A BRIEF TREATISE ON THE PRIVILEGES OF THE HOUSE OF COMMONS.

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NEWCASTLE UPON TYNE: PRINTED BY K. ANDERSON, FOR LONGMAN, HURST, REES, AND ORME, BOOKSELLERS, PATERNOSTER-ROW, LONDON.

1810
To save the trouble of particular references, it is requisite to say, that the books chiefly consulted in this Treatise are,—Hatsell’s Precedents of Proceedings in the House of Commons, Cobbett’s Parliamentary History, Townsend’s Four Last Parliaments of Queen Elizabeth, Tindall’s Continuation of Rapin, Prynne on the Fourth Institute, and the Rolls of Parliament, 6 vols. fol.
The object of the present Brief Treatise is to shew by what slow and imperceptible degrees the House of Commons has proceeded from the lowest degree of privilege, to the highest degree of power which can be exercised by any human tribunal—that of depriving a fellow-creature of liberty for an indefinite period, and in thus marking their progress from servility, to unlimited authority, to convince the people how jealous they ought at all times to be of their liberty, since every little encroachment leads to something greater, till it finally ends in despotism.

The advocates for this assumed power of the House, have indeed pointed out the road to despotism by a different route, and have pretended to consider it, under the name of privilege, as the
only safeguard to the liberty of the people, as the only bulwark against anarchy, and its natural consequence, tyranny: but I must beg leave to differ from such chimerical fears, and to affirm, that from all my experience of mankind, and my knowledge of history, the smoothest and the surest road to despotism has ever been that which pretends to be the path of liberty. Rome, even after she had submitted to the most contemptible tyrants, had all the forms of a free government, and to the last she had a consul, even tho' that consul was a horse; and France has yet all the outward semblance of freedom. I must therefore again repeat, and it cannot be too often repeated, that a nation which wishes to preserve its liberty, must firmly oppose, by every constitutional means, the exercise of a despotic power, whether exercised by a King, Lords, or Commons, or by all the three united: for the most dangerous species of tyranny is that which creeps insidiously in under the forms of a free constitution; and whenever the written law is suspended by any other authority, should that be suffered to grow into use, and to become a precedent for succeeding times, from the moment that such a precedent is established, from that moment we begin to lose our liberty. It is needless to harangue about the privileges of the Parliament being the privileges of the people, and exercised
only for their good: this is all mere words; for it is impossible to shew how it can ever be for the interest of the people, to give up the safeguard of the written law and submit to arbitrary imprisonment, whether commanded by an individual or a body of men.

To be governed by the law, is the great distinction between freemen and slaves: if one branch of the legislature can either make new laws or dispense with the old ones, or set up precedents in opposition to laws, there is an end of our freedom. The privileges of the House of Commons are freedom from arrests and assaults, for the persons and servants of its members; liberty of speech; the right of taxation; of advising the removal of evil counsellors from the King; and of determining all things relative to elections:—these are the chief of its privileges; and its power is the power requisite for the exercise of its functions, and no more: it is not a power to dispense with the law, to oppress the subject, or to overturn the constitution. While the House limits itself to the exercise of these privileges, and these powers, it will be respected, beloved, and admired; when it aims at more, it will, I trust, meet with a firm and constitutional resistance, not only from individuals, but from the nation.

The privileges of Parliament are by some referred to so ancient a date as the time of Canute
the Dane;* but I believe the Parliaments summoned by the Norman monarchs were things of a very different nature from the old Saxon Wittenagemot, and therefore the farthest we need to go is the time of Edward I. which will shew us that tho' their origin, like that of most other things of long continuance, has been forgotten, they were originally derived from the crown; as Parliaments themselves, at least the popular part of them, were but concessions forced from the monarch by his necessities and the haughty spirit of his barons: and indeed the humble and submissive language at all times used by the Commons to the King, in which from the time of Edward III. to Henry VIII. they acknowledged their liberties to be held by grant from the crown, is a proof that they considered themselves originally indebted to him for their being called together; tho' in course of time this language came to be only a matter of form, and they now look upon their assembling as a right; and so it is; but a mere right without power, is a barren possession.

Before the time of Henry VIII. the remedies for all breaches of privilege contained under the head of arrests and assaults, were of three different kinds,

* Hatfell's Precedent's, &c. v. I. p. 2, a passage is quoted from one of the laws of Canute—Omnis homo pacem habeat cundo ad gemotrem et redeundo a gemoto, ch. 107.
viz. a general supersedeas of all legal proceedings against members, during the time the Parliament sat; a writ of privilege in arrests by mesne process, and acts of parliament for those taken in execution, to indemnify the Chancellor for issuing the writ to release the member or his servant, and to save the parties arrested a right to renew the execution after the time of privilege had expired. Acts of Parliament, and ordinances of the King, were also enacted, on the petition of the Commons for the punishment of those who committed assaults on the persons of members or their servants.

The first case of privilege, cited by Hatfell from Sir Edward Coke, in his fourth Institute, p. 24. is that of the master of the Temple, 18th Edward.—The same case is cited by Mr. Tate, in Townsends's four last Parliaments of Elizabeth, who says, it was the Knights Templars who petitioned the King to allow them to distrain for rent due to them by certain members of Parliament.—To which the King answered, "That it was not fitting that those of his council should be distrained during the time of Parliament."—8th Edward II. two writs of Supersedeas were issued by that King, directed to the judges of assize, exempting members of Parliament generally, from being impleaded in any civil action during the time of Parliament.—9th Edward II. 1298, the same King summoned the
sheriff of Yorkshire to come before him, to answer for having detained the horses and harness belonging to the Prior of Malton, at York, on his return from the Parliament at Lincoln, "Because," says the King, "it behoves us to defend and protect those who are summoned by us to our Parliament, in their coming, staying, and returning, from all injuries, oppressions, and grievances."—March 12th, 1332, 6th Edward III. the King issued an order, "That no man, during the time of Parliament, on pain of losing all his substance, should presume to wear any coat of mail, or any weapon, offensive or defensive, in London, Westminster, or the suburbs; and that, during the time of this session, no games, or other plays, of men, women, or children, should be used in Westminster, to the disturbance of the Parliament."

A special commission was given 11th Richard II. to several gentlemen in the North, to enquire into a riot and assault on the lands and servants of John de Derwentwater, knight of the shire of Cumberland, during his attendance in Parliament.

It is remarked by Prynne, 1st, "That from this precedent it is observable, that the Commons at this time assumed no jurisdiction to themselves to examine and punish this transcendant riot and breach of privilege, but only complained of it to the King, as they did in all other cases of the like
nature till the end of Henry VIII.—2d. That the King issued out a commission to enquire into this riot and assault by a jury, according to the wholesome provisions of Magna Charta, which, says he, I remark not with a view to diminish the just and ancient privileges of the Commons, but to rectify their late irregularities in sending persons into custody upon every motion and suggestion of a pretended breach of privilege, to the great vexation and expense of individuals, before any legal proof can be had of their guilt, against the great Charter and all the ancient precedents of Parliament."

(Prynne on the 4th Institute, Add. Appendix, p. 331.) Such was the opinion of this great lawyer, senator, and most honest man, on the encroaching power of the Commons, an opinion of more weight than the determination of fifty judges, who, nine out of ten, always lean to the side of power and prerogative, and would surrender the subject’s liberty to satisfy their revenge against any man whose principles or politics differ from their own.

Prynne was a man who has suffered more obloquy from the violence of party than any man that ever existed; yet his writings, his speeches, and his conduct prove him to have been a man of the most stupendous knowledge, and the most immovable integrity. The volumes he has left us, are more wonderful for learning and variety of research than
any other man ever produced; his speeches have the same character, and his integrity in defending Charles the Ist. at the risque of his own life, when he thought that monarch had offered terms of conciliation to the Parliament which they ought to accept, shew that he was actuated by no private, personal, or party feeling; for he had uniformly opposed the unconstitutional encroachments of Charles, and for that opposition had suffered most severely in his person, character, and property.

5th Henry IVth. The Commons petition the King, that those who had violated their ancient privilege of freedom from arrests might be punished by making fine and ransom to the King, and giving treble damages to the party aggrieved. The King answers, "There is already sufficient remedy." Prynne imagines that the King thought this punishment too severe, and that the sufficient remedy he alluded to, was the writ of privilege which the law allowed.

In the case of Larke, 8th Henry VIth. the Commons pray that a general law might be enacted, that no members, nor their servants might be arrested or detained during the time of the Parliament's sitting, which the King refused with the usual parliamentary negative, "Le roi s' aviserait," leaving each particular case, as before, to find its own remedy by an act of parliament. The Lords, in their
answer to this case when cited by the crown lawyers, in Lord Arundel's affair, 1625, suppose, "The ground on which the King refused the petition of the Commons was on account of that part which desired, that none might be detained in prison during the Parliament, tho' they might have been arrested before; and therefore, in Thorp's case, 31st Henry VIth, a fourth limitation was added to the former three, except for treason, felony, breaking the surety of the peace, or condemnation before Parliament."

11th Henry VIth a general law was enacted against all those who should assault or maim any Member of Parliament or his servant, during the session, by fine to the King and damages to the party, to be determined by jury or inquest.

23d Henry VIth. "The Commons in the present Parliament assembled, pray the King, that if any person or persons make assault on any of the Lords or Commons, being in the said Parliament or from thence returning home, or in any future Parliament coming, abiding, and returning, that they upon whom such assault is committed, may have such writs as by an act of the present Parliament is ordained to be had for Sir Thomas Parr, directed to the Sheriffs where the trespass was committed, returnable to the King's Bench." The King's answer was, "Let the statutes made before in this behalf
be in all periods kept and observed,” meaning the statutes 5th Henry IV. c. 6, 11th Henry VI. c. 11. Mr. Harrell says, that after the most diligent search, he could not find any thing relating to Sir Thomas Parr, either in the Records themselves, the Statutes, or the Parliamentary History. It is somewhat singular that a man of his accuracy should have so soon given up the search. The statute itself is, to be sure, not recited in its order, but it is contained in a petition presented to the King and Parliament by the offenders, who it seems had been guilty of a violent assault on Sir T. Parr, with an intent to murder. In consequence of which it was enacted, “That a writ should be issued from the Chancery to the Sheriffs of London, commanding them within two days to publish and declare, that Robert Belingham, Thomas Belingham, Thomas Strickland, John Dickinson, and Robert Dickinson, should appear in the King’s Bench at the Moys of Pasche 1446, and that no plea from them to the contrary should be good, and if they did not appear they should stand as attainted of felony, and in that case no pardon, nor petition of the King, should be of any avail: nor should they have any benefit of any writ of error assigning that they were in the King’s service or in prison.” The petition states, “That for great fear and dread of the said act and process, they durst in no wise appear, and
therefore pray the King, that with the advice of
the Lords Spiritual and Temporal and the Com-
mons in Parliament assembled, the said act might
be repealed,” which was granted, on condition that
no Lord should lose any title that he ought to have
by way of escheat in their freeholds, nor any other
person, by reason of the revocation above said.—
The petition of the Commons is in the Rolls of
Parliament, vol. 5, p. 111, the petition of the of-
fenders, vol. 5th, p. 169. It is remarkable that
the names of the petitioners are not accurately re-
peated. Sir T. Parr was knight of the shire for
Wiltmoreland, and most of his assailants were of
the same county; one of the Belingham was also a
Member of the House; as to any further particu-
lars of the affair, they must for ever remain con-
cealed.

31st Henry VIth, Thomas Thorp, the Speaker
of the House, at the commencement of the session
of Parliament, being in prison, the Commons re-
quested the King and Lords, that, according to
their ancient privileges, he might be set at liberty.
The next day the counsel for the Duke of York,
declared before the Lords that he had received
damages against the said Thorp in the last term,
the Parliament not then sitting, by verdict in
the Exchequer, for taking away the goods of the
said Duke out of Durham House, for which Thorp
remained in execution, and he prayed that he might remain. The advice of the Judges being had, they replied, "That they ought not to answer to that question, for it had not been usual for the Judges to determine the privileges of the High Court of Parliament, for it is so high and mighty in its nature, that it may make law, and that which is law it may make to be no law, and the determination of that privilege belongeth not to the Judges, but to the Parliament;"—and yet notwithstanding this fulsome servility, which does not apply to the Commons singly, but to the whole Parliament, they said, "That as for a declaration of proceedings in the Lower Courts, there was no general supersedeas for all process in the courts, but only for such as were not for treason, felony, surety of the peace, or condemnation had before the Parliament;* or otherwise, this High Court of Parliament, that ministereth all justice and equity, would put the party complainant without all remedy, in as much as actions at common law cannot be determined by the High Court of Parliament." And thus we see, that notwithstanding—

* The learned Professor Christian has given a singular explanation of these words, and imagines the "before" to signify "in the presence of."—I wish he would tell us how this can be so construed.
ing the fair words of the preamble, they honestly and virtuously gave their opinion that privilege of Parliament did not belong to this instance, and therefore the Lords determined that the said Thomas Thorp, according to the law, should remain in prison for the causes above-mentioned, notwithstanding his privilege: a sufficient proof in what light they regarded the bent of the Judges' opinion. The King gave command that the Commons should immediately choose another Speaker, and they chose Sir Thomas Charlton. It is somewhat singular that Mr. Hatsell should have entirely mistaken and misrepresented this precedent. Sir F. Burdett does exactly the same, and they both consider the determination of the Judges to be on the side of the privilege; for the former says, "It is somewhat extraordinary, after the opinion of the Judges formally given, that members arrested for any other cause than treason, felony, surety of the peace, or condemnation before Parliament, ought to be released, that the Lords should adjudge Thorp still to remain a prisoner." Sir F. Burdett says, "The Judges, whose opinion was for Thorp's being entitled to privilege;" and yet afterwards he tells us, they determine that no general writ of Supersedeas could lay, (a vulgarism for lie), because it would stop the course of justice, and leave the party complainant without remedy." But if the Judges
had determined for the privilege, they themselves would have left the aggrieved person without a remedy, and determined contrary to their own opinion. The counsel for the Duke stated, "That the bill and action were taken, and by due process of law, judgment thereon given against the said Thomas Thorp, in the vacation of the said Parliament, and not in Parliament time; and if the said Thomas were released before the Duke should be satisfied, the said Duke would be without further remedy." The reason why the Judges added the fourth exception to writs of privilege is very evident, because this case came exactly under that description; the condemnation had been given before the Parliament met, and therefore to their integrity we are indebted for this exception, tho' it has since been violated.

The subsequent proceedings, 1st Henry VIIIth, v. Rolls Parl. vol. 6, p. 294, by no means alter the validity of the Judges' opinion, tho' we find that the Duke's action against Thorp was a feigned one; and that he had persecuted both him and his son for their attachment to Henry VIIIth: Henry VII. restored to the latter the lands of his father, which had been forfeited.

