Electress’s being in England, is ill in itself; one must declare himself to be of a most ridiculous, or of a most malicious Opinion. For either it must be a general Rule, that the Successor must be always kept out of the Kingdom: Or, it must be supposed, that the People have just Reason to entertain some just Notion in Prejudice to the Electress. But the general Rule is, absolutely, not to be maintain’d. There is neither Law nor Example to justify it.

‘ For if it were so, then her Majesty, when Princess of Denmark, must have been sent out of the Kingdom; and yet no Man ever pretended to broach so traitorous an Opinion.

‘ And all the World knows, that the Electress may come over whenever she pleases, without being invited.

‘ All wise Princes and Governments, that have had a Succession, have ever thought, that the securing of that Succession, was a present and great Security to the public Safety; without considering whether there should arise any real or imaginary Disputes between the Sovereign and the next Heir.

‘ And

‘ And I also hope that our Friends will never pretend to have any Reason to insinuate, That they ought to have any Jealousies of the Electress, as to her own Person.

Anno 5 Ann.  
1705.

‘ For People must be very malicious to say, or very ill inform’d to believe, that she is weak or disaffected, that she loves Divisions, or that intriguing Persons can manage and turn her at their Pleasure.

‘ You know, my Lord, that she is infinitely above these Characters.

‘ That she is wise, and hath the greatest Tenderneſs in the World for her Relations, and particularly for her Majesty.

‘ That she is charitable to all Men, a Friend to English Liberty; and so knowing, that she cannot be easily imposed upon. All those who are acquainted with her, ought to believe, that the Queen would be well pleased with her agreeable Temper and Conversation.

‘ Her moderate Behaviour hitherto ought to assure us of the Continuance of it for the time to come.

‘ Her quiet Temper, her Zeal for our Preservation, and her Esteem for the Queen, have made her not comply with the Advice of some, who called themselves Whigs; which might have given Offence, if she had follow’d them.

‘ If, after all this, People can think, that her Presence in England can be any Prejudice to the Queen or Kingdom, they must be very ungrateful.

‘ And it is no less injurious to her Character to misrepresent the publishing a Letter, that was so judiciously writ, and so necessary, at this time, to suppress these groundless Reports.

‘ This Letter, which I sent to your Lordship, was only to confirm what she had said to Mr. Howe, who is the first of the Queen’s Ministers that have come to this Court, that hath owned he had orders to declare to her Royal Highness the Queen’s good Intention, further to secure the Succession in her Royal Highness’s Family.

‘ So that no body can say, that she hath done any thing at present, but what came from the Queen herself.

‘ It also appears, that it is a most skilful and malicious Contrivance of some, to cry out, Jacobitism; as soon as any body they do not like, speaks of inviting over the presumptive Heir

‘ Those who are sincerely for so proper a Method to secure the Succession, ought to take the Advantage of joining in this Point with all whoever are for it, let their Character be what it will.

‘ For when Men mean well, they will thoroughly pursue their Point, and consider the nature of things as they really are in themselves.

‘ If

Anno 5 Ann.

1704.



‘ If those whom you suspected to have had wicked Designs, were not sincere in shewing their Zeal to invite the presumptive Heir, we ought to have taken them at their word; and by this means they had been punish’d as they deserv’d, by being catch’d in their own snare.

‘ Then the Crown might have been join’d with the Church, in an excellent Address to the Queen, and both voted out of Danger.

‘ May the Judgment, Honour and Candour of our Friends, never be called in Question by our own, and other Nations; for their very visible Mistake, in losing this great, and, perhaps, irrecoverable Opportunity they had to oblige their Country for ever.

‘ If the Motion to invite the Successor could be of any use to the Jacobites, it must be because it was not receiv’d

‘ Ought a good thing to be disapprov’d; because a Man I suspect, or do not love, proposes it?

‘ If we maintain this Position, we shall put it into the power of the Jacobites, to hinder any good Resolution we can desire to take; for it will be enough, if any one we call a Jacobite, seems to agree with us.

‘ It is a shame that we should be imposed upon by such weak and malicious Notions.

‘ In short, to oppose the further securing of the Protestant Succession, is to act directly for the Jacobites; and to hinder the Successor’s coming into England, is to oppose the further securing of the Succession, in my humble Opinion.

‘ The Succession and England are in great Danger from the present Conjunction of Affairs.

‘ The Success of the present War, which is, as yet, very uncertain, will have the greatest Influence on this Subject.

‘ Our Constitution does not allow of a standing Army in time of Peace, though we have a formidable Neighbour, who hath always a Will, Power and Pretences to surprize us, whether we are in Peace or War with him, if we are not ever upon our Guard: And he aims at no less, than to subvert our Religion, Liberty and Property.

‘ Under such Circumstances, we ought to think of all possible means to secure ourselves against a Deluge of Blood, and an universal Confusion.

‘ The Subversion of our Constitution is much to be apprehended; if it should so unfortunately fall out, that there should be a Demise; and the Successor, being absent, should not be in a Condition to pass the Seas, while the Enemy may have time to prevent all our good Measures.

‘ It is certain, that those, who are not sensible of the Consequences, that may attend our Negligence, and the Malice of

*\*- Our Constitution, it seems, is greatly altered since the writing this plausible Letter.*

of our Enemies, on such an Occasion; must either be corrupted, or very indifferent, as to the Safety of their Country.