It is somewhat singular that no claim was ever made by the Commons, for their members not being impleaded in any civil action, from the 8th
Edward II. to the 12th Edward IVth, in the affair of Ryver against Cosins, where the defendant pleaded the King's writ of supersedeas, which writ the Barons of the Exchequer, with the advice of the other eight Judges, disallowed as not being grounded on custom; and yet the Commons, five years after, (17th Edward IVth) in the case of Atwyll, in their petition to the King expressly state, "That for a time whereof man's mind runneth not to the contrary, the Knights and Burgesses among other liberties and franchises, have had and used privileges that any of them should not be implead-ed in any action personal;" on which was grounded to stay the action against Atwyll till the end of that present Parliament: it contained also an exemption for his horses and other goods requisite to be had with him to the said Parliament; an exemption never granted since that to the Prior of Malton, 9th Edward IIId.

We have thus far seen that the House never ventured, by their own authority, to release their members when arrested or imprisoned. In this state of subserviency to the law, the House continued till the time of Henry VIIIth, who, tho' one of the most imperious of all the Kings of England, first allowed the Commons to do that for themselves which was before an act of the Crown or the Legislature.
33d Henry VIIIth, one George Ferrers, the Member for Plymouth, and an Officer of the King's household, was arrested at the suit of one White for 200l. as surety for one Weldon of Salisbury, and carried to the Compter, in Broad-street. The House being informed of this, sent the Serjeant to release Ferrers tho' detained in execution, and committed the officers of the Compter, who had refiited this novel authority, to a prison called Little Eafe, the Sheriffs of London, who granted the writ, to the Tower, and the bailiffs who executed it, to Newgate; and all this without any writ of privilege, any act of Parliament, or any other authority than the mace of their Serjeant; and from these prisons they were not released but at the earnest intercession of the Lord Mayor and others of their friends. Mark reader, not on their own petition, for that is a modern invention. A bill passed the House by a small majority, to revive the execution against the principal, and not against the surety. The King having heard of this transaction, sent for the Chancellor, the Judges, the Speaker, and many of the Commons, and in a blustering speech commended their conduct, chiefly insisting on the fact of Ferrers being a servant of his own; and Mr. Hatfell thinks that this was the chief reason why the Commons ventured to assume so much power, and why
it was acquiesced in by the King. Lord Herbert considers it as a manoeuvre of his, to keep them at his own devotion. The salutary provision of Magna Charta, for the personal liberty of the subject, was thus for the first time violated with impunity, and may in time be obliterated, not by the increased prerogative of the Sovereign, but by the guardians of the people, who are expressly chosen to redress their grievances, and ought to defend them against the power of the Crown.—Vide Hollinghed’s Chron. last ed. vol. 3, p. 824.

36th Henry VIIIth, the executors of Richard Skewes brought an action against the Sheriff of Cornwall for 75l. because he had dismissed from prison, William Trewynnard, who had been cast in an action for rent to that amount, due to the said Richard Skewes. The counsel for the Sheriff pleaded a writ of privilege as his authority, altho', as he was detained in execution, there ought to have been a special act of Parliament, and moreover he was imprisoned before the commencement of the session, both of which being illegal, there was no judgment of the court noted in the record. Sir F. Burdett has misrepresented this affair; he briefly says, Trewynnard was relieved according to law by a writ of privilege, for obeying which the Sheriff sustained an action. The action, no doubt, was brought on the ground that a writ of
privilege was not sufficient authority for the release, which ought to have been effected by a special act of Parliament, saving to the plaintiff the revival of the execution; or more properly, being arrested when the Parliament was not sitting, he ought to have been detained, according to the determination of the Judges, in the affair of Thorp the Speaker.

The usual mode of obtaining a writ of privilege had been to apply to the Court of Chancery. On the 22d of February, 1532, however, it was ordered by the House of Commons, "That if any member required privilege for himself or servant, he should have a warrant signed by the Speaker before it could be demanded." Let it be remarked, that this was another step in the progress of the Commons, to an independent authority with which they were not originally invested. The whole law of Parliament, as it is called, is composed of precedents, and therefore those members of the House who are friends of liberty, ought to be very careful how they suffer any fresh precedents to be created.

5th Edward VIth, 1552, is to be found the next instance in which the Commons ventured of themselves to commit any one, not a member of the House, for contempt and breach of privilege. Hugh Fludde, servant to a member, had been deprived
of his privilege on the representation of one Gordon, and having been ordered to be delivered back again by the Serjeant of the House, to the Sheriffs of London, he assaulted the Serjeant and got away, in which proceeding he was assisted by one Crekefloke. The House sent Fludde to the Sheriffs, and Crekefloke to the Tower, where he remained five days, and then was discharged after paying his fees, *tho' it does not seem that he petitioned.*

17th April, 1554, a subpœna was brought from the Lords, caused to be served on a Peer by a Member of the Commons, which the Lords considered a breach of their privileges. The Commons returned it saying,—"They did not consider it as any breach of privilege." A laconic answer!

28th April, 1554, William Johnfon, a Member, complained of being beaten by one Monyngton, for having taken a net belonging to Lord Mordaunt out of one Bray's house; Monyngton was thereupon sent prisoner to the Tower, tho' discharged the next day, *without petition.*

* The commitment in this instance, was an exertion of power in the Commons not justified by any former example, and not only contrary to Magna Charta, but the 11th Henry VIth, enacted for the express purpose of protecting mem-
Jan. 1557, Thomas Eyms, Burges for Thurfske, complained that he had been served with a sub-
pœna out of Chancery, whereupon two members were sent to the Chancellor Heath, Archbishop of York, to require that the process might be re-
voked.

8th Feb. 1557, Walter Raleigh, father of the great Sir Walter Raleigh, attached by the Admi-
ralty Court, had a writ of privilege by a warrant from the Speaker.

16th February, 1562, 5th Eliz. A servant of Sir T. W—— attached in London at the suit of T. R. Baker, had a warrant of privilege, not-
withstanding judgment against him for four marks —another instance in which the House of Com-
mons began to dispense with the law, for we have seen that before the 33d Henry VIIith, arrests in execution were always superseded by act of Parlia-
ment.

February 16, 1575, a committee was appointed to examine the matter touching Mr. Hall's servant, and it was ordered on the 20th that he should have privilege. On the 21st a committee was appointed to consider how he should be delivered, which

bers from assaults during their attendance on Parliament, tho' not while they were elsewhere, and Johnson, at the time he was beaten by Monyngton, was in Bedfordshire.
seems somewhat strange, as this was no new thing, and therefore one should think they could be at no loss how to proceed; it is plain, however, that they wished to supersede the writ of privilege, and deliver him by their own authority; but the committee reported, "That they found no case of any being set at liberty by the Serjeant's mace, but only by writ; and that every member who required privilege for his servant should make oath before the Chancellor or keeper of the great seal, that such person was his servant at the time of his arrest."

Contrary to and in defiance of this report, and after much debate and argument, on the 27th it was resolved, "That Edward Smalley, the servant of Arthur Hall, Esq. should be brought up the next day by the Serjeant and not by writ. On the 29th he was accordingly brought to the House and so discharged." A determination in complete defiance of the usual practice of the House, tho' somewhat countenanced by the proceeding in the case of Ferrers, 34th Henry VIII.

On the 29th February, 1575, Mr. Bainbridge complained that one Williams had assaulted and threatened him, on which the Serjeant was immediately ordered to go for Williams, and bring him before the House. Williams being brought, and confessing that he struck Mr. Bainbridge, was ordered into the custody of the Serjeant, but how
long he remained does not appear, as nothing further is mentioned in the journals. In this case the House followed the precedent they had made in Johnson's, and thus protected two cowards who were not able to protect themselves.

On the 1st February, 1580, the same mode of proceeding was adopted on the complaint of Mr. Norton, that he had been assaulted by two Porters, who being apprehended by the Serjeant, were committed to his custody, till one of them, on his humble submission and acknowledgment of his fault, was set at liberty.

To shew how differently men judge in their own behalf and in that of others, we must remember (v. p. 18) that the Commons declared a writ of subpœna to be no breach of privilege when complained of by the House of Lords. In the present instance we find them maintaining a directly contrary position; for on the 10th February, 1584, it was ordered that three Members, attended by the Serjeant, should repair to the Court of Chancery, and there represent that one of their Members, Mr. Cook, had been served with a subpœna out of that Court, which they considered a breach of their ancient rights and privileges. The Chancellor, Sir T. Bromley, replied, "That he believed they had no such privilege, nor would he allow it, unless they could prove that it had been allowed by
the Court of Chancery." On this answer being received, a committee was appointed to search for precedents, but they produced no report. In the same year, however, a similar case having arisen, the Commons grew more bold, and committed the officer who had served a subpœna on one of their members, to the custody of the Serjeant during pleasure, where he remained five days, and was then discharged on paying his fees and all expenses, *not upon petition.* Many subpœenas were afterwards served on members, for which the delinquents were attached and brought to the bar of the House, to answer for their contempt.

February 27, 1586, one White, who had arrested Mr. Martin, a member, was brought to the House to answer for his contempt; to which he replied, that he had arrested Martin fourteen days before the Parliament sat. A committee, nominated to search for precedents as to the duration of privilege, report, that Mr. Martin was arrested by White, on mesne process, above twenty days before the commencement of this Parliament held by prorogation. The House divided on the following questions. "Whether they would fix a time certain or a convenient time for the duration of privilege? The House answered A convenient time. Whether Mr. Martin was arrested within this reasonable time? The House answered, Yes. Whether
White should be punished for arresting Martin? The House answered, No;" because the arrest was twenty or rather twenty-four days before the Parliament met, and the reasonable time of privilege was unknown to White, and Martin was allowed his privilege solely because White had arrested him once before. The House thus reserved to itself a discretionary power of fixing the duration of privilege.

21st February, 1588, divers writs of Nisi Prius, having been brought against different members, to be tried at the assizes in different parts of the realm, it was prayed that writs of supersedeas might be awarded, and it was resolved, "That such members as had occasion, should repair to the Speaker for his warrant to the Lord Chancellor for the awarding such writs. No instance of this sort had arisen since 8 Edward IId. yet the House adopted the motion almost as a matter of course, which admitted of no doubt.

On the 1st March, 1592, Serjeant Yelverton reported to the House that Mr. Thomas Fitzherbert, after having been outlawed, had been elected a member, and two hours after his election was arrested by a writ of Capias Utlagatum. The said Fitzherbert prayed for a writ of privilege. The House determined, after many days' debate, on the 5th April, "That Thomas Fitzherbert, tho' a
member by his election, should not have privilege, because he was taken in execution before the return of his election; because he had been outlawed at the Queen's suit, and was now her Majesty's debtor; and because he was not taken during the Parliament, nor going, nor returning." The matter was agitated a second time, but it ended with the same determination.

8th April, 1593, Mr. Neale, a burgess, having been arrested, the creditor and the officer who executed the writ, were both sent to the Tower during pleasure, tho' the debt had been discharged and the member released.

22d November, 1597, privilege was moved for Sir T. Tracy "now presently attending the Common Pleas, to be put on a jury." The Serjeant was sent with his mace to summon him to the House, which summons he obeyed without any resistance on the part of the court. This is the first instance of the kind to be found.

19th November, 1601, two servants of members being arrested, were discharged by order of the House, and the persons who caused the arrests sent to the custody of the Serjeant.

The precedents which have been quoted are the most material of all those relating to arrests and assaults which are to be found from the earliest account of Parliaments to the end of Queen Eliza-
beth, and it seems that the refusal of the Chancellor Bromley to allow the exemption from subpoenas to be a privilege of the House was the cause of its being laid down by the House "That no subpoena or summons for the attendance of a member on any other court, ought to be served without leave obtained or information given to the House, and that the persons who procured or served such process were guilty of a breach of privilege, and punishable by commitment or otherwise by the order of the House." The first part of this doctrine, so far as relates to leave or information, is certainly reasonable, because the House ought to be allowed to judge how far and when it could dispense with the attendance of its members: the latter part seems by no means requisite, because the punishment ought to fall on any member who attended after being forbid by the House. Another exertion of authority which grew into use during this reign, tho' it commenced under Henry VIIIth, was that of liberating members arrested, by the Serjeant at arms, and committing the bailiffs and others concerned in the arrest, during pleasure, for their contempt of the House.

In the period between the accession of James 1st to the year 1628 a number of instances are to be found of commitment for arrests; a few only deserve to be noted. The case of Sir Thomas Shirley
is remarkable, as having been the cause of the act 1st James 1st, c. 13, for new executions to be sued against any who shall be delivered out of execution by privilege of Parliament, and for discharge of them out of whose custody such persons shall be delivered; for the power exerted by the House of releasing their members solely by their own authority, had left the persons procuring and executing arrests in a very awkward predicament; the former lost their action, and the latter were liable to be punished for setting their prisoner at liberty.

10th February, 1606, Mr. James, a member, was arrested, the attorney who caused the arrest, and the officer who executed it, were committed to the custody of the Serjeant for a month, but at the end of ten days, Bateman the attorney petitioning, he and the officer were discharged. This is the first instance upon record of any man petitioning to be released, and the first of any man being committed to the custody of the Serjeant as a punishment.

The Parliament of 1621 having accepted the King's offer of an adjournment, rather than a prorogation, for five months, it was resolved after much debate, "That in case of any arrest, distress, or process against the person, goods, or servants of the members, a letter should issue under the Speaker's hand for the party's relief as if the Parliament
were fitting, and that the persons offending should be punished for contempt at the next meeting.” An uncommon stretch of privilege, tho’ the resolution was drawn up by Sir Edward Coke, a friend of liberty.

June 4th, 1621. The House is informed that Johnson, a servant of Sir James Whitlock, is arrested; the persons concerned in it were called to the bar and heard on their knees, in their defence. This is the first time that this humiliating submission was required from persons thus situated. The punishment inflicted on these unlucky men was still more humiliating: they were set on one horse, barebacked, back to back, and led from Westminster to the Exchange, with papers on their breasts bearing this inscription, “For arresting the servant of a member of the Commons House of Parliament;” and all this was executed, notwithstanding they had acknowledged their fault and asked the forgiveness of the House.

July 4, 1625, Mr. Basset having been arrested on mesne process before his election, it was debated whether he was eligible or to be allowed privilege, and resolved that he should be released; he was accordingly brought up to the House by the Serjeant. A more flagrant act of injustice was hardly ever committed, being not only contrary to law, but to all former precedents.
9th Dec. 1625, it was moved in the House, that Mr. Giffard, a member, arrested in execution, be sent for. Mr. G. had been elected for Bury on the 11th January, but the writ was not returned till the 30th, and he was arrested on the 23d. After much debating, the Clerk of the Crown, the Sheriff of Suffolk, and the town clerk of Bury, were called up to the House and ordered to alter the return from the 30th January to the 11th. It was then ordered that Mr. Giffard should have privilege, and he was accordingly delivered, by habeas corpus, on a warrant from the Speaker on the 18th.

On the 9th February, 1625, Sir T. Badger's servant was delivered by the Speaker's warrant for a habeas corpus, tho' the House resolved "That they had power when they saw cause, to deliver immediately by their Serjeant."

The instances are very numerous during the reigns of Elizabeth, James and Charles 1st, in which members were exempted by privilege from their attendance on inferior courts, and from being impleaded in any civil suit; it is needless to particularize them, as the exemption was seldom disputed, and is founded on this reasonable principle, that members of the House ought not to be diverted, either in body or in mind, from their attendance on their duty as representatives.
The necessity for preserving the goods and effects of a member from detention does not seem so evident, yet it has been considered as one of their privileges from the time of Edward the 11d, in his letter to the Sheriff of York concerning the goods of the Prior of Malton. Three instances only of this privilege being claimed and allowed are found from 1477 to 1628, and two in that year under Charles Ist. The 10th of the present reign put an end to the privilege of servants, and to that of not being impleaded in civil actions; so that nothing now but the persons of members are exempt from legal molestation.

Under the head of liberty of speech, we must comprehend not only those cases wherein that right has been directly acknowledged or attacked by the different Kings of England, but those also wherein it is supposed to have been attacked, by traducing the character and proceedings either of individual members or of the House. The Commons began very early to be jealous of having their proceedings represented to the King, lest it should limit their freedom of debate; for, 2d Henry 4th, 1400. “The Commons beseech the King that he will not listen to any report of their debates from any of their members before they are settled, determined, and discussed.” The King answers will not listen to any such person, nor give credence to them before such
matters as are debated in the Commons are shewn to him by their advice and assent, according to their prayer.

Mr. Hatfell has omitted a very material precedent for liberty of speech, which I have found in the Rolls of Parliament, vol. 5, p. 337—33d Henry VIth. "To the right, wise, and discreet Commons in this present Parliament assembled, beseech humbly, Thomas Yong, That whereas he late being one of the knights for the shire and town of Bristowe in divers Parliaments afore this, demened him, in his saying in the same, as well faithfully and with all such trewe diligent labour as his sympleneness cooth or might, for the wele of the King and this his noble realme; and notwithstanding that by the olde liberty and freedom of the Comyns of this lande, had enjoyed, and prescribed fro' the time whereof no mynde is, alle such persons as for the tyme been assembled in every Parliament for the same Comyns ought to have their freedom to speke and say in the House of their assembly, as to them is thought convenient and reasonable, without any chalenge, charge, or punycion therefore to be leyde to them in any wife. Nevertheless, by untrewe sinister reports made to the King's highness of your bisecher for matters by him shewed in the House accustomed for the Comyns in the said Parlementes; he was therefore taken, arrested, and rigorously in open wise led
to the Toure of London, and there grevously in
great dureffe long time emprisoned, agenft the said
freedom and libertie, and was there put in grete
sere of ymportable punycion of his body and dread
of losse of his life, withouten any inditement, pre-
sentment, appele, due originall, accusation or cause
lawfull had or sued agenft him, as is openly
knownen, the not mowyng* to come to any answere
or declaration in that partie; whereby he not only
suffered great hurt, pain, and disease in his body,
but was by the occasion thereof put to over grete,
excessive losses and expences of his goods, amount-
ing to the some of M marks and much more.
Please hit your grete wisdoms, tenderly to consider
the premises, and thereupon to pray the King,
that hit may like his Highness of his noble mind
to graunte an provide, by the avice of the Lords
Spirituall and Temporall in this present Parliament
assembled, that for the losses, costes, damages, and
imprisonment, your said bifecher have sufficient
and reasonable recompence, as good faith, and
truth, and conscience requiren.” “The King
willeth that the Lords of his counseill do and pro-
vide, in this partie for the said suppliant, as by their
discretions shall be thought reasonable and con-
venient.”†

* Not being able.
† The said Thomas Young was the ancestor of Sir G.
In the time of Henry VIIIth one Tyrrell, a member, was expelled, sent to the Tower, and all his posterity rendered incapable of serving in Parliament, for telling the King what passed in the House.

4th Henry VIIIth, Mr. Strode, a member, having proposed a bill for the regulation of the tinners in Cornwall, was prosecuted in the Stannary Court for that offence, fined a large sum of money, and imprisoned in the castle of Lidford, from whence he was delivered by a writ of privilege, and all the proceedings set aside by an act of Parliament, which, after reciting the facts relative to Strode, ends with these words: "And over that, be it enacted by the same authority, that all suits, accusations, condemnations, executions, fines, amerce-ments, punishments, corrections, charges and impositions, put or had, or hereafter to be put or had unto or upon the said Richard, and to every other of the persons afore specified, that be of this present parliament, or that of any parliament hereafter, shall, for any bill, speaking, reasoning and declaring any matter or matters concerning the parliament to be commenced and treated of, be utterly void, and of none effect. And over that, be it

Young, of Colyton, in Devonshire, and afterwards was Chief Justice of the Common Pleas under Henry 6th, and of the King's Bench under Edward 4th.—Vide Baronetage of England.
enacted by the said authority, that if the said Richard Strode, or any of all the said person or persons, hereafter be troubled or otherwise charged for any causes as is aforesaid, that then he or they and every of them so troubled, of or for the same, to have action upon the case, against every such person so troubling any, contrary to this ordinance and provision, in the which action, the party grieved shall receive treble damages and costs, and that no protection, esteyne, or wager of law, in the said action, in any wise be admitted or received."

Mr. Hatfell and many other writers, and indeed the two Houses of Parliament, have construed this into a general act; I must own I never can consider it in that light; it is expressly limited to Richard Strode and the persons who voted for the bill.

The first direct demand of liberty of speech was made by Thomas Moyle, Speaker, in the 34th

* In the argument on the case of B'amardiston v. Soame, it is allowed that the 4th Henry 8th is a private law as far as relates to Strode; but it is asserted that one clause is declaratory of the ancient law and custom of Parliament. To this it must be answered, 1st, That at the time that act was made no such law and custom was recognized; and, 2dly, That the quotation is false; for whereas the act says, "That all suits, accusations, &c. to be put or had upon R. Strode and every other the person or persons aforesaid, that be of this present Parliament, or of any Parliament that hereafter shall be." The quotation says, "upon any members."
Henry VIIIth, and yet it was somewhat covertly expressed by Sir James Pickering, the Speaker, 1st Richard II, 1378, who made protestation, "That if he should utter any thing to the scandal or offence of the King, his crown and dignity, or the estate of the Lords, it might not be taken notice of by the King, and that the Lords would pass it by as if nothing had been said, for that the Commons desired in all things to preserve the reverence due to both on all occasions;" and this continued to be the usual form till the 28th of Henry VIIIth, when the request of free access to his Majesty was first added; and in the reign of Queen Elizabeth, Serjeant Wray, in 1571, first made these four demands of the Queen, "That the persons, servants, and goods of all the members might be free from all suits and arrests, That they might have free access to her Majesty, That they might have liberty of speech, and That if any sent should not truly report, or in part mistake their message, it might be liberally interpreted;" and this has been the constant form of petition from that time to the present.

The reign of Queen Elizabeth forms an æra in the Parliamentary History of England. The rising spirit of the people, occasioned by the destruction of the feudal system under Henry VIIth, and the reformation under Henry VIIIth, had to contend
with the arbitrary temper of that Princess, and the Commons maintained an advantageous contest for that liberty of speech which is essential to the existence of a popular assembly, whose express mission is to redress the grievances of the people, and to enact wholesome laws for the maintenance of their prosperity and tranquillity; in the succeeding reigns the struggle was continued, and finally settled at the revolution.

The first subject on which the Commons exercised their freedom of speech under Elizabeth, was that of her marriage; three times they petitioned her to unite herself to some one for the sake of the succession, and the last time, as their speeches had grown bolder, she sent for their Speaker and thirty members, and reproved them in a tone of severity somewhat tempered with lenity; and whereas they had offered her a large supply on condition of her marriage, she remitted one-fourth of it with these memorable words, "That money in her subjects' purse was as good as in her own exchequer"—She then expressly forbid the House to proceed any further in that affair, which occasioned Mr. Paul Wentworth to make a motion, to enquire "Whether the Queen's commands were not against the liberties and privileges of the House." This motion was the first step in the great contest between the Crown and Commons,
which was finally settled by that article of the Bill of Rights, which declares "That freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." The debate on this motion lasted five hours, a long one in those times, and long enough at any time; for it has never been well with England since our representatives have been so fond of speechifying.—The Speaker was again sent for, and received her Majesty's commands, "That the House should proceed no further in the matter, and if any one were dissatisfied, and had further reasons to offer, he would shew them before the Privy Council." Her Majesty, however, thought better of it, and revoked this stern command, which was changed into a request, that the house would proceed no further; which revocation they received with most hearty thanks.

On Saturday 14th April, 1571, Mr. Strickland brought in a bill for reforming the book of Common Prayer; he was within a day or two called before the Privy Council, and forbid to go to the House till her Majesty's pleasure was further known. On Friday 19th Mr. Carleton moved that he be sent for to the House, on which the Comptroller of the Queen's Household declared the reason of his being kept away, tho' not in custody,
was because he had moved for a bill which would infringe on the Queen's prerogative. Mr. Yelverton made a strong speech, affirming, "That they had a right to treat of all things that were not treason," and urged the House to demand the return of their member. The ministers whispered together, and the Speaker requested the House to proceed no further in the matter for the present. The next morning Mr. Strickland returned to the House.

18th Eliz. 1575, Mr. Peter Wentworth having spoken much at length for the liberties and privileges of the House, the Commons began to be alarmed lest they should suffer from the Queen's displeasure, and therefore he was committed to the custody of the Serjeant, (the first instance of the kind to be found) and then called before a Committee to answer for his speech: his examination before that Committee accords with the free and noble spirit which dictated his speech, and gives him a claim to be had in everlasting remembrance as one of the earliest and boldest friends of liberty, by whose undaunted exertions we have hitherto enjoyed that pre-eminence over other nations which can only be obtained and preserved by a free constitution. In this speech he tells a remarkable fact, not mentioned in the Journals, "That Mr. Bell having uttered a very good speech on certain licences granted to four courtiers, to the great injury of
eight or nine thousand subjects, was called before the Privy Council, and returned to the House so terrified, that the rest took the alarm, and for ten or twelve days hardly regained the use of their speech, and when they did, for fear of being mistaken, they spent more words in the preamble than they did in the matter they spoke to." His examination being finished, one of the ministers moved for his being committed to the Tower, where he remained above a month, and was at last enlarged at the Queen's request: so far she triumphed, but Mr. Wentworth was a man not to be daunted by such treatment, nor to give up a cause he had undertaken to defend; for on the first of March, 1587, he revived the same subject, and delivered to the Speaker a list of queries touching the liberties of the House, which the Speaker refused to put to the House, and Mr. Wentworth was soon after committed to the Tower.

The Queen, in answer to the Speaker's demand for liberty of speech, 22d Feb. 1592, replied by her Chancellor, "Liberty of speech is granted you, but you must know what privilege you have, not to speak every one what he lifteth, or what cometh in his brain to utter it; your privilege is Aye, or No."

Feb. 24, 1592, Mr. Wentworth, who it seems had gained his liberty, joined with three other members
in a petition to the Chancellor, to desire the Lords would unite with the Lower House to entreat her Majesty to entail the succession; for this they sent Mr. Wentworth to the Tower, and the rest to the Fleet. On the 10th March, Mr. Wroth ventured to move, "That as the places from whence these members were sent might justly complain that they were not represented, by reason that their members were not present in the House, when divers heavy burthens were imposed on their constituents, the House should petition her Majesty that they might be forthwith restored." To this the members of the Privy Council, who were members of the House, answered, "That the cause of their commitment was best known to her Majesty, and to press her in that suit was only to make the matter worse." How long these unfortunate men continued in prison we have no information.

Feb. 27, 1588, Mr. Cope moved for a reformation of certain ecclesiastical abuses, and for a new book of Common Prayer. The House did not agree to the motion; and yet a few days after, Mr. Cope, the proposer of the Bill, and three other members who supported it, were sent for to the Court and from thence to the Tower. The House sat two days without taking any notice of this violation of their privileges; at length Sir John
Higham moved the House to petition her Majesty for their release. Sir Christopher Hatton doubted, whether the gentlemen were committed for matter within the compass of privilege; the House stopped their proceedings at his suggestion till the 13th, when Mr. Cromwell moved for a conference with those of the Privy Council in the House.—A committee was nominated, but nothing is said of their proceedings: the session closed March 23d.

February 27th, 1592, Mr. Morris having moved for a reform of abuses in the Ecclesiastical Courts, the Speaker was sent for to the court, and returned with this message.—"It is her Majesty's express command, that no bill touching matters of State, or reformation of the church, be brought in or entertained by the House."—"And," said the Speaker, "if such a Bill be brought in, I am commanded by her Majesty not to read it." Mr. Morris, who had moved the Bill first mentioned, was sent for to the court, and committed to the custody of the Chancellor of the Exchequer—a new kind of jailor! The effect of this severity was not exactly what the Queen expected; for the proceedings of the House against monopolies had such an effect on her Majesty, that she suddenly revoked all the patents granted for these shameful invasions of the subjects' right and comfort.
The specimens already given of Queen Elizabeth's conduct to the House of Commons, will serve to shew in what light we ought to consider the reign of this imperious woman. Had it not been for the opposition she experienced from the ardent temper of the puritan party, the liberty of the House, and with it the liberty of the country, would have been subverted. Had that party conducted themselves in other cases, as they did in that of Mr. Strickland, and against the monopolies, the Queen and her ministers, who well knew how to yield when they saw resistance to be vain, would have given way, and the consequences would have been more happy both for the individuals so persecuted and for the nation. The speeches in the House on the revocation of monopolies, are so servile, so fulsome, and so full of grosse flattery, that it is no wonder kings grow despotick when their subjects feed them with such pampering food.