Anno 5 Ann.

1705.

Therefore it is necessary, that the presumptive Heir should be always establish'd in England: And it would be better husbandry, to make an honourable Provision for him suitable to what was settled in the late Reigns; than to be at the Charge of a War, to recover his Right, and our own Liberties, from the Dangers which they then may be in. This may save us great Sums, which we may be oblig'd to lay out, to bring him over; and yet, perhaps, we may not have the Success we desire.

We may well remember, that the Nation paid Six Hundred Thousand Pounds for the Expence of the Prince of Orange's Expedition to deliver us from the Danger our own Folly had brought us into: And yet it was a hundred to one, that he succeeded, tho' so many Men of Quality and Interest, both in Church and State, did appear for him.

But the Expence of Money is the least Evil that our Negligence may bring upon us: Since our Religion, Lives, and Liberties, and all are at Stake.

Your Lordship further says, that the Court was threaten'd last Sessions with this Motion, and dared with it ever since the Parliament was chose; and that it is your Opinion, that the Electores should not give any further Countenance to it.

I use your Lordship's own Words, and do assure you, that the Electores hath not meddled with, nor countenanced any Design, otherwise than appears in her Letter to my Lord Archbishop; having had no Knowledge of what was to be proposed in her Favour before the Motion was made.

But since you had such early notice of this Design I do the more wonder, that this Motion was not made by those who belong'd to the Court: Since it is most manifestly for her Majesty's Interest, as well as that of the Nation, that the presumptive Heir should be establish'd in England.

You could not then have had a Pretence to complain, that it came from Men you did not like; and we have no Reason to think that it would not have been agreeable to the Queen, if the whole matter had laid before her Majesty, who does every thing that can be advised for the Good of Europe and of her own Subjects.

'Tis a strange Notion, to think, that the Presence of the Successor can ruin the Succession.

And it is very unlikely, and not to be supposed, that the Successor (at least any of those we have in this Family, who have a true Respect and Love for the Queen, and true Honour and Virtue in themselves) will ever be a Cause of Confusion in England, by his Presence; This must be invented by those, who ought to be as much suspected as any, by all, who are for the Protestant Succession: And it carries so much

Anno 5 Ann.  
1705.

Malice and Wild-fire in it, that I am afraid to touch it any more.

‘ As to the other Methods proposed in the House of Lords, for the better securing of the Succession: tho’ I have all the Deference in the World for their Lordships, as well as for the honourable House of Commons; yet I am persuaded (with great Submission) that the Parliament will yet think, such Measures not sufficient for these Ends, and will, in time, consider of others more effectual.

‘ We hear from England, That the Laws have been considered which relate to the Administration of the Government, in case a Demise should happen during the Absence of the Successor; and that they are found defective.

‘ This may well be, for neither our Ancestors nor we did ever imagine, That any good Englishman would oppose the Establishment of the rightful and lawful next, or presumptive Protestant Heir in the Kingdom; but that he should be ready at hand to support the Constitution, whenever the Succession came to him.

‘ And this is more necessary at present, than ever; since there is a Pretender supported by France, who usurps the Stile and Title of King of England to her Majesty’s great Dishonour, and Danger of the Protestant Succession.

‘ As for the Act to secure the Queen’s Person and Government, &c. the Powers which the Lords Justices are to have, for the time being, must be very great; and may be liable to bring Dangers, if not Ruin to the Kingdom, if they shall happen to fall into the Hands of ill Men.

‘ The Heir being kept at a Distance will not be able, in time of Danger and Confusion to distinguish his Friends from his Enemies; since he will not be acquainted with the Nobility and Gentry, whom he would have known if he had been in the Kingdom: And therefore will be under great Difficulties how to name proper Persons to join with the seven Lords-Justices.

‘ Besides, it is very doubtful how far his Orders and Choice will be respected; for many Pretences and Measures may be put in practice by a powerful Skill to elude them.

‘ Who can say what Men will be in the great Employments, when a Demise may happen?

‘ Those we think the best Friends to the Succession may die before that time comes; and those whom we call Jacobites, or others who are such in their Hearts, without being known, may yet come into those Employments

‘ The Power of the Nation both by Sea and Land, and even the Treasure, may be in ill Hands; and if this happens, they may dispose of the Crown and Succession as they please.

‘ One single Person may usurp the Power of all the Lords-Justices and Council, as it did fall out in Edward the VIth’s time

time, by the Subtlety of the Duke of Northumberland to the great Prejudice of your Lordship's Family. Anno 5 Ann.  
1705.

' And this hath often happen'd, both in England, and other Countries, tho' Criminals have been frequently punished.

' But such Circumstances may be more dangerous in England at present, than People thought them in former Ages.

' The happy Criminals are always applauded, far from being punish'd.

' Such a single Person at such a Conjuncture may chuse to play the Game of Cromwell, or that of Monk, for the false, or for the true Heir.

' And the time may come, in which the Pretender with the great foreign Power, and the Intrigues within the Kingdom may be able to gain more People than the Successor, being absent and destitute of the necessary Supports especially after the Dissolution of the great Alliance, which may justly be apprehended in time of Peace; as it did happen after the Treaties of Nimeguen and Ryswick, and as it is very like to fall out again after this War; if more effectual Measures are not taken in the Kingdom as well as Abroad. And if the Allies do not find their Security in our Constitution, and in the Succession.

' The Lords have made an excellent Address to the Queen, to maintain a good Intelligence with the Allies and particularly with the States-General.

' But it is to be wish'd that this good Intelligence may be so extended, and that such Measures may be taken, that we may be always certain of their Assistance to secure the Protestant Succession.

' England and the States are the great Support of the Protestant Religion and Interest, and of the Liberties of Europe. 'Tis undoubtedly the Interest and Safety of both, always to maintain a good Correspondence and true Friendship. Therefore the wise and honest Ministers on both sides will easily find the most proper Means to prevent any Quarrel, and will preserve a perfect Union, which must be grounded upon the Obligation and Necessity of each others mutual Defence.

' England may, and ought to depend upon its own Wisdom and Force, to defend itself; being secured and quiet at home.

' And we have had hitherto the good Fortune to preserve our Liberties, when most other Nations have lost theirs.

' But late Experience has shewn us how near we may come to Slavery by our Negligence And also, how necessary it may then be to recur to, and how dangerous to rely upon foreign Aid, as to our own Safety.

Anno 5 Ann.  
1705.

' We can be in no Danger under her Majesty's Reign, and wise Conduct.

' But we are to apprehend and prevent, to the utmost of our Power, any ill Accidents, that may befall us, when it may please God to take our good Queen from us

' Who knows what Men or Parties may rise up at home and abroad? We ought, therefore, like honest and wise Men, to set things upon the best and surest Foundations. At least we ought not to weaken the Succession, by neglecting the proper Means for its Security.

' 'Tis true, that the Invitation of the presumptive Heir hath no Negative put upon it: But it is also true, that if it had pleased our Friends in Parliament at this time, when they were a Majority to advise her Majesty to it, in Concurrency with others; that this would have better secured the Protestant Succession, and our Constitution, than all the Laws the Nation can make.

' I pray, my Lord, what will our Acts of Parliament, our Oaths, the Proclamation of the Successor, and even our Lords-Justices signify, if the Successor is not certain of passing the Sea, and of being possessed of the Fleet, the Troops, the Treasure, the Garrisons, the Sea-Ports, the Tower, and the City of London?

' The World will wonder at, and we shall deplore our fatal Blindness; if we are capable of being amused by imaginary Securities, and neglect, at this time of day, what is really necessary for our Safety.

' Laws are no more than Cobwebs against Power and Force.

' The History of England doth furnish us with many Examples, which shew that the next Heirs to the Crown have been often excluded from the Succession to it, by their being absent at the time of the Demise.

' We have an Instance now before us in Spain, which hath cost us much Blood and Treasure, and is like to cost us much more; besides, what England doth, and may suffer by the Loss of that Trade, which was next to that of our West-Indies, the most profitable to us.

' For if King Charles had been in Spain before the Death of the late King, it might, in all Probability, have prevented this General War; and the French King would never have attempted the Conquest of Spain, if he had not had Footing there before; nor the Spanish Ministers have dared to do what they did, if the Arch-Duke had been present at Madrid.

' Therefore to hinder the next Heir's coming into England, will be a very great Reflection upon us: For it must  
tend



tend to the Destruction of, or at least, very much hazard  
our Religion and Liberties. Anno 5 Ann.  
1705.

‘ And so we ought to consider of our Dangers in due time: since it may so happen, That it may not be in our Power to secure the coming over of the Successor: And I will only mention what has been said in England, that we are not always sure of a protestant Wind.

‘ A thousand other Accidents may befall us, if we trust to the last Extremity.

‘ Therefore we ought now to take right Measures, That the Successor may be always established, and sure to possess himself of the Power, whenever it shall please God to afflict us with a Demise: And that we may be as little exposed as is possible, either to Chance or Treachery.

‘ The Queen seems to be of this Opinion, and all honest Men ought, and will contribute all they can to make it agreeable and easy to her Majesty.

‘ The Electors, and the other Princes of this Family, do always praise and admire the Care that the Queen takes of the Interest of Europe against our Common Enemy; and pray for her Majesty’s long Life and Happiness.

‘ God be thank’d the Queen is in good Health, but, alas! She is mortal, and must our Safety depend upon an Accident, that must befall the best of Mankind?

‘ It is true, that the Electors hath many Years more than her Majesty, and that the Queen is in the Vigour of her Age; and therefore, that the Electors is not like to survive her Majesty; but our Interest and Safety consists in making such Provision once for all, whether the Electors lives or not, that the next Heir may be always present, or in a Condition to be so; without which, in my humble Opinion, we cannot be safe, otherwise than by an extraordinary Providence.

‘ My Lord Haverham hath always shewed himself so true a Friend to this Family, and the Constitution of England; that I thought no Man could be more proper to be advised with upon the Electors’s Letter.

‘ I ask your Lordship’s Pardon for troubling you with so long a Letter; but I thought myself obliged in Duty to my Country, and Friendship to you, to speak plainly upon this Question, which contains the Happiness or Misery of England: And therefore I hope that all wise and honest Men will take care how they decide it. I am

My Lord,

Your Lordship’s most Obedient  
And most Humble Servant.

R. GWYNNE.

Hanover, Jan.

1st Old-Style. }

12th New-Style. } 1705.

After

Anno 5 Ann.  
1705.