The reign of James Ist commenced with the fairest professions; and had his subsequent conduct corresponded with his first promises, he would have been the best king that ever swayed an English sceptre. But it is easier to promise than to perform, as will be seen by comparing his first address to his people, in calling a Parliament, with his behaviour to the Parliament when they wished to exe-
cute his intentions. In many other things worthy to be noted, he tells them.—"We well know that princes cannot yield more general, more clear, or profitable proofs to their people, of their desire to govern well, than by redressing abuses whereby they find them grieved, either in constitution or administration of the laws in being; or by seeking to establish new laws, agreeable to the rules of justice, whenever time doth discover any defects in the former policy, or when the state of any Commonwealth doth require new ordinances." "We trust that this assembly of our Parliament being grounded upon so sincere an intention at first, may be matched by a like in the end; and as it is the first Parliament of our reign, so it may be found not only worthy of the high title it beareth, of the great council of the nation, but also may be a precedent hereafter for the true use of Parliaments." "We trust that the choice of burgesses may be made of men of sufficiency and discretion, without any partial respects, or factious combinations, which always breed suspicion, that more care is taken to compass private ends than to provide for the good of the realm." "We command that express care be taken not to choose any persons bankrupt or outlawed, but men of known good behaviour and sufficient livelihood, and such as are not only taxed, but have paid the taxes;
nothing being more ridiculous than to permit those to make law, who, by their own acts, are exempted from the law's protection." "We direct that all sheriffs be charged, that they issue no precepts for electing burgesses for towns which are so decayed that they have not sufficient residents to make such choice, and of whom they can make lawful election." "We also give warning to the Lords and others who are to serve in this Parliament, to have special care, as they tender our displeasure, to admit none as their servants during the Parliament, who are not such in reality, thereby to be privileged; seeing that such questions of privilege have consumed great part of the time destined for the Parliament, whereby the affairs of the realm have been impeded, and the subjects drawn to greater expenses and charges, by attending, than needful." Had James's conduct accorded with his professions, he would have been the best king that ever existed.

1603. The first dispute between James and the Commons, arose from the election for the county of Buckingham, in which he claimed the right of the Crown to be the sole judge of returns, and the Commons claimed that right for themselves. The dispute, as it embraced the general subject of privileges, may be mentioned now, but that part which relates to the election must be referred to
another division. The Speaker and a committee of the House had a conference with his Majesty, in which, after professing that he had no design to infringe their privileges, he told them,—"That as they held them all from him, and by his grant, he did not expect they should be turned to his disadvantage, so as to deprive him of any power he had before possessed." The dispute was settled by Sir Francis Goodwin, whom the Clerk of the Crown had objected to, resigning his seat at the request of each party; but the Commons having conceived themselves ill used, drew up an apology to the king, touching their privileges, in which they affirmed, "That their privileges and liberties are their own as much as their lands and goods; that they cannot be withheld or impaired without manifest detriment to the whole realm; that their making request at the commencement of the Parliament to enjoy them, is only an outward act of civility and respect to the King, and no more weakened their right, than suing to the King for their lands by petition." "The prerogatives of princes may easily and do daily grow," say they, "the privileges of the subject are for the most part at an everlasting stand; they may by care and good providence be preserved, but once lost, they are not regained without much disquiet. If good kings were immortal, as well as kingdoms, to strive so
for privilege would be vanity and folly; but seeing that God, who in his mercy hath given us a wise and religious King, doth also sometimes permit deceivers and tyrants in his displeasure, for the sins of the people; hence hath the desire of rights, liberties, and privileges, both in nobles and Commons, its just original." It is remarkable, that in this apology they declare, "The rights and privileges of the Commons of England consist of three things: 1st, That the shires, towns and cities of England, by representation to be present, have free choice of such persons as they shall put in trust to represent them. 2d, That the persons chosen, during time of Parliament, as of their access and recess, be free from all restraint, arrest, and imprisonment. 3d, That in Parliament they may speak freely their consciences, without check or controlment, and with due reverence to the sovereign court of Parliament, that is, to his Majesty and both Houses."

1610, The King attempted, both in a speech and by a message, to restrain the Commons from debating in Parliament the right of the Crown to impose duties on goods exported and imported; on which occasion the Commons reply by petition, and among other things state "That it is the antient and undoubted right of the Commons to debate freely all things concerning the subject, his-
rights and state; which freedom of debate being foreclosed, the essence of the liberty of Parliament is withal dissolved."

December 1st, 1621. It being reported that Sir Edwin Sandys had been imprisoned during the recess, several warm speeches relating to their privileges passed in the House, which coming to the King's ears, he sent a message by the Secretary of State, "That having heard that some fiery, bold, and popular spirits in the House had presumed to debate and argue on matters far beyond their reach and capacity, he informed them that none should presume to meddle with any thing concerning the government or mysteries of state; and whereas they had sent to Sir Edwin Sandys to know the reason of his late restraint, he would tell them it was not for any misdemeanor committed in Parliament, tho' he considered himself able to punish any man's misdemeanors there, which he will not in future spare, if any man's insolent behaviour shall give him occasion." To this the Commons answered by an apologetic petition, stating all their grievances, and insisting upon their undoubted right to liberty of speech. To this his Majesty answered rather in more softened and gentler terms than before, and concluded with stating "That they had not insisted on their privilege as a matter of right, but as a permission granted by him and his ancestors, and
professing that he would be ever careful to preserve them, whilst they respected his prerogative." The privileges of the House were no doubt derived originally from the concessions of the Monarch, so was half the property of the kingdom after the conquest; but as that which was originally a grant becomes in time a right, so the titles of property, and privileges of the House, are no longer an indulgence for which we are indebted to the Crown. A warm debate ensued upon the message, and it was resolved, "That the House should go into a committee to consider and report all things relating to their privileges, and that all other affairs should for the time be suspended;" which so alarmed the King, that he sent down another message, promising in general terms, as before, to respect their privileges, and wondering they had not been satisfied with his former promise. A debate of considerable interest ensued upon this message, in which some were for having their privileges defined, others more warily contended they ought not to be set down on paper, least if any should be omitted they might not easily be reclaimed, but that a declaration should be drawn up of all those privileges which had been impeached. The King, finding how things were proceeding, sent down another message to the House, "Requesting them to be satisfied with the assurance he had already given of respecting their
privileges, and that, as the session drew to a close, they would expedite the affairs which concerned the good of the nation" The House sent the King their thanks for this letter, and professed their loyalty and dutiful affection to his Majesty, but not a word of the dispute in question: they proceeded, however, to nominate a select committee to consider of such of their privileges as had been impeached, and to draw up a protestation of the same in particular, and of those in general, which they claimed. The protestation being presented to the House by Serjeant Ashley, it was read to the following effect, "That the liberties, franchises, privileges, and jurisdiction of Parliament, are the ancient and undoubted birth-right and inheritance of all the subjects in England—That the urgent and arduous affairs concerning the King and the whole realm, and the redress of grievances, are the proper subjects of debate and counsel in Parliament—that in the handling these affairs every member should have liberty of speech—that every member of the House hath equal freedom from impeachment, imprisonment, or molestation, other than by the House itself, for and concerning any affairs relating to Parliament; and if any of the said members be complained of or questioned for any thing said or acted in Parliament, the same is to be shewn to the King, by the advice and consent of all the Commons assembled in Par-
liament, before the King gives credence to any private information.” This protestation was entered on the Journals of the House: how it was relished by the King will be seen by his subsequent proceedings. Ten days afterwards he assembled the Privy Council and all the Judges in town, and having sent for the Clerk of the House of Commons, commanded him to produce the journal book and with his own hand tore out the above protestation; his reasons for so doing he published in a long memorial, dated December 30, 1621; and, as if this was not sufficient, he dissolved the Parliament on the 6th of January, 1622, stating his reasons to be the undutiful behaviour of the House of Commons. “The ill-tempered spirits,” whom the King alluded to in his address to the nation, were either imprisoned or banished; Sir Edward Coke and Sir R. Philips were sent to the Tower; Mr. Selden, Mr. Pym, and Mr. Mallory to other prisons; Sir Dudley Diggs, Sir T. Crew, Sir Nath. Rich, and Sir James Pettrot were sent into Ireland; Sir P. Heyman into the Palatinate; and Sir John Saville, as the greatest punishment of all, was created a Privy Counsellor and a Peer. The spirit of the Commons was not, however, wholly subdued by these severities; for we find them three years after, impeaching the Lord High Treasurer, in which impeachment Sir E. Coke was the leader; and after a long and impar-
trial he was found guilty, fined and imprisoned in the Tower; and at the close of the Parliament, 1624, the Speaker thanks his Majesty for his great kindness to them in the enjoyment of their ancient privileges, freedom of speech, and freedom from arrests; the former, it seems, they had exercised by representing to his Majesty divers weighty and heavy grievances. The King's answer to these petitions was in a much more softened tone than that in which he had formerly replied to any remonstrance or petition.

The succeeding reign of Charles Ist. occasioned a still more violent, and more noble struggle between the King and the Parliament for their ancient rights and privileges, and finally brought about that revolution which is by some believed to have fixed the liberties of the nation in a state in which nothing further is to be desired: let those who think thus, candidly examine all that has been altered for the worse, since that time.

Charles began his reign most inauspiciously, and it presented one continued tissue of deceit and treachery, till he could deceive no longer; for it was too late to attempt sincerity when he fell into the hands of greater deceivers than himself; he justly paid the forfeit of his life for his continued encroachments on his people's liberty. Sir John Elliot began the war of the patriots against the King’s pro-
fligate measures, by demanding an account how the subsidies and fifteenths granted 21st James, were spent, and including an inquiry into the miscarriage of the fleet, misgovernment, misemployment of the King's revenues, miscounselling, &c. and moved for a special committee to take these things into consideration. The Duke of Buckingham became the first object of popular vengeance, and at a conference held with the Lords on the charges preferred by the Commons, Sir John Elliot and Sir Dudley Digges having used expressions which were thought to reflect on the King and the Duke, were both committed to the Tower. The House, justly inflamed by this most flagrant violation of their privileges, resolved on the 12th May, 1626, "That this House will not proceed on any other matter, till we are righted in our liberties." The King, being most probably advised to persist no longer in a quarrel which he could not maintain, on the 19th May gave an order for Sir John Elliot's release. As soon as he had taken his place in the House the Vice Chamberlain repeated the accusation, which was that of having insolently called the Duke of Buckingham, in summing up the charges against him, "The man," saying, "You see the man," which, as Sir D. Carleton, a supple courtier, observed, "were extraordinary terms to use to so high a personage, and never used in Parliament before."
Sir John Elliot, so far from denying it, or endeavouring to explain away the words he had used, boldly replied, "That he thought it not fit at all times to reiterate his titles, and that he still thought him a man, and not a God." The House, animated with the spirit infused into them by this great patriot, without one dissenting voice, resolved, "That Sir John Elliot had not exceeded the commission given him, in any thing which passed in the late conference," and the like resolution passed for Sir Dudley Digges. For the character of Charles I and James I, in those transactions, I refer my readers to the manly and constitutional language of Mr. Hatfield, vol. 1st, p. 154.

1628. Charles, finding the Parliament not compliant with his wishes to supply his extravagance, had recourse to the unconstitutional modes of raising money by loans, benevolences, &c. A great number of persons of rank and quality refusing to subscribe to the loan were committed to different prisons, not in their own, but in distant counties. Sir John Elliot addressed a petition to the King from the prison of the Gatehouse, shewing the constitutional grounds on which he refused to comply with the demand. Sir Peter Heyman, for similar refractoriness, was sent into the Palatinate. The proceedings of the Court, in thus wantonly oppressing the people, and restraining the freedom of
Parliament, produced those violent debates and conferences between the two houses, which gave birth to that memorable charter of our liberties, the Petition of Right, which the King had no sooner granted, than he fought every means in his power to evade. Pending this discussion it was resolved, "That no freeman ought to be committed or detained in prison, or otherways restrained by command of the King, the Privy Counsel, or any other, unless some cause for which he ought by law to be committed, be expressed; and also, "That the writ of Habeas Corpus cannot be refused to any man committed or detained in prison by the King, the Privy Council, or any other, should the same be demanded." The Commons having adopted very spirited remonstrances against these illegal proceedings, and refused to pass the bill on tonnage and poundage, the King sent a message by the Speaker to adjourn the House, which they resisted, saying, that the adjournment of the House rested with themselves: on the Speaker refusing to put the question, and attempting to leave the House, he was held in the chair by Mr. Hollis, Mr. Valentine, and other members. The Commons passed their resolutions against the King's arbitrary measures, and the Parliament was immediately after dissolved.

The King published a long Declaration of his reasons for that measure, and the refractory mem-
bers were called before the Privy Council and examined. On their answers, three of them were committed to the Tower and two to the King’s Bench. The Judges were summoned the next day, and divers questions proposed to them touching the privilege of Parliament, which they, as humble servants of the King, answerèd to his liking, an information was filed in the Star Chamber against the members, on which they were imprisoned; but moving for a Habeas Corpus, they were brought up to the King’s Bench, and being remanded, were committed by the King’s special command to different prisons: a few days after, when the Judges were ready to give their opinions, the prisoners were not forthcoming. Towards the end of the vacation, the King summoned the Chief Justice and Judge Whitelocke to Hampton Court, where he told them he was willing the gentlemen should be bailed, notwithstanding their obstinacy in refusing to petition and confess their fault; and declared his intention to proceed with them by common law, and not in the Star Chamber. The two Judges attempted to conciliate, telling his Majesty, “That, as their offences were not capital, they ought to be bailed, on giving security for their good behaviour” The King thanked them for their opinion, and said,—“That he should never be offended with his Judges when they plainly told him
the truth, and did not answer him in enigmas and riddles." On a motion for bail and finding securities, Mr. Selden answered, and all the rest assented—"We will never agree to give sureties for good behaviour, because that is not required even in cases of felony and treason, and would be an acknowledgment of some fault, which we never can acknowledge, without a dereliction of our duty as members of Parliament, wherein these offences are said to have been committed." On this refusal they were all remanded to the tower, and shortly after an information was filed against them in the King's Bench, to which they put in a plea against the jurisdiction of the court.—"That inasmuch as these offences are said to have been committed in Parliament, they ought not to be punished in any other court;" which plea was over-ruled, and on the first day of the next term, the record was read, and the case argued at the bar. The Judges being all of one opinion, the prisoners were sentenced to heavy fines, and to be imprisoned during his Majesty's pleasure, or till they gave surety for their good behaviour and acknowledged their offence; some of them died in prison rather than submit, and others, not able to pay the fine, were released on their petition, on condition of not coming within ten miles of the court, and giving a bond of 2000l. for their good behaviour. The King having thus
s subdued for a time these revolts against his authority, and dissolved the Parliament, deprived the nation of that great council for twelve years, from 1628 to 1640. But he was little benefited by such an act of injustice; for his own conduct having become more arbitrary, the spirit that had been repressed only burst out with greater violence. The table of the House was soon filled with petitions against Ship-money, Projects, Monopolies, Star Chamber, and Commission Court. Mr. Pym spoke for two hours on grievances, and particularly the late punishment of their members; after which the House came to a resolution, "That all the records and proceedings in the King's Bench and Star Chamber should be sent for to the House; that a select committee should be nominated for stating the facts relative to the violation of their privileges, and report their opinion of it." They then desired a conference with the Lords. The King sent to the Commons to hasten the supply; they took no notice of the messenger, and were immediately dissolved.

The King, after receiving many petitions on the subject, resolved to call another Parliament, which being assembled, 1640, and sitting 13 years, was called the Long Parliament; it was the Parliament which brought Charles to the scaffold and overturned the freedom of the nation. A committee of privileges was nominated by this Parlia-
ment: it was opened by a long speech on grievances from Mr. Pym, in which the privileges of Parliament were not forgotten, and the greatest of all he mentioned was, "The intermission of Parliaments contrary to the statute, to be called once a year, the main cause of all the grievances to which a Parliament can give remedy."