Censure pass'd  
upon it.

Address of both  
Houses to the  
Queen, about  
Sir Rowland  
Gwynne's Let-  
ter.

After the reading of this Letter, the Commons resolv'd,  
' That it was a scandalous, false and malicious Libel, tend-  
ing to create a Misunderstanding between her Majesty and  
the Princess Sophia, and highly reflecting upon her Majesty,  
upon the Princess Sophia, and upon the Proceedings of both  
Houses of Parliament; that an humble Address should be  
presented to her Majesty, That she would be pleased to give  
Order for the Discovery and Prosecuting the Author, Prin-  
ter and Publishers of the said Pamphlet, and that the said  
Resolutions should be communicated to the Lords at a Con-  
ference, and their Concurrence desir'd thereunto.' Their  
Lordships not only readily concurr'd with the Commons on  
the 11th, but likewise agreed upon an Address to be pre-  
sented to her Majesty, pursuant to the said Resolutions; to  
which Address they desired the Concurrence of the Com-  
mons, who heartily joined with them, and so the next day,  
both Houses presented the following Address to the Queen:

' We your Majesty's most dutiful and obedient Subjects,  
the Lords Spiritual and Temporal, and Commons in Parlia-  
ment assembled, beg leave to acquaint your Majesty, That,  
having taken into serious Consideration a printed Pamphlet,  
entitled, *A Letter from Sir Rowland Gwynne, to the Right Ho-  
nourable the Earl of Stamford*, We came to the following Re-  
solution.

' That the said Pamphlet is a scandalous, false and mali-  
cious Libel, tending to create a Misunderstanding between  
your Majesty, and the Princess Sophia, and highly reflecting  
upon your Majesty, upon the Princess Sophia, and upon the  
Proceedings of both Houses of Parliament.

' May it please your Majesty, This seditious Libel having  
been, of late, with great Industry dispers'd among your Sub-  
jects, we humbly beseech your Majesty to give strict Orders  
for the Discovery of the Author, Printer and Publishers  
thereof, to the end they may be brought to condign Punish-  
ment, according to the utmost Rigour of the Law. And we  
pray your Majesty to use all Means, which shall seem proper  
to your Royal Wisdom, for preventing such insolent and  
dangerous Attempts for the future.

To this Address, the Queen was pleased to give the follow-  
ing Answer:

The Queen's  
Answer.

' My Lords and Gentlemen, Nothing can be more ac-  
' ceptable to me, than so seasonable an Instance of your Con-  
' cern to preserve a good Understanding between me and the  
' Princess Sophia, and of your Care to defeat the Artifices  
' of designing and malicious Men.

' I am fully sensible of the very ill Design of the Paper,  
' which you have so justly censured, and I will not fail to  
' give the necessary Directions for complying in the most ef-  
' fectual Manner with all you desire in your Address.'

There

There being, at this Juncture, no less, than about 12000 Seamen wanting to Man her Majesty's Navy, both the Lords and Commons took, severally, that weighty Affair into Consideration, and after some time spent therein, the Commons came to these Resolutions: 1st, ' That, in order to the speedy and more compleat manning of her Majesty's Navy for the Year 1706. the Justices of Peace, and other Civil Magistrates throughout the several Counties, Ridings, Cities, Towns and Places, within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, be empower'd, and directed forthwith to make, or cause to be made, strict and diligent search for all such Seamen, or Sea-faring Men, as lie hid, and are not in her Majesty's said Service. 2dly, That the said Justices, and other Civil Magistrates, do take up, send, conduct and convey, or cause to be taken up, sent, conducted and conveyed, all such Seamen or Sea-faring Men to be deliver'd to such Persons as shall be appointed to receive the same. 3dly, That a Penalty be inflicted upon every Person who shall presume to harbour or conceal such Seamen or Sea-faring Men. 4thly, That a Reward be given to every Person who shall discover and take up such Seamen, or Sea-faring Men, as aforesaid the same to be distributed and paid to every such Discoverer or Person so taking up such Seamen or Sea-faring Men respectively, out of the Money given for the Service of the Navy. 5thly, That Conduct Money be allowed for conveying and subsisting such Seamen and Sea-faring Men, according to the present Usage of the Navy. 6thly, That, for the Encouragement of the said Service, every Seaman who shall be turn'd over from one Ship to another, shall be paid his Wages, which shall appear to be due to him in the Ship from which he was turn'd over, before such Ship to which he shall be turn'd over do go to Sea, either in Money, or by a Ticket, which shall entitle him to an immediate Payment. 7thly, That such able-bodied Landmen, who are liable to be raised for the recruiting her Majesty's Land-Forces and Marines, be raised for the said Service, in the like manner, and delivered to such Persons who shall be appointed to receive the same: And order'd, that the Committee to whom the Bill for the Encouragement and Encrease of Seamen, and for the better and speedier manning her Majesty's Fleet, and for making Provision for the Widows and Orphans of all such as shall be slain, or drowned, in her Majesty's Service, and for the Support of Trade, is committed, have power to receive a Clause or Clauses pursuant to the said Resolutions: And that it be an Instruction to the said Committee, that they have power to receive a Clause for discharging of such Seamen, and other insolvent Persons, as are in Prison for Debt, and delivering them into her Majesty's Service on board the Fleet.

Anno 5 Ann.  
1709.

Votes about  
the beter man-  
ning of the  
Fleet.

This

Anno 5 Ann.  
1705.

Queen passes  
Acts.

This was perfected, and pass'd both Houses in four Days; and the Lords and Commons having, after several Conferences, agreed upon the Bill, entitled, *An Act for the Amendment of the Law, and the better Advancement of Justice*, the Queen came to the House of Peers on the 13th, and the Commons being sent for up, her Majesty gave the Royal Assent to the following seventeen public Acts, viz.

1. *An Act for laying further Duties on Low Wines, and for preventing the Damage to her Majesty's Revenue by Importation of foreign-cut Whalebone, and for making some Provisions as to the Stamp Duties, and the Duties on Births, Burials and Marriages, and the Salt Duties, and touching the Million Lottery Tickets, and for enabling her Majesty to dispose of the Effects of William Kidd, a notorious Pirate, to the Use of Greenwich Hospital, and for appropriating the public Moneys granted in this Session of Parliament.*
2. *An Act for the better Security of her Majesty's Person and Government, and of the Succession to the Crown of England in the Protestant Line.*
3. *An Act for repairing the Highways between Barnhill and Hatton Heath in the County of Chester.*
4. *An Act for the better enabling the Master, Wardens and Assistants of Trinity House, to rebuild the Light-House on the Edystone Rock.*
5. *An Act for the better ordering and governing the Watermen, and Lightermen, upon the River of Thames.*
6. *An Act for enlarging the Pier and Harbour of Parton, in the County of Cumberland.*
7. *An Act for the paying and clearing the several Regiments commanded by Lieutenant-General Stewart, Colonel Hill, and Brigadier Holt, and for supplying the Defects of the Muster-Rolls of these, and several other Regiments.*
8. *An Act for the better collecting Charity-Money on Briefs by Letters-Patent, and preventing Abuses in relation to such Charities.*
9. *An Act for the Increase and better Preservation of Salmon, and other Fish, in the Rivers within the Counties of Southampton and Wilts.*
10. *An Act for the better recruiting her Majesty's Army and Marines.*
11. *An Act to empower the Lord High Treasurer, or Commissioners of the Treasury, to issue out of the Moneys arising by the Coinage-Duty, any Sum not exceeding Five Hundred Pounds over and above the Sum of Three Thousand Pounds yearly, for the Uses of the Mint.*
12. *An Act for continuing An Act made in the Session held in the Third and Fourth Years of her Majesty's Reign, entitled, An Act for punishing Mutiny, Desertion, and false Musters, and for the better Payment of the Army and Quarters.*
13. *An Act for raising the Militia for the Year One Thousand Seven Hundred and Six, notwithstanding the Month's Pay formerly advanced be not repaid, and for an Account to be made of Trophy-Moneys.*
14. *An Act to enlarge the time for registering unsatisfied Debentures upon the forfeited Estates in Ireland, and for renewing of other Debentures which have been burnt, lost or destroyed.*
15. *An Act for the Encouragement and Increase of Seamen, and for the better*

and

*and speedier manning her Majesty's Fleet. 16. An Act to prevent Frauds frequently committed by Bankrupts. And, 17. An Act for the Amendment of the Law, and better Advancement of Justice; As also to an Act for naturalizing Vincent de Laymerie, and others, and to 52 other private Bills: After which her Majesty made the following Speech to both Houses.*

Anno 5 Ann.  
1705.

My Lords and Gentlemen,

Being now come to a Close of this Session, I am to return you my Thanks for having brought it so speedily to a good Conclusion; especially for the wise and effectual Provision made to secure the Protestant Succession in this Kingdom, and the great Advances on your Part, towards procuring the like Settlement in the Kingdom of Scotland, and a happy Union of both Nations.

I am very well pleased likewise with the Steps you have made for the Amendment of the Law, and the better Advancement of Justice.

I must again repeat to you, Gentlemen of the House of Commons, that I am extremely sensible of the Dispatch you have given to the public Supplies; I assure you I will be very careful that they may be applied, in the most effectual Manner, for our Common Interest.

My Lords and Gentlemen,

At the Opening of this Parliament, I recommended, with great Earnestness, an entire Union of Minds and Affections among all my Subjects, and a sincere Endeavour to avoid and extinguish all Occasions of Divisions and Animosity; I am much pleased to find how entirely your Sentiments have agreed with mine. Your Unanimity and Zeal, which I have observed, with great Satisfaction, throughout this whole Session, against every thing that tends towards Sedition, doth so much discourage all such Attempts for the future, and hath set such an Example to the whole Kingdom, that, when you are returned into your several Countries, I doubt not but you will find the Effects of it every where, and I assure myself you will make it your Business and Care to improve and perfect that good Work you have so far advanced here; and by continuing to shew a just dislike of all Factions, and turbulent Proceedings, and resolved to discountenance the Encouragers of them, you will soon make the whole Kingdom sensible of the good Effect of so prudent and happy a Conduct.

Then the Lord Keeper of the Great Seal (by her Majesty's Command) prorogued the Parliament until Tuesday the 21st Day of May next.

The Parlia-  
ment prorogued.

TOME III.

Oo-o

During

Anno 5 Ann.  
1708.

Proceedings on  
the Union.