March 1st, 1640. Dr. Chaffin was sent for as a delinquent, by the Sergeant at Arms, for having in a sermon, preached in Salisbury Cathedral, used this indiscreet expression, "From all lay puritans, and lay parliament men, good Lord deliver us." The question being put whether he should be committed to the Tower, the House divided, and it was carried in the negative by one calling voice—the numbers were 379.—It was ordered, however, "That the Dr. should receive an admonition from the Speaker, and make a public explanation of his words in the place wherein they were delivered, within sometime convenient."

July 6th, 1641, the Commons voted, 1st, That all the proceedings against their members, 4th Charles 1st, were breaches of privilege.—2d, That five of the Judges were guilty of a breach of privilege.—3d, That there was a delay of justice in refusing to bail the said members, contrary to Magna Charta.

July 8th, Among others the following resolu-
tions were passed, "That the information in the King's Bench against Mr. Hollis, &c. for matters which were transacted in Parliament, was a breach of privilege—That the Judges, in over-ruling the plea, committed a breach of privilege—That the fines and punishments passed on Mr. Hollis, &c. were a breach of privilege—That those of the members who were alive, and the executors of those who were dead, ought to have reparation—That Mr. Lawrence Whitaker being a member of Parliament, for searching the rooms and papers of Sir John Elliot, by so doing have been guilty of a breach of privilege, be sent to the Tower;" where he was sent, notwithstanding he pleaded the length of time, 13 years, since the fact, and the King's urgent command.

The King having required five members to be delivered to his serjeant at arms to be tried for high treason, and this being not immediately complied with, he came himself to demand them of the House. The House on the day after voted the King's conduct a breach of privilege, and published a declaration of their opinion. The House met again on the subject, and after many speeches relating to their grievances and privileges, they voted a declaration touching the attempt to arrest five of their members, and shortly after another for putting the kingdom in a posture of defence, which was
the first step in that contest which was imprudently
decided by arms, and terminated in a worse tyranny than that which they at first opposed. The Com-
mons resolved also, "That no member should or
could be arrested for Treason, without first inform-
ing the House and obtaining leave for his arrest."

I have here to lament the want of Mr. Hatfell's
assistance; for his volume on the privileges of the
House ends with the King's attempt to arrest the
five members, Hollis, Hazlerig, Pym, Hambden,
and Stroud.

The Parliament being voted perpetual 1641,
Clarendon tells us, that "The House of Commons
took much more upon them in point of privileges
than before; tho' this act added nothing to their juris-
diction, which the wisdom of former times had kept
from being limited or defined, there being then no
danger of excess, and it being more agreeable to the
nature of a supreme court, to have an unlimited ju-
risdiction; now that they could not be dissolved
without their consent, they called any power they
pleased to assume to themselves, a privilege; and
any opposition to that power, "A breach of their
privilege," and asserted, "That they were the only
proper judges of their own privileges."—Let it be
remarked, that Clarendon here uses the language
which Sir Edward Coke first applied to the Com-
mons, and which belongs only to the whole Parlia-
ment. The Commons of themselves never can be considered a supreme court: nor can they have an unlimited jurisdiction, and this language, handed down from one great man to another, shews how careful all great men ought to be in the use of language which may impose upon posterity. The Convention Parliament, which was assembled for the restoration of Charles II'd. brought things back in some measure to their former channel, tho' they were at first somewhat likely to fall into the opposite extreme. In that Parliament the Speaker's usual demands were forgotten, and such was the intoxication of the people on the restoration of their old government, that had it not been for the prudence and foresight of the Lord Chancellor Clarendon they would have rendered Charles II'd. despotic, or able to govern without a Parliament; for Mr. A. Popham, an artful and intriguing man, offered, with the assistance of a party he had in Parliament, to obtain an act for settling upon the King and his successors two millions a year, which, with the excise and other duties, would have rendered him independent of the nation. The King, well pleased with the proposal, advised with Clarendon about it, but he too wary not to foresee the evil, told his Majesty, "That the best revenue he could have was in the hearts of his people, and if he would only trust them, and deserve to be trusted, he would
find such supplies as would never fail him in time of need."

In the next Parliament, however, called the long, or pensionary Parliament, for it sat 17 years, and many of its members were pensioned by the Crown, we find the Speaker resume usual claim of privilege. The liberty of speech which had been thus invaded, was finally settled by the Bill of Rights, and influence, since the revolution, has taken the place of prerogative, and there have been no more open violations of the House's liberty.

The privilege of commitment for libels, is the most doubtful of all those claimed by the Commons, for it was never noticed in the disputes between them and the Stuarts, nor ever expressly asserted till the year 1701; and on enquiry we find from what small beginnings it has crept in upon the people, till it has at length arrived at that excessive and inordinate power exercised in the imprisonment of Mr. Gale Jones and Sir F. Burdett, and declared by some men to be essential to the Parliament's existence,—a power which has brought the people into the same predicament in which the House of Commons stood when they contended against the royal prerogative, with this difference, that the Commons had the people to support them, and now the people have to contend against the united force of the House and the ministry, and if the administrators of
the law should refuse to redress their wrongs, they have but one other remedy.

The great object for which all men and bodies of men are constantly contending is power, and we find it perpetually changing hands, as different parties grow stronger or weaker: every man wishes for power himself, and consequently to lessen the power of his antagonist. The Commons and the Lords have each assumed power not originally their own, and denied it to each other; and individuals when oppressed by them, have denied it to belong to either; in most cases the cause of the weakest is the cause of truth, for strength belongs to the oppressor and not to the oppressed; and it is in this balance of powers and interests that the excellence of our constitution consists, for when the sentiments of the three are so amalgamated by corruption, as to form only one overwhelming interest, the people have no longer any certainty of their liberty but from their own weight and exertion.

The House of Commons very early began to exercise a power of commitment for words spoken in the House against any of the three estates, and it was afterwards in some instances extended to the protection of individual members, and even of other nations.

January 19, 1551, one Storey, a member, was committed to the Tower, for a severe speech against
the King and the Protector; the words he spoke from, were these, "Woe unto thee, O England, when thy King is a child."

15th April, 1559, one Trower, a servant to the Master of the Rolls, was ordered to attend to answer to certain words spoken by him against the House; he attended, and was charged with saying, "That if a bill were brought in for women's wyers in their pastes, they would dispute it and go to the question;" for which he was committed to the custody of the Serjeant. There are some few other precedents to be found in Hatfell of the same nature, but they hardly deserve to be quoted.

The first precedent in regard to a direct libel on the House, is that of Mr. Hall.—On the 4th of February, Mr. Norton complained to the House of a book containing much slanderous and scandalous matter, derogatory to the authority, power, and state of the House, and injurious to the validity of its proceedings in establishing laws; and on its appearing that Mr. Hall was the ostenisible author of this book, he was ordered to be apprehended by the Serjeant, and on his coming to the bar of the House, he submitted himself to the House and asked pardon; and being withdrawn, it was unanimously resolved, on the report of a committee, that he should be committed to the Tower for six months, as the prison
most proper for the House; that he should pay a fine to the Queen of 500 marks, and be expelled the House for the present Parliament. The power assumed by the House in this affair was new and extraordinary; and Mr. Hatsell remarks, that from the number of punishments which were heaped on this unhappy author, there must have been some secret history in the affair, some particular offence against the Queen, with which the public are not acquainted. The book itself perhaps contained no matter worthy either of notice or punishment; the proceedings however form an æra in parliamentary history, and make another step in that gradual advancement by which the House has almost superseded one of the most valuable articles of Magna Charta. The little that we now know of the book is from a passage quoted by Sir F. Bacon in the year 1601, in a Committee of privileges, and from the report of the Committee appointed to examine it: the former said, "That tho' he had been a member in seven Parliaments, he knew but of two persons committed to the Tower, one of whom was Hall, for saying, "That the Lower House was a new person in the trinity;" and the latter charged him with having published the conferences of the House in print, and in a libel containing matter of infamy of sundry good particular members of the House, and of the whole state of the House,
and also of the power and authority of the House; affirming that the House had judged and proceeded untruly; with having impeached the memory of the late Speaker, deceased; with having attacked the authority of the House in framing committees without his consent; and in defacing the credit of the House, and of its individual members, that he practised to deface the authority of the laws and proceedings in Parliament, and so to impair the antient orders touching the government of the whole realm, the rights of the House and the form of making laws by which the subjects of the realm are governed."

The book seems unworthy to have been noticed, because the credit and consequence both of bodies and individuals must depend on their own conduct, and not on libels or pamphlets, whether true or untrue.

May 26, 1601. The Commons complained to the Lords of a book which, tending to make division and strife, they conceive themselves and the Lords much injured thereby, and which, if one of their House had been guilty of, they would have inflicted on him exemplary punishment; but because they supposed it to be the work of one of the Upper House, they desired a conference, to consider of the mode in which they ought to proceed. The Lords desired time to consider, and sent for two stationers concerned in the printing, who confessed
the author to be Dr. Thornborough, Bishop of Bristol. By this the Lords were put to a great dilemma, and the Commons pushing them on the matter, they prevailed on the Bishop to make an acknowledgment, which was read in the House to this effect, "That he had erred and was sorry for it." The Commons requested a copy of it, which the Lords granted, and so the matter ended.

2d James Ist, 1604. The Commons, in their apology to the King touching their privileges, notice this book as a high infringement of the same, and tending to murmurs, division, and sedition; and also to convince the King that they were no puritans, they tell him, "That they had sent a man to the Tower for reflecting upon the Bishops, in a petition he had lately presented."

February 13, 1606. Sir Christopher Pigott, during the debate on the proposed union with Scotland, 4th James Ist. uttered such a violent and intemperate speech against the whole nation, that the King took notice of it, and sent a message to the House, in which he was ordered to attend; and after attempting to excuse himself, he was commanded to receive his sentence on his knees, which was to be expelled the House and committed to the Tower. After remaining some time he sent a petition to be released on account of his ill health, which the
Houfe did not at firft regard, but at the interceflion of the King he was set at liberty.

May 24, 1614. The Commons having defired a conference with the Lords on certain impositions, which the Lords refused. The Commons, May 28th, sent up a messenger ftating that they had used certain unjustifiable expressions of them, as "That the prerogative is a 'noli me tangere,' that no one could agree to a conference in that matter who had taken the oaths of supremacy and allegiance, and that on the conference he doubted he should hear from the Commons some undutiful and feditious speeches, fuch as ought not to be heard by their Lordfhips." The Lords, after many attempts to get rid of the complaint, at laft allowed the Bishop to acknowledge his error, and make submission to the Commons, faying, "That he had never believed his words could have been fo misinterpreted, or he would never have uttered them in that honorable Houfe." The Lords, however, took care to fay, "That no member of their Houfe ought to be called in question, when there was no other ground for it than common hearsay infor- mation."

February 27, 1609. The Commons complain of a book published by Dr. Cowel, containing matters of scandal and offence to the High Court of Parliament, and otherwife of dangerous example,
and desire the Lords to come to a conference, which they agreed to: at this conference the Commons noted the passages they had objected to. The Lords desired a little time to consider, and ordered their Clerk to search for precedents. In the meantime the Lord Treasurer informed the Lords that the King had perused the book, had examined the author in his presence, and would shortly deliver his judgment, to be communicated by them to the Commons, and thus the matter ended.

Could one inordinate act of grasping at power justify another, the late proceedings of the Commons against Gale Jones and Sir Francis Burdett might be justified by their former attempt to assume a judicial authority in the case of Edward Floyde, 1621, whom they sentenced to a most ignominious and cruel punishment, for having spoken certain disrespectful and malicious words concerning the Princess Palatine, the daughter of the King. The Lords judging this proceeding to be an infringement of their privileges, or rather of their judicial authority, sent a message to the Commons to that effect, and requested a conference. Having considered the precedents produced at that conference by the Commons not to be to the purpose, the Lords proceeded to enquire, "Whether that House may sentence any man who is not a member of that House for a matter which does not concern them, and for
which they have produced no precedent." Both parties agreed to a second conference, and the Lords resolved to stick to this only, "That the Commons have no power of judicature, no coercion against any but in matters concerning their own House." Had this case not interfered with the jurisdiction of the Lords, we should have had a fine precedent (for those who are fond of precedents, no matter how bad) for the power of the House of Commons to try for any offences they pleased. The House then came to a mutual understanding not to interfere with the privileges of each other; and yet between the two it was determined that the poor man should suffer, tho' the one had no more right to try him than the other. His offence was merely that of foolish, idle, and disrespectful words spoken against the King's daughter; those who have any relish for reading such silly stuff, may see it in Cobbett's Parliamentary Reg. vol. 1, p. 1260; and yet for this, without either judge or jury, was this poor man sentenced by the Lords, "To be declared incapable of ever bearing arms, or to have his testimony received in any court of Justice; to be brought from Westminster on a horse, his face to the tail, with papers on his head and back declaring his offence; to stand in the pillory in Cheapside; to be whipt at a cart's tail from the Fleet to Westminster Hall, and there stand in the
pillory again; to pay a fine to the King of 5000l. and be imprifoned in Newgate for life." A few days after, on the motion of the Prince, it was ordered, "That the punishment of whipping and all that belongs to it should be forborne, till further commands received;" and, "That when any sentence beyond imprisonment be agreed on, judgment should not be given but after a day or two's consideration."

1st Charles, 6th July, 1625. Dr. Montague was committed to the Serjeant at Arms for publishing a book which tended to the revival of popery and the overthrow of the protestant religion. The Commons represented it to the King, who prayed they would release him as he had taken the matter into his own hand: on giving bail for 2000l. he was discharged out of custody. The Commons took the matter up next session; they committed him afresh, August 3d, and April 10, 1626, they passed certain resolutions against his book, but the King took the matter out of their hands, and so it ended.

2d Charles Ist, 1626, Mr. More was committed by the Commons to the Tower for these words said to contain a reflection on the King, "We were born free, and must continue free, if the King would keep his crown." These words being reported to his Majesty, he represented it to the House and they committed him in consequence.
At the end of four days the King sent to say he would remit his further punishment, and he was set at liberty.

1628. Mr. Rous charged Dr. Mainwaring with preaching two sermons asserting the King's divine right, and the duty of unconditional submission. The Commons drew up a declaration of their sentiments, and demanded a conference with the Lords, in which it was agreed he should be impeached; and he was accordingly tried and sentenced to make recantation on his knees before both Houses.