During this Recess the grand Affair of the Union of the two Kingdoms took place; the first meeting of the Commissioners for that purpose being at the Cockpit, April 16. at which were present for Scotland the Earl of Seafield Lord-Chancellor, Duke of Queensbury, Earl of Mar, Earl of Loudon, Earl of Sutherland, Earl of Wemyss, Earl of Leven, Earl of Stair, Earl of Rosebury, Lord Archibald Campbel, Lord Viscount Duplin, Lord Ross, Lord President of Session, Lord Justice Clerk, Mr. Francis Montgomery, Sir Alex. Ogilvie, Sir Patrick Johnston, Sir James Smollet, George Lockhart of Carnwath, William Seton of Pitmedden, John Clark, Daniel Stewart, Daniel Campbell.

Those for England, who appeared on this solemn Occasion, were the Lord Keeper, Lord High-Treasurer, Lord President, Lord Privy-Seal, Duke of Somerset, Duke of Bolton, Earl of Sunderland, Earl of Kingston, Earl of Orford, Lord Viscount Townsend, Lord Wharton, Lord Grey, Lord Powlet, Lord Somers, Marquis of Hastings, Sir Charles Hedges, Mr. Harley, Secretaries of State; Mr. Boyle, Lord Chief-Justice Holt, Lord Chief-Justice Trevor, Mr. Attorney-General, Mr. Solicitor-General, Sir John Cook, Doctor Waller.

When after the Lords Commissioners for both Kingdoms had taken their Places, the Commissions were opened, and read by the respective Secretaries, and then the Lord-Keeper of the Great-Seal of England, addressing himself to the Lords Commissioners for Scotland, spoke in these Words.

Lord Keeper's  
Speech to the  
Scots Com-  
missioners of  
the Union.

' My Lords, We the Commissioners appointed by her Majesty, and authoriz'd by the Parliament of England to consult and treat with your Lordships, as empowered in like manner, by her Majesty and the Parliament of Scotland, concerning an Union of the two Kingdoms, and such other things as we, the Commissioners on both Parts, shall think convenient and necessary for the Honour of her Majesty, and the common Good of both Kingdoms, do apprehend there never was (in any Assembly of this nature) so little Occasion as at present, for the Commissioners of England to give any verbal Assurances of their Zeal to promote and complete (so far as in their Power) the great and good Design we are met about, since it cannot be doubted, but that we bring along with us the same Sentiments, which so lately appeared in the Parliament of England, when they took care to manifest, by a solemn Act, that they did postpone all other Considerations to their evidencing a good and friendly Disposition towards the Kingdom of Scotland.

' The Parliament of England, in making that unexpected Advance, seem'd resolved, if possible to attain that Union, which

which hath been so long thought necessary, by all that wish well to the Prosperity of both Nations.

Anno 5 Ann.  
1706.

‘ And we most sincerely assure your Lordships, that we accordingly meet your Lordships with Hearts fully resolv’d to use our utmost Endeavour to remove all Difficulties in this Treaty, to prevent all Misunderstandings, to cherish and improve the good Dispositions to one another we meet with, to have the general and joint Good of both Kingdoms solely in our View, and not the separate of either, but to act as if we were already united in Interest, and had nothing left to consider but what Settlements and Provisions are most likely to conduce to the common Safety and Happiness of this whole Island of Great-Britain.

‘ Which Measures, if pursued on both Parts, we hope may enable us to prepare such Terms of Union as may prove satisfactory to her Majesty and her Parliaments of both Kingdoms.’

To which the Earl of Seafeld, Lord-High-Chancellor of Scotland, on the Part of the Lords Commissioners for that Kingdom, reply’d as followeth.

‘ My Lords, the Lords Commissioners for Scotland have desired me to assure your Lordships that they meet you on this Occasion, with great Willingness and Satisfaction, to treat of an Union between the two Kingdoms, and of such other Matters and Concerns as may be for her Majesty’s Honour, and the maintaining a good Understanding between the two Nations.

Answer’d by the  
Lord-Chancellor  
of Scotland.

‘ We are convinced that an Union will be of great Advantage to both; the Protestant Religion will be thereby the more firmly secured; the Designs of our Enemies effectually disappointed, and the Riches and Trade of the whole Island advanced.

‘ This Union has been often endeavoured, before and since the Kingdoms were united in Allegiance under one Sovereign; and several Treaties have been set on Foot for that End, tho’ without the desired Success; but now we are hopeful that this shall be the happy Opportunity of accomplishing it; her Majesty hath frequently signified her good Inclinations towards it; and we are the more encouraged to expect Success in this Treaty, by the good Disposition which appeared in the Parliament of Scotland for it, and by the friendly Proceedings in the last Session of the Parliament of England, which gave general Satisfaction. We have great Confidence in your Lordship’s good Intentions, and we shall be ready on our Parts to enter into such Measures with you as may bring the Treaty to such a Conclusion as may be acceptable to her Majesty, and to the Parliaments of both Kingdoms.’

O 90 2

At

Anno 5 Ann.  
1706.

Preliminary  
Articles of the  
Union-Treaty.

At their next Meeting, The Lord-Keeper, in the Name of the Lords-Commissioners for England, delivered to the Board certain Preliminary-Articles which were read as followeth, and afterwards agreed to:

I. That all Proposals made by either side, be made in Writing, and every Point agreed on shall be reduced into Writing.

II That no Point, tho' agreed, on, and reduced into Writing, shall be Obligatory on either side, till all Matters be adjusted in such Manner as will be proper to be laid before the Queen and the two Parliaments for their Approbation.

III. That there be a Committee appointed, consisting of a certain Number of each Commission to revise the Minutes of what passes, which are not to be inserted by the Secretaries in their respective Books, but by Order of the said Committee, having first made Report thereof to the respective Commissioners, and received their Approbation of the same.

IV. That all the Proceedings of the Commissioners of both Kingdoms, during the Treaty, be kept secret.

First Proposals  
by the English.

The Lord-Keeper also delivered to the Board the following Proposals, which may be look'd upon as the Basis of the Union. ' That the two Kingdoms of England and Scotland be for ever united into one Kingdom by the Name of Great-Britain; That the United Kingdom of Great-Britain be represented by one and the same Parliament, and that the Succession to the Monarchy of the united Kingdom of Great-Britain, in case of Failure of Heirs of her Majesty's Body, be, according to the Limitations mentioned in an Act of Parliament, made in England, in the 12th and 13th Years of the late King William, entitled, *An Act for the further Limitation of the Crown, and the better securing the Rights and Liberties of the Subjects.*'

May 9, Her Majesty came to the Meeting, and being seated in her Chair, spoke to the Lords Commissioners as followeth:

Queen's Speech  
to the Com-  
missioners,

' My Lords,  
' I Am so much concern'd for the Union of the two King-  
' doms, that I could not satisfy myself without coming, be-  
' fore I went out of Town, to see what Progress you had  
' made in the Treaty, and to recommend very earnestly to  
' you the bringing it to a happy Conclusion, with as much  
' Dispatch as the Nature of it will admit; not doubting of  
' the general Satisfaction which my Subjects of both King-  
' doms will receive in finding you overcome all Difficulties  
' to attain so great and public a Good.'



When her Majesty had done speaking, the Lord-Keeper desired to know of her, if she would be pleased to hear the Proposals made on either side, and the Resolutions hitherto taken thereupon, read by the respective Secretaries; which her Majesty was pleased to allow of.

Anno 3 Ann.  
1706.

June 26, Her Majesty came again to the Meeting, and being seated in her Chair, spoke to the Lords-Commissioners as follows:

‘ My Lords,

‘ I Am come hither once more to see what further Progress you have made in this Treaty, and to press a speedy Conclusion of it, in regard my Servants of Scotland cannot without great Inconvenience, be much longer absent from that Kingdom.’

Queen's second  
Speech to the  
Commissioners.

After which, her Majesty was pleased to direct, that the Proceedings of the Commissioners for both Kingdoms (from the time of her being here) should be read, which was accordingly done by the respective Secretaries, and then her Majesty went away.

July 23<sup>d</sup>, The Treaty being happily finish'd the Lords Commissioners for both Kingdoms went from the Cockpit to attend the Queen to St. James's, where the Lord-Keeper, in the Name of the Lords-Commissioners for England made the following Speech, and presented to her Majesty one of the signed and sealed Instruments or Writings, containing the Articles of Union on the Part of England.

‘ May it please your Majesty, We the Commissioners appointed by your Majesty, in pursuance of the Act of Parliament passed in your Kingdom of England, to treat concerning an Union of the two Kingdoms, with the Commissioners for Scotland, do (according to our Duty) humbly beg leave to present to your Majesty these the Effects of our continued and faithful Endeavours towards that End.

Lord-Keeper's  
Speech to the  
the Queen,  
upon presenting  
the Articles of  
the Union.

‘ They are Articles agreed upon between your Commissioners of both Kingdoms, as the Terms or Conditions upon which the intended Union is to take Place, if your Majesty, and the Parliaments of both Kingdoms shall think fit to approve and confirm the same.

‘ In these we have come to an Agreement on every Point, we judged necessary to effect a complete and lasting Union, and we have endeavoured not to stir into any Matter we had reason to think was not so.

‘ And altho' we have unanimously carried this Treaty thus far, purely from a Conviction, that we have done therein to God, your Majesty, and our Countries good Service; yet we are far from thinking, that what we have done will

or,

Anno 5 Ann.  
1706.

or ought to be of any Weight or Authority elsewhere; but do most entirely submit these our Labours to the high Wisdom of your Majesty, and both your Parliaments, to stand or fall by the Reason, Justice, and public Utility on which they are founded.

‘ Your Majesty’s Royal Presence and seasonable Admonitions to us at the fittest Junctures were (we most thankfully acknowledge) a very great Encouragement and Assistance to us in the Difficulties we met with.

‘ Your Majesty’s Glory is already perfect, and the finishing this Work is all that is wanting to complete as well as secure the Happiness of so great a People, as your Subjects may now without any Arrogance pretend to be.

‘ May your Majesty live not only to give a Sanction of this universal Blessing to all your People, but also to see, in a long and prosperous Reign over us, the many immediate (or near) good Effects of it: But, as for that great and main Consequence of it, for which your Majesty is making, by a most gracious and charitable Foresight, this only effectual Provision, I mean the Continuance of Peace and Tranquillity in this Island, upon a Descent of the Crown instead of that Blood-shed and Distraction, which would probably follow upon the fatal Division of it;

‘ May we be so happy, as never in our Days, to experiment the Fitness of these Measures your Majesty is now taking for that End? But may late, very late Posterity only, in that respect, reap the Advantage of them.’