May 27, 1641, Mr. Taylor was brought before the House for having said, "That they had committed murder by the execution of the Earl of Strafford, and that he would not for the world have so much guilt lie on his conscience as they had on theirs by that sentence." He was expelled the House and voted incapable of ever again being chosen, committed to the Tower during pleasure, and ordered to make recantation of his words at Windsor where they were uttered, and at the bar of the House.—The power exerted by the Long Parliament was chiefly that of impeachment, by which they got rid of those who stood in the way of their authority, and drew the whole power of the state into their own hands; they did not stop at mere breaches of privilege, but, under pretence of the public good, they voted every thing unlawful which opposed or
thwarted their opinions or their will. The follow-
ing, tho' perhaps trifling, shews at least the spirit of
the House.

June 9, 1641, The House sitting late, candles
were brought in by mistake, and Sir W. Widdrington
and Mr. Price taking them from the Serjeant
without a general command, created some bustle.
Mr. Hollis the next day moved that for this breach
of order they should both be sent to the Tower
during pleasure. They were ordered to receive
their sentence kneeling, which they at first refused,
but at last complied.

1660. The first instance to be found after the
restoration, of the Commons noticing a libel, is that
of Dr. Drake, who published a pamphlet entitled
"The Long Parliament Revived;" in which he af-
serted, that the former Parliament not being legally
dissolved, that which was then assembled could not
be legal. The Commons voted him to be im-
peached, and the Lords, after the articles of im-
peachment were presented, left him to be prosecut-
ed by the Attorney General in the King's Bench;
for which proceeding, I should suppose they could
not be fairly authorized.

1668. The affair of Skinner and Sir Samuel
Barnardiston caused a dispute about the jurisdiction
of the two Houses. Skinner, who had been seri-
ously aggrieved by the East India Company, brought
his case at once before the Lords, and they gave him damages to the amount of 5000l. The Company knowing no balance against the power of one House but the power of the other, seek redress by their governor, from the Commons, who, jealous of the Lords, vote their proceedings illegal, and that Skinner, for prosecuting a suit by petition in the Lords, and procuring judgment to be served on Sir S. Barnardiston, a member of the Commons, was guilty of a breach of privilege, and therefore ordered him to the custody of the Serjeant. The Lords, piqued at this proceeding, demanded a conference, but after two or three conferences, settled nothing. They then declared the petition of the Company scandalous, and imprisoned Barnardiston, &c. The Commons on this voted, "That whoever should aid or assist in executing the sentence of the House of Lords, should be considered as a traitor to the rights and liberties of the Commons of England, and an infringer of the privileges of the House." The King, to settle the dispute, prorogued the Parliament. The next session, however, the Commons resumed the affair, and passed several resolutions, declaring the right of the subject to petition the House of Commons for a redress of grievances, in which case the Lords had no right to interfere, without being referred to by the Commons, it being the sole right of the Commons to receive peti-
tions; that the House of Peers, like every other court, must be guided and governed by law, otherwise their Lordship's judicature would be boundless and above law, and the party grieved without remedy. The King summoned the two Houses to his palace and proposed to them to cancel the proceedings on both sides, which proposal they joyfully accepted, and then, as Andrew Marvel tells us, Sir James Clifford carried the Speaker, his mace, and all the members, into the King's cellar to drink his health.

Another dispute about jurisdiction between the two Houses arose in 1675, in which the Commons denied the right of the Lords to hear appeals from inferior courts. Dr. Shirley having lost his cause against Sir J. Fagg, appealed to the Lords, who cited the said Sir John before them. The Commons interfered. The Lords voted it a breach of Magna Charta, as delaying justice. The Commons voted the appeal which cited one of their members, a breach of privilege, and committed all the council concerned in it to the custody of their Serjeant, and afterwards to the Tower.

The cases of Stoughton v. Onflow, and Crispe v. Dalmahoy, of the same kind, happened about the same period, and the same arguments were used in all by the Lords against the inordinate power claimed by the Commons, under the name of pri-
vilege. No victory seemed to be gained by either party, except that the Lords had law and justice on their side, and the Commons only strength.

August, 1675. Col. John Howard, brother to the Earl of Carlisle, having been killed in an action between the Germans and the French, Lord Cavendish and Sir T. Meres being together, were heard to say, "That he deserved no better, having served against a vote in Parliament." This coming to the ears of his brother, Mr. T. Howard, he wrote a scandalous and abusive letter, calling these gentlemen incendiaries, &c. and had copies of the letter dispersed. The House sent a committee to him, being ill of the gout, to know if he acknowledged the letter: his answer was, "He would say nothing, but leave it to be proved." A few days after he was sent for to the House, but not in custody, and having neither affirmed nor denied anything, the House voted, "That he was the author of the paper, and committed him to the Tower." A summary mode of proceeding, and grounded on that pernicious doctrine of constructive contempt.

1676-7. The Lords having fined and sent to the Tower one Dr. Carey for a libel on the Parliament, the Commons took the matter up; in the course of the debate Sir T. Lee said, "That crimes against the government ought not to be punished in Parliament for the law is open." Mr. Powle said, "If
this be so, no Commoner in England but is at the Lords' mercy; what a man says against the government is no more cognizable by the Lords than in any other place;” and yet the book certainly spoke against the Parliament, for it called them “traitors and rebels.” “An invasion of our privileges,” said Sawyer, “is invading the government.” Sir W. Coventry answered, “We are not the government, but a part of the legislature.” Serjeant Maynard said, “If a man contemns a court, that court may fine him; if Dr. Carey be committed for contempt of an order, see what it is, and whether you will go thro' with it or not.”

1680. The King having become tired of Parliaments, and threatening to dissolve that lately assembled, the country party foreseeing the tendency of his measures to introduce arbitrary power, contrived to get petitions from different parts of the nation: how they were got, has been humourously described, but no matter how; for tho' they might not express the sense of the people, they expressed their interest. His Majesty treated them with great levity and contempt, and his courtiers threw every difficulty in their way, and caused many of their adherents to express their abhorrence and detestation of such petitioning. The House of Commons, therefore, as the guardian of the people's rights, resolved, “That it is, and ever hath been, the undoubt-
ed right of the subject to petition the King for calling Parliaments and redressing grievances; that to traduce such petitioning, and represent it to his Majesty as tumultuous and seditious, is treason to the liberty of the subject, and contributes to the design of subverting the antient legal constitution of this kingdom, and introducing arbitrary power; that a committee be nominated to enquire after all such persons as have thus offended against the right of the subject."

October 28th, It having been proved that Sir Robert Cann had traduced the right of petitioning, and uttered several words reflecting upon Sir T. Knight, a member, it was ordered that he be committed to the Tower and expelled the House.

October 29th. The Commons resolved, "That Sir F. Wythins having presented an address to his Majesty, expressing an abhorrence of the subject's petitions, is a traitor to the liberties of the subject. Ordered, "That Sir F. Wythins be expelled the House and receive his sentence on his knees from the Speaker; and thus the privileges of the House were exerted to defend the privileges of the people, or rather an unconstitutional stretch of power was exerted on the occasion; for however great the good that might be obtained by it, it cannot be denied that the arbitrary power of commitment is contrary to the salutary
provisions of Magna Charta; and as all the good it effected, might have been equally obtained by the mere expulsion of these traitorous members, it is a pity that the House exceeded its authority, and exerted an arbitrary power, even in the defence of liberty.

Dec. 9th, 1680, Mr. Sheridan was imprisoned in the Tower for denying the right of petitioning: he demanded a Habeas Corpus, which most of the Judges fearing to grant, got out of the way; but it was granted by Baron Weston. The Commons, on the writ being served, had a long debate how they should proceed, and after many violent speeches against the power of the Judges to bail for commitments by the House, the matter dropped. Sometimes after it was ordered, "Sir F. North, Sir T. Jones, and Baron Weston, should be impeached; but the Parliament being prorogued, that also dropped.

July 6th, 1689, Colonel Birch gave in the report of the committee nominated to consider the petition of John Topham, Esq. Serjeant at Arms, who had been served with several actions by persons whom he had taken into custody by order of the House, but that his pleas were overruled by the Judges. These Judges, six in number, who had sat during that time in the King's Bench, were summoned to attend the House, and their judgments...
reverted, as contrary to the privileges of Parliament. Sir F. Pemberton and Sir T. Jones ventured to defend their conduct, affirming that the plea ought to be overruled, and hoped that their judgment was according to law, as the matter was pleaded. Another judgment to the same effect was reversed by the joint consent of the Lords and Commons, and thus the Commons seem to have triumphed, not only over the Judges, but over the law, by committing men to prison without a trial, and overruling all who opposed their power. Let it, however, be remembered that all this was for the express purpose of defending the subject's right to petition.

January 21, 1692, A book, called "King William and Queen Mary Conquerors," was ordered to be burnt by the common hangman, as containing assertions of evil consequence to their Majesties, the liberties of the subject, and the peace of the kingdom. The Pastoral Letter of Bishop Burnet received the same treatment, as being said to contain the first hint of that notion.

Dec. 21, 1694, Dyer, a newswriter, was reprimanded on his knees for noticing the proceedings of the House.

January 11th, 1696, The House resolved, "That John Rye, of London, Merchant, having caused a libel reflecting upon a member of the House, to be
printed and published, is guilty of a breach of privilege;" ordered, "That John Rye be taken into the custody of the Serjeant at Arms, for the said offence."

October 28, 1696. A pamphlet on the Proceedings of the House in regard to clipped money, was voted false, scandalous, and malicious, and destructive of the freedom and privileges of Parliament. A few days after, being informed of a printed paper entitled, A Summary Account of the Proceedings, &c. they voted, "That printing the names of the members of the House, and reflecting upon them for their conduct in Parliament, was a breach of the privileges of the House, and destructive of the freedom and liberties of the House." A vote directly destructive of the liberty of the people to censure their representatives, and a new privilege then for the first time claimed.

Nov. 7th, 1696, Mr. Manly, a member, for saying, "It would not be the first time that people have repented making their court to the government at the hazard of the liberties of the nation," was committed to the Tower, and discharged a few days after on petitioning.

January 29, 1697. The question was put, "That Gabriel Glover be taken into the custody of the Serjeant for speaking scandalous words of the House:" it passed in the negative.
May 21, 1698. The Commons request the King to give directions that Molyneux's State of Ireland might be prosecuted for denying the dependence of Ireland on the Parliament of England.

April 3d, 1699.—Mr. Chivers was ordered to attend for having written the two following letters:

Dear Will,

Yesterday we had a great contest in the House about augmenting the forces, in which my brother member signalized himself for the good of his country. He made a violent speech for keeping up more forces than the sense of the country was for, that we poor country gentlemen were forced to labor hard, and sit late, to overcome them. I really believe he will never give his country one vote, he is so linked with the court party.

I remain,

H. Chivers.

To Mr. W. Wilkes, in Calne, Wiltshire.
January 5th, 1798.

Dear Brother,

I have sent you his Majesty's speech, and a list of those gentlemen who voted for the standing army. The question was, Whether the army should stand, or the bill be thrown out? but, God be praised, we carried it. The
number for disbanding the army was 221, and the lift will shew you how many were against it.
I remain, &c.

HENRY CHIVERS.

To Mr. Hoskins, Calne, Wiltshire.

Mr. Chivers pleaded indisposition. He was ordered to attend next day; but not coming, the question was put, that he be sent for in custody of the Serjeant at Arms, which was negatived. It was then resolved, "That publishing the names of members of the House, and reflecting upon them, and misrepresenting their proceedings in Parliament, is a breach of privilege, and tends to destroy the freedom of Parliament."

Jan. 15, 1700. Sir R. Leving was committed to the Tower for aspersing the conduct of the Irish Commissioners.

The affair of the Kentish petition is the next precedent, as to time, of commitment for libels, and as it is the only direct one for the power now claimed, by the House, it merits no small portion of our attention.—May 8th, a petition was presented to the House by five Kentish gentlemen, and signed by many of the deputy lieutenants, by 21 justices of the peace, all the grand jury and other freeholders then present at the quarter sessions held at Maidstone April 28, 1701. The petition was couched
in the following terms:—"We, the undersigned, &c. deeply concerned at the dangerous state of the kingdom and of all Europe, and considering that the fate of us and our posterity depends upon the wisdom of our representatives, think ourselves compelled to lay before this honorable House the consequence, in this conjuncture, of your speedy resolution and most sincere desire to answer the great trust reposed in you by the nation; and in regard, that from the experience of all ages, it is manifest that no nation can be great or happy without union, we hope that no pretence whatever will be able to create a misunderstanding among ourselves, or the least distrust of his most sacred Majesty, whose great actions for this nation are written in the hearts of his subjects, and can never, without the blackest ingratitude, be forgotten; we most humbly implore this honorable 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 will ever, &c."—The petition being read, it was immediately resolved, "That the said petition was scandalous, violent, and seditious, tending to destroy
the constitution of parliaments, and to subvert the
established government of the realm;” and then it
was ordered, “That all those gentlemen should be
taken into custody who had presented the said peti-
tion.” The order was executed with considerable
severity, which so far from quieting the minds of the
people, already much irritated, caused tumults and
disturbances in various places, and gave birth to a
memorial signed Legion, which was addressed to
the House and sent under cover to the Speaker.
The language of this letter, compared to that of
the petition, was fire and sulphur. Among other
things equally strong, it contained the following
statement of the nation’s grievances.—“To impris-
on men, not your own members, by no authority
but your own vote, is illegal, a notorious breach
of the liberty of the people; it is setting up a dis-
pening power which your fathers never pretended
to, bidding defiance to the Habeas Corpus Act, de-
structive of the laws, and treason to the trust re-
posed in you. Committing to custody those gen-
tlemen who, in a legal and peaceable way, came
to put you in mind of your duty, is illegal, injuri-
ous, and destructive of the subject’s right of peti-
tioning. Voting a petition to be insolent, is ridicu-
lous and impertinent, because the freeholders are
your superiors; a contradiction in itself, and a con-
tempt of English freedom.” The paper ends with
claiming and declaring, "That it is the undoubted right of the people of England, when the Parliament does not proceed according to their duty and the people's interest, to represent the same to them, either by petition, memorial, or address.—That the House of Commons, separately, have no legal power to suspend or dispense with the laws of the land, any more than the King by his prerogative.—That the House of Commons have no legal power to imprison any man (their own members excepted) or commit them to the custody of their Serjeant; but ought to address the King, on good grounds, to cause such persons to be apprehended, which persons ought to have the benefit of the Habeas Corpus Act, and be fairly brought to trial by due course of law." They then require and demand among other things, "That all the persons who presented the Kentish petition, and are now unjustly detained, may be discharged or admitted to bail, and the liberty of the subject thereby recognized and restored." The Commons nominated a committee, to lay before his Majesty the different attempts to excite sedition and tumult, but never named this very singular address; the committee made no report, and none was ever called for. The inconsistency of the Commons in this instance deserves particular notice, compared with their conduct in the time of Charles II'd, when they vindi-
icated the subject's right of petitioning the Crown, and even sent men to the Tower for denying it; and now, for exercising the same right to themselves, they imprison men in a much worse place, with much greater marks of cruelty and severity. The King prorogued the Parliament on the 24th of June, 1701, and dissolved it on the 28th. Three days after the gentlemen who had been so long imprisoned were entertained at the Mercer's Hall at the expense of the citizens, at which entertainment many of the nobility and persons of the first rank and fortune were present; but the matter ended not here, for in the next Parliament Mr. Thomas Colpeper, having petitioned the House on an undue return, they not only declared his opponent duly elected, but voted, "That Colpeper having been one of those who presented the scandalous, insolent, and seditious Kentish petition, should be committed to the Tower, and prosecuted by the King's Attorney General for the said crime. The House also resolved, after much debate and controversy, "That to assert the House of Commons have no right of imprisonment but over their own members, tends to subvert the constitution of that House, and that to print or publish any books or libels reflecting upon the House or any individual member, is a violation of the rights and privileges of the Commons." Let it be distinctly remember-
ed, that these instances are to be found, of persons not members of the House being reprimanded and committed to the Serjeant for libels on the House, this is the first time in which they expressly claimed the right of imprisonment by a solemn resolution, and it is upon this resolution that the proceedings in the case of Mr. Gale Jones are founded.

Jan. 1701–2. Fuller, the famous impostor, took great pains to defame the House of Commons, by asserting that 180,000l. had been distributed among them by agents of the French King, and that he would produce the persons at the bar of the House: they gave him leave, and required him to do so, but he had no such persons to produce; and it was ordered "That he should be prosecuted by the King's Attorney General for the offence."

The commencement of Queen Ann's reign was very fertile in libels, all of which were noticed either by the Lords or Commons, in the usual way, by a legal prosecution.

1704. The famous Aylesbury case of Ashby and White, is the next precedent in which the Commons claimed the right of arbitrary imprisonment, and this case, tho' it took up many days of discussion, and filled many sheets of paper, may be stated in a few words.—Matthew Ashby brought an action at common law in the Queen's Bench against William White, the mayor of Aylesbury, and others,
the constables of that town, for refusing to take his vote at an election of burgesses. Three of the Judges were of opinion that Ashby was not wronged. Lord Chief Justice Holt differed from the rest on this ground, that there was a great difference between an election of a member and the right to vote in it. "The House of Commons," he said, "were judges of the former, whether it was fairly managed; but the right of voting was an original right, founded on a freehold of forty shillings a year, in burgage tenure or prescription; that all these were legal titles triable by a court of law and not by the House of Commons." The other Judges not being of the same opinion, Ashby was cast, but the cause was removed by writ of error to the House of Lords, who reversed the judgment. The Commons conceiving this an invasion of their privileges, as the sole judges of all things relating to elections, appointed a committee to search the Journals of the House for precedents, and another to examine the Records of the Queen's Bench. The report of these committees was referred to a committee of the whole House, in which, after a very long debate, the House passed five resolutions, the substance of which was, "That the right of determining all things relative to the qualifications both of elections and elected belongs solely to the House of Commons—That Matthew Ashby having brought
an action at Common law against William White for not receiving his vote, is guilty of a breach of privilege; and that all persons concerned in bringing such suits are guilty of a breach of privilege."

The House, tho' they voted Ashby guilty of a breach of privilege, did not commit him, because there had been no declaration upon the subject before, thereby acknowledging that this was a new precedent, of which there had before been no example.

On these proceedings of the Commons, the Lords nominated a committee, who drew up a state of the case upon the writ of error in their House, and the reason of their determination was, "That the House of Commons could give a man no redress who was deprived of his right to vote by the refusal of an officer to admit it; and because there was not one precedent upon record that any man so injured ever applied to the House of Commons."

The judgment of the Lords being thus given, five other men brought their actions on the same ground, which so irritated the House of Commons, not only, as they said, being a breach of their privileges, but being contrary to their late declaration, a new and unheard-of crime; they therefore sent for these five men and committed them to Newgate, where they lay three months, well supplied and much visited; at the end of that time they moved the Queen's Bench for a Habeas Corpus, which was
refused by those Judges against the opinion of Chief Justice Holt. On this, two of the prisoners moved for a writ of error in the House of Lords, which so alarmed the Commons that they petitioned her Majesty to refuse the writ, a new and extraordinary measure, and still more so, the reasons they gave to induce her Majesty to comply with their request, viz. "That they had lately given great dispatch to the supplies," which looked like a sort of bribe to her Majesty. To this she answered, "That their petition, as relating to judicial proceedings, required great deliberation;" which answer, being reported by Mr. Secretary Hedges, the Commons took so much amiss that they gave it no reply, and immediately proceeded to greater extremities by committing to prison the counsel for these five men; and dreading least they should be liberated by the writ of error, they ordered them to be removed from Newgate at midnight, with such circumstances of terror and severity as had seldom been exercised on the greatest offenders; but the prisoners being well supported, it is supposed by Lord Wharton, refused to ask pardon of the House. The Lords on this came to the following resolutions: "1st, That neither House has a right to create themselves any new privileges, not warranted by the laws and customs of Parliament. 2d, That every freeman who conceives himself injured has a right to seek for
redress by action at law. 3d, That the House of Commons, by committing to Newgate, Daniel Horne, &c. for commencing an action against the constables of Aylesbury, on pretence that it was contrary to their declaration and a breach of their privileges, have, by so doing, assumed a legislative authority, and, as far as in them lies, subjected the liberties of Englishmen to the arbitrary votes of the House of Commons. 4th, That every Englishman when imprisoned has a right to apply for a writ of Habeas Corpus to procure his liberty. 5th, That for the House of Commons to punish any person for assisting in procuring such writ, is a breach of the many good statutes provided for the liberty of the subject, and of most pernicious example. 6th, That a writ of error is a writ of right, and ought not to be denied, the denial thereof being an obstruction of justice and contrary to Magna Charta.”

The above resolutions being delivered to the Commons at a conference, who, after some time and a second conference, finding that their Serjeant had been served with two writs of Habeas Corpus for Mr. Montague and Denton, the counsel for the Aylesbury men, they resolved, “That no Commoner, committed for breach of privilege, ought to be compelled to appear in any other place, or before any other judicature, during the session of Parliament in which he was committed, and that
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the Serjeant do make no return, and for such refusal he have the protection of the House; and that the proceedings of the House in relation to the Aylesbury men are in maintenance of the rights and privileges of the Commons of England.” The Lords, March 14, 1705, presented to her Majesty a Representation and Address, containing a brief statement of the affair, and prayed her Majesty not to refuse the writs of error which were to bring the matter before their Lordship’s House. The Queen answered, “That she would have granted the writs desired, had she not seen a positive necessity for proroguing the Parliament.” To this answer the Lords voted their thanks, and thus this important affair ended. It deserves, however, to be studied by every man who wishes to be well acquainted with the constitution, and in Cobbett’s Parl. Reg. vol. 6th, and Hatfell’s Precedents of Proceedings, vol. 3d, he will find all the speeches and arguments on both sides; and never was any affair more fully, nor more ably argued, nor more constitutional and legal knowledge brought into a smaller space. The termination was undoubtedly friendly to the liberties and rights of the people; because, as the law now stands, any man who conceives himself deprived of his elective franchise, by the refusal of an officer to take his vote, may find redress at common law. Had the Commons gained their point,
he would have been compelled to refer to them without receiving from them full satisfaction; and tho' Lord Milton in the Lower House, lately called it a victory, if it was, it is hard to say what a victory means; for in no other instance were the claims of the Commons more completely defeated.

March 17. The Commons took upon them to exercise an inquisitorial power of the press; for Sir Dudly Cullum reported from the committee nominated to examine two books on the nature of the Soul, "That Dr. W. Coward was the author, and that they contained matter scandalous, offensive, &c." The House resolved; "That they be burnt by the hands of the common hangman:" this was a power the Lords had before exercised; but such offences could not by any means be brought within a breach of privilege, and therefore it is difficult to say by what right the Commons assumed to themselves a power of licensing the press, or infringing its liberty.

March 8, 1706. A complaint was preferred to the House against a pamphlet intitled, "A Letter from Sir Rowland Gwynne," concerning the bringing the Princess Sophia into England as a means of securing the Protestant succession. They addressed the Queen to prosecute the author, if he could be found; but their vengeance at last fell on the
Printer, and he was imprisoned and fined with the utmost severity, contrary to the Bill of Rights, Art. 10th, which declares, "That excessive fines ought not to be imposed."

Nov. 25th, 1707. The House being informed of a pamphlet published by Mr. Afgill, one of their members, containing many passages against the Christian religion, they ordered the book to be burnt by the hands of the hangman, and the author of the said book, (which he owned), to be expelled the House.

March 13th, 1714. Sir Richard Steel was expelled for publishing two periodical pamphlets called, The Crisis, and, The Englishman, as "Being scandalous and seditious libels, containing many expressions reflecting upon her Majesty and the government, the nobility, gentry, clergy, and universities of the kingdom." It was entirely a party affair, in which the Tories got the better of the Whigs, after a severe parliamentary contest.

1751. The Hon A. Murray was committed for a contempt of the House: he sued out a Habeas Corpus, which the judges, Denison and Foster, refused to admit, and he was remanded. But it must be remembered, his contempt was not of a libellous nature, and that the judges only refused to release him, because his offence was a contempt: contempt is a general term, and thus one precedent creates
another, contempt in time becomes a libel, and a libel may in time become treason.

1768. The Commons resolved, "That privilege in Parliament does not extend to the writing and publishing seditious libels, nor ought to be allowed to obstruct the course of the law." A resolution which I believe does not bear the interpretation given to it by those who denied the right of the Commons to commit for a libel. It means that a member of the House who has written a libel against any other, is not to be exempted from trial by the privileges of the House. The occasion which gave rise to this resolution sufficiently explains its meaning and intention. Mr. Wilkes, who had been sent to the Tower for writing a seditious paper in the North Britain, sued out a Habeas Corpus and was released by the King's Bench, on the ground that the privileges of Parliament extended even to publishing libels. The House thought otherwise, and resolved as before expressed. Mr. Cobbett and some other political writers have published this Resolution under the signature of Philo Juftitia, who says, "It will be seen how far the House have violated their own law by the commitment of Mr. Gale Jones and Sir F. Burdett." Now this must be either gross stupidity, or a wilful intention to deceive.
1771. The case of Brass Crosby, Lord Mayor of London, who committed the Serjeant of the House for arresting a printer, is one of the latest instances of the Commons exerting the power of commitment; and tho' the Judges in that case determined for the privilege, yet it was only on the ground of his offence being a contempt of the House; but the opinion of fifty Judges would not alter the nature of things, nor make that to be lawful which is against the law; for if the law of Parliament is the law of the land, the Judges clearly are bound to take notice of it; and a libel can never, by any fair reasoning, be construed into a contempt, for a contempt strikes at the authority of a court, a libel only questions its proceedings, and may be in the right; whereas a contempt is a positive offence, a clear and undisputed fact, not a mere opinion. The case of Alderman Oliver, 1771, being nearly the same as the former one, requires not a more particular examination. The consideration of the other rights and privileges of the House of Commons mentioned in p. 5, must be deferred, as not immediately urgent.

To prove that I have not published this Treatise to serve the purpose of any party, or from any sinister motive, I have produced many precedents of commitment for libels, which Sir Francis Burdett has omitted; and I will now attempt to shew
that he has deduced many unfair inferences from those he has cited; and first, he asserts that the Commons, before the year 1621, or at least before the long parliament, never overleaped the bounds of the constitution, nor attempted to take the law into their own hand: the fact however is, that till the reign of Henry VIIIth they were restrained from so doing by the power of the Crown, tho' in three remarkable instances before that time they attempted to enlarge their privilege to the manifest injury of the people, in two of which they were hindered by the King, and in another by the integrity of the Judges, vide p. 10, 11, 13. It will be seen also that I have produced may instances of arbitrary commitment before 1621, one only of which Sir Francis has cited, and after such citation he remarks, "That when their privileges were violated, the House was content to appeal to the law, and never overstepped the limits of the constitution." The worthy Baronet has also omitted most of the cases where the House has presumed to censure libels, not against themselves, and has mentioned some of them, viz. "Hall's Sober Reply," and "Veni Creator Paraphrased," as instances in which members of the House, or the whole House, being libelled, were content to leave the party accused to be tried by a jury of his equals; whereas they were only libels against the established religion. To the force, and
whole bent of his argument, nothing can reasonably be objected by any friend of liberty; and as his cause was so good, he need not have been afraid to tell the whole truth, even where it seemed to make against his position; for if there were an hundred precedents more than there are on the side of arbitrary commitment, they could not make that to be right, which is in itself wrong, as contrary to law, justice, and humanity. If ever there was an affair which ought not to be determined by precedent, it is this, because precedent ought to avail nothing against principle, where the liberties of the people are concerned.

The proceedings and arguments in the foregoing instances of violated privileges, have been partly employed in the two Reports of a Committee of Precedents, in the action brought against the House, in the name of the Speaker, by Sir Francis Burdett; and by most of the lawyers who have lately attempted to support the pernicious doctrine which asserts the power of the House in commitment for libels, under the general and indefinite term of contempt. Having undertaken to shew that this power is of modern origin, and not derived from immemorial usage, it becomes me, by all the means in my power, to repel the force of the arguments used by these legal casuists; and to shew how far they have perverted facts from their direct application, and fought
to support their cause by disingenuous sophistry. The Committee first state, "That they find it to be the uniform practice of the House, as far as the Journals extend, to commit to different custodies, persons whom they have adjudged guilty of a breach of their privileges." Now they should first have told us what was the case before the commencement of the Journals, which began, temp. Edward 6th; for it was in the reign of Henry 8th, as has been shewn, (p. 18) that the House, with the tacit permission of that monarch, first exercised the power of commitment. The Committee next attempt to pervert the obvious sense of the 9th article of the Bill of Rights, which says, "That no one shall be questioned out of Parliament, for Proceedings in Parliament," by affirming, "That it extends as clearly to actions brought by individuals, as to prosecutions directly instituted by the Crown." According to the laws of fair criticism, the sense of a doubtful passage is always to be interpreted by the circumstances which gave rise to it; now what was the state of things which produced the Bill of Rights? The liberties of the House of Commons had been openly invaded by the arrest of its members, and those members had been punished by inferior courts, for their conduct as representatives of the nation, which things naturally occasioned a desire and avowed intention, to obviate them in future, by a legisla-
tive provision. Actions against the House were then totally unknown, because the House had always acted pretendedly at least on the side of the people, and openly against the Crown; and, therefore, as the possibility of such an action had never presented itself to the framers of the Bill of Rights, a provision against it was no part of their intention. The Greeks had no law against homicide, because they believed the thing impossible. It is obvious also that the Bill of Rights meant only to protect the freedom of individuals in Parliament, against the oppression of the Crown; because they did not believe the Parliament capable of oppressing individuals, and therefore it expressly says, "proceedings in Parliament," and not proceedings "of Parliament," and what more strongly defends this interpretation is, that the conclusion of the memorable Bill enacts, "That no declarations, judgments, doings or proceedings, in any of the said premises, to the detriment of the people, ought hereafter to be drawn into example." Another reason why the article in question cannot have the forced meaning put upon it, is, that the House was formerly the party injured: How then can it be turned to a case in which the House is the party accused of being unjust? Whenever it happens that the people have no redress against illegal punishment, their case is miserable in the extreme; but they must, or they ought, to have redress from
the Judges, by whom the law is administered; for if they refuse to listen to the claims of the people, when their privileges are invaded by the privileges of either House, they are no longer the instruments of the law, but the agents, or the slaves, of despotism.

The Committee then bring forward the law of 4th Henry VIII. as a general act establishing the Rights and Privileges of Parliament, and so it has been considered both by the two Houses and by many eminent lawyers and writers on the Constitution. The Commons voted it to be such, on the 12th Nov. 1667, and the Lords, 11th Dec.; and in consequence of these votes, on the same day the Lords ordered, that Lord Hollis be desired to cause the proceedings of the King’s Bench, in the case against himself, Sir John Elliot, Benjamin Valentine, Esq. to be brought up by writ of Error, upon which they reversed the judgment of the court, the next Session. And yet, notwithstanding this high authority, I am of opinion, that the Statute, 4th Henry VIII. meant no more than it expressed, viz.: to exempt “Richard Strode, and those that be his complices, of this, or any future parliament, from all suits, condemnations, &c. by any other court, or courts;” — but even allowing it to be declaratory of the general liberty of speech in Parliament, it is by no means declaratory of the power of
the House to punish whom they please, and for what they please, without control; nor does liberty of speech mean to be totally free from censure, for then the liberties of the Commons would invade the people's liberty. On the whole it must be observed, that all the cases produced by the Committee, in which the House has censured or punished the Judges for taking cognizance of its proceeding, were only when that cognizance was at the instigation, or in support of the authority of the Crown; and from hence has been unfairly deduced, the general inference, that the Judges have no right to interfere in any thing which the House chooses to call a privilege, and this doctrine, both before and since the revolution, has received support from the conduct of the Judges themselves, many of whom having basely surrendered their rights, as interpreters of the law, have suffered the law to be silenced.

The Committee then states the practice of the House in laying proceedings in suits, brought against members and their servants during the time of privilege, which they consider as only in some degree connected with this subject, now it seems to me that tho' the whole of that practice was an innovation begun in the time of Henry VIII. yet even allowing it to be as old as the common law, it can have no connection with the present case, because
it was in defence of an acknowledged privilege, viz. the freedom from arrests; and this is only in defence of a disputed one, viz. "The right of committing for libels;" and, therefore, their inference that the action brought by Sir Francis Burdett against the Speaker, is a breach of privilege, falls to the ground; because it is not supported by that similarity which is requisite to make the proceedings in any two cases equally justifiable.

The Committee next make a distinction between commitments for contempt in general, and commitments for libel; a distinction unknown to the House before 1580, and since then the practice of commitment for that offence, has by no means been uniform, or rather the reverse, for Mr. Hatfell tells us, "That it has been very common since the revolution, in cases of libel, either to order the Attorney General to prosecute the offenders, or to address the king for that purpose. The House of Lords have adopted the same mode, tho' Lord Clarendon, May 18, 1716, reports from a Committee, without addressing the king, but by immediate order from the House." The Committee tells us, that commitment for libels has been exercised as far back as the Journals are to be found,—a small mistake, for the Journals go as far as Edward VI. and the first instance of commitment for a written libel is in 1580, 22d Elizabeth. The Committee next
assert, in direct contradiction of the fact, that the power of commitment for libels, is part of the fundamental law of Parliament; and that the law of Parliament is part of the "lex terrae," or law of the land, mentioned in Magna Charta, as much as the acknowledged power of commitment by the Courts of Westminster for contempt. Now as to the law of Parliament, it is a pleonasm, for all the laws are laws of Parliament, inasmuch as they are framed and enacted by the Parliament, for no single branch of the Parliament can make a law, tho' it may lay down or practice certain rules for the conduct of its own members, or for the protection of its own authority, against immediate insult or contempt; but as to these usages being by any means in the contemplation of Magna Charta, which was enacted before the Parliament existed, it is mere nonsense, and it is directly contrary to the explanation of the words, "lex terrae," or law of the land, given in many subsequent statutes—9th Henry III.; 5th Ed. III. c. 9; 28th Ed. III. c. 3; 25th Ed. I. c. 2; 25th Ed. III. c. 4. The common law of the land exists by immemorial usage, the law of Parliament has no such existence; it is merely a collection of precedents of no very ancient origin, and was first dignified with the name of law and custom of Parliament by Sir E. Coke, in his Institutes, soon after or about the time of the great struggle be-
tween James First and the Commons, for liberty of
speech, and as it commonly happens in all violent
disputes, that both parties go too far, the Commons
both then, and in the time of Charles First, used a
language, when they spoke of themselves, which is
only applicable, and sometimes hardly applicable,
even to the High Court of Parliament, or Great
National Council. It should be remembered, how-
ever, that their arguments only went to deny the
power of the Judges to try their members for of-
fences committed in Parliament, to try offences com-
mitted by the House of Commons, had never then
come into any man's contemplation. It is remark-
able that in mentioning the different laws which
might be considered as coming under the name,
laws of the land, or the leges terræ of Magna
Charta, none of the great men engaged in the strug-
gle with Charles First, ever named the law of Par-
liament, which the managers for the House of Com-
mons would not have omitted, had they thought it
fairly came under that denomination. The Lord
Chancellor Ellesmere, in giving his opinion in the
case of the Post Nati, Cobbett's State Trials, vol.
2, p. 669, 670, when he enumerates the different
laws that were comprehended under the common
law of England, never names the law of Parliament,
which no doubt he would, had he considered it as a
branch of that law, for his words are very com-
prehensile—"Whether it respects the church, the crown, or the subject, it is comprehended under the general term, Common law of England." Mr. Vaughan, in the Proceedings against Lord Clarendon, in a similar enumeration says of the law of Parliament this and no more:—"There is the law and custom of Parliament, called a law, 'ab omnibus querenda, a multis ignorata, a paucis cognita.' The Latin words are from Sir E. Coke. The reason why these gentlemen differ in their enumeration is, that in Lord Ellesmere's time, the words 'lex et consuetudo,' had not been applied to the usages of Parliament; for Sir E. Coke was no doubt the first who gave them that dignified appellation.—Howel, who wrote a book on the Precedence of Kings, in the time of Charles First, has a chapter on the prudential laws and constitution of Great Britain, relating to princes and people. Yet in that chapter there is no mention of a law of Parliament, a law at that time little known, much less acknowledged or quoted. The Committee having generally asserted the right of commitment to be recognized by the Lords and by the different courts of law, proceed to substantiate their assertion by proofs, and of these the first is from the Rolls of Parliament, vol. 3, p. 244, 2d. Richard II. which as they have not condescended to translate, it behoves me to take that trouble, lest it should pass for more
than it is worth—"In the said Parliament, all the Lords, as well spiritual as temporal, then present, claimed as their liberty and franchise, that all great matters moved in that Parliament, and to be moved in other Parliaments to come, touching the Peers of the land, might be handled, adjudged, and discussed by the course of Parliament, and not by the civil law, nor by the common law of the land, used in the lower courts of the realm; which claim, liberty, and franchise, the king kindly allowed and granted in full Parliament."—This is a literal translation, and it is difficult to perceive what it has to do with the privileges of the Commons, tho' we shall hereafter see the use that was made of it by Sir E. Coke, the great author of all their arbitrary claims. The case of Thorp, before noticed in p. 13, is quoted only by halves; for the Committee never tell us that the Judges, on being referred to by the Lords, gave their opinion as to the law, and even added a new exception from privilege, and that the Lords, in consequence of that opinion, determined that Thorp should remain in prison.—The next precedent quoted by the Committee, is that of Strode, of which I have before given my opinion, and that opinion remains unaltered. The report proceeds to say, that "The Commons tell the Lords, 1606, that they have no doubt they are a court, and a court of record;" but they forget to
tell us that in the same year the Lords tell the Commons, in the dispute concerning Naturalization, (Vide Cobbett's Parl. Hist. vol. 1, p. 1079) "That they could not admit the term, Commons Court of Parliament, because their whole House, without the Lords, is no Court of Judicature,"—and they told them the same thing in 1621, in the case of Edward Floyde.—(Vide Cobbett's Parl. Hist. vol. 1, p. 1254. The next question is from a report of Precedents by Sir E. Coke, in which it is agreed, that "The House of Commons alone, hath a power of punishment, and that judicial." How far this quotation is accurate, I will not say, for the report is not to be found in Cobbett; and I am sorry that he has omitted many other valuable reports and debates. At any rate if the quotation is just, it will carry little weight, when we remember the opinion of the Lords just cited; and remember also, that nothing was too extravagant for Sir E. Coke to assert, relating to the power of the Commons. For opposing the encroachments of prerogative, the nation owes him an everlasting obligation, but we must not forget that his doctrine of privilege, tended to raise up another arbitrary power which cost the nation much calamity. Notwithstanding it may have suited the purpose of some bold parliamentary leaders, to claim for the Commons a judicial authority, yet the Commons themselves, at a period when
they were most essentially the servants and representatives of the people, have formally disclaimed it.

1st. Henry IV.: "The Commons shewed the King, that as the judgments of Parliament belong solely to the King and the Lords, and not to the Commons, except when it shall please the King to shew them the said judgments; for their ease, let no record be made in Parliament against the said Commons, that they are or shall be parties in any judgment given, or to be given hereafter in Parliament." To which it was answered, by the Archbishop of Canterbury, by command of the King: "Since the Commons are petitioners, and the King and the Lords at all times have had, and shall have, the right of judgments in Parliament, as the Commons have shewn; except in making statutes, or in grants and subsidies, or such things for the common profit of the realm, when the king wishes specially to have their advice and assent,—let this order be kept and observed at all times in future.—(Vide Rolls Parl. vol. 3, p. 427.) The right of judicature in regard to elections, the Commons have since exercised, and now exercise; but that they are not a Court of Record, is evident, because they cannot hold a plea for actions whereof the debt or damage amounts to forty shillings; because they cannot lay on fines, and because their Journals are no Records;—all this is wholly uncontroversible, and yet there are some men who
would give all this power to the Commons without considering its effect on public liberty.

The Committee tells us next, that, in the matter of the appellant jurisdiction of the Lords, the Commons assert their right "to punish by imprisonment a Commoner that is guilty of violating their privileges, that being according to the known laws and custom of Parliament, declared by the King's royal predecessors in former Parliaments, and by himself in this;" and, "that neither the Great Charter, the Petition of Right, nor any other laws, take away the law and custom of Parliament, or of either House of Parliament."—They should also have told us that in the same affair, viz that of Dr. Shirley, the Lords had asserted that the conduct of the Commons, in imprisoning the lawyers who had prosecuted the appeal against a member of their House, was "A transcendant invasion of the rights and liberties of the subject, against Magna Charta, the Petition of Rights, and many other laws which have provided that no freeman shall be imprisoned or otherwise restrained of his liberty but by due process of law." Which party spoke the truth, the public will determine, and which gained the victory may be seen by a reference to the dispute.—(Vide Cobbett's State Trials, vol. vi. p. 1187.) The assertions of the Commons, in their resolutions on this affair, are not to be passed by without examination; and first,
they say "That neither the Great Charter, &c. take away the law and custom of Parliament." The law and custom of Parliament had no existence before Magna Charta, and the terms lex et confuetudo Parliamenti, were first used by Sir E. Coke, and taken from the words lex et confuetudo regni, in the old law books; and as to the other statutes alluded to they are only confirmations of the Great Charter, and consequently the custom of Parliament cannot be valid against them, for law is of higher authority than custom; a law may abrogate a custom, but a custom cannot abrogate a written law.

The case of the famous Kentish petition is next cited by the Committee, and no one could have been more unfortunately chosen, for the conduct of the Commons was in direct violation of the right for which they themselves had so nobly contended against Charles II. and condemned the sufferers, by a resolution passed after the crime was committed, if such it deserves to be called.

The case of Ashby v. White comes next, but the quotations from it are so brief and so garbled, that they carry very little or no weight. It is said that in that case, the Lords never denied the right of the Commons to commit to prison even those who are not members of their House; but the right is allowed only with this reservation, "Whether any thing may be a breach of privilege merely by a vote
of the House; that is, whether they have a right to create themselves a new privilege by their votes." The Committee have not quoted one single word more from the arguments of the Lords in that great cause, and for this very good reason, the whole tenor of their arguments was against the power of imprisonment at pleasure, assumed by the House of Commons in that case; for example, "The law of England is not governed by particular precedents, but consists in the reason of them, Ratio est anima legis; ubi ratio ibi jus." "The House of Commons have in former ages shown a great concern for the personal freedom of their fellow subjects; but it is now insisted that their own imprisonments are out of the reach of the law, and their legality not to be questioned." "Resolved, That neither House hath any power to create a new privilege which is not warranted by the known laws and customs of Parliament." "If the House of Commons, under the name of privilege, would proceed to do things inconsistent with the prerogative of the Crown, the privileges of the Lords, and the rights of the people, we are bound to tell them, These

are not the Commons privileges; and if by saying, They are the sole judges of their own privileges, they would deprive the Crown or the Lords of noticing manifest innovations, and objecting to them when occasion required, the Commons might take to themselves the whole government without control.” “The law of the land can only be altered by the legislature.” “A law without promulgation cannot have force to create an offence.” “The liberty of men's persons is the greatest of privileges, and not to be violated but in known cases; the invasion of it has shook the best constitutions.” “A declaration of one House, or of both Houses, cannot alter the law.” “Not only the Lords but all mankind will judge of what is not their privilege, if the Commons claim as such what neither reason, nor law, can justify.” “Resolved, That the House of Commons, by pretending to attribute the force of law to their Declaration, have claimed a jurisdiction unknown to the constitution, have assumed a new privilege, and have thereby, as far as in them lies, subjected the rights of Englishmen and the freedom of their persons, to their own arbitrary votes.” “That the natural order of things was inverted in this dispute, the House of Commons taking part against the law and the subject's personal liberty.” Such were the constitutional sentiments of the Lords in 1704.
The Committee have omitted all notice of the proceedings in the affair of Lord Clarendon, in which the Commons requested the Lords to imprison him on a mere general impeachment; the Lords refused till the Commons specified their charges, and offered some very strong arguments against arbitrary commitment: "A mode of proceeding which would not leave it in the power of the Lords to preserve Magna Charta and the Petition of Right from invasion. Tho’ this House of Commons be excellently composed, yet, allowing this claim, if ever there should be a House of Commons ill disposed or engaged in faction, they