This done the Lord Chancellor of Scotland in the Name of the Lords Commissioners for Scotland, made the following Speech, and presented also to her Majesty one of the sign’d and seal’d Instruments or Writings, containing the Articles of Union on the Part of Scotland.

Lord Chancellor of Scotland’s Speech to the Queen on the same Occasion.

‘ May it please your Majesty, the Commissioners appointed by your Majesty for the Kingdom of Scotland, to treat of an Union of your two Kingdoms of Scotland and England, have commanded me to return your Majesty their most humble and dutiful Acknowledgments, for the Honour your Majesty has conferred on them, in employing them to negotiate this most important Affair, which is of the greatest Consequence to all your Majesty’s Subjects.

‘ We have endeavour’d to discharge this Trust with all Fidelity, and are now come humbly to lay before your Majesty, the Articles and Conditions of Union which we have treated of, and agreed upon, and do submit them to your Royal Consideration.

‘ It is a great Satisfaction to us, that what we have concluded in this matter, has been done with Unanimity; and we must own, that the Knowledge we had of your Majesty’s great Con-

Concern for uniting your two Kingdoms, and the Earnestness with which your Majesty has been most graciously pleased to recommend it, hath enabled us to bring this Treaty to a happy and speedy Conclusion; to the mutual Satisfaction of the Commissioners on both sides; and we shall esteem it our greatest Happiness, if what we have prepared be acceptable to your Majesty, and ratified by the Parliaments of both Kingdoms, without which, what we have done can be of no Authority.

Anno 5 Ann.

1706

‘ An Union of the two Kingdoms has been long wish’d for, it being so necessary for establishing the lasting Peace, Happiness and Prosperity of both Nations: And tho’ it has been frequently endeavour’d by your Majesty’s Royal Predecessors, without the desired Success; yet the glorious Successes, with which God has bless’d your Majesty’s Endeavours for the Happiness of your People, make us hope that this great Work is reserv’d to be accomplished in your Majesty’s Reign.

After which, her Majesty was graciously pleased to make the following Speech.

‘ My Lords,

‘ **I** Give you many Thanks for the great Pains you have taken in this Treaty, and am very well pleased to find your Endeavours and Applications have brought it to so good a Conclusion. The Particulars of it seem so reasonable, that I hope they will meet with Approbation in the Parliaments of both Kingdoms. I wish therefore, that my Servants of Scotland may lose no time in going down to propose it to my Subjects of that Kingdom: And I shall always look upon it as a particular Happiness, if this Union (which will be so great a Security; and Advantage to both Kingdoms) can be accomplished in my Reign.’

Queen’s Speech,  
in Answer to  
both.

*The END of the Third TOME.*

*BOOKS printed for, and sold by WARD and CHANDLER, at their Warehouse at the Ship, without Temple-Bar, London; and at their Shops in York, and Scarborough.*

I. **A** Guide to Justice: Being Modern English Precedents, for the Direction of Justices of the Peace, in making out Warrants, Mittimus's, Recognizances, Superseas's, Affidavits, Informations, Inquisitions, Summons, Precepts, Certificates for the Poor, and Warrants for their Removal, Bonds, &c. Necessary for all Justices of the Peace, Deputy-Lieutenants, Commissioners of Sewers, &c. to assist them in the Execution of their several Offices. Approved by, and published at the Request of Sir John Dutton, Sir Robert Cann, Sir William Codrington, Barts. Robert Kendall, William Blathwaye, Giles Earle, John Stephens, John Temple, Thomas Cooke, John Small, Esqs; and others his Majesty's Justices of the Peace for the County of Gloucester. By Joseph Higgs Gent. who has been Clerk to the Commission of the Peace, from the Reign of King Charles II. to the present time. 8vo. Price 3 s. 6 d.

II. The Compleat English Copyholder: or, A Guide to Lords of Manors, Justices of the Peace, Tenants, Stewards, Attorneys, Bailiffs, Constables, Game-keepers, Haywards, Reeves, Surveyors of the High-ways, &c. Being the Common and Statute-Law of England, together with the adjudged Cases relating to Manors, Copyhold Estates, Courts-leet, and Courts-baron, common-placed: Containing the whole Practice of the Court-leet, Court of ancient Demesne, Court-baron, and Music-court, of the Honour of Tutbury, and the Business of a Manor in all it's Branches; with their several Tenures and Customs. Collected from Records, Manuscripts, and printed Books; and Directions for Distraining for Rent; by the late Sir Bartholomew Shower. By William Shires, of the Inner Temple, Esq; In two Volumes, 8vo. Price 9 s.

III. The English Clerk's Instructor in the Practice of the Courts of King's Bench and Common Pleas, viz. in filling up and suing out Writs of the first Process; in drawing Declarations, Pleas, and Demurrers; making up Issues and Paper Books; entering Judgments; suing out Writs of Execution; Writs of Error, Originals, Outlawries, &c. and in passing of Fines; and several other Matters necessary for the Practice of an Attorney. To which are added, several choice Precedents of Declarations never before printed. By Daniel Reading, Attorney at Law. In two Vol. 8vo. Price 10 s.

IV Sir Bartholomew Shower's Reports in B. R. in the Reign of King William III. In two Volumes, folio. Pr. 2 l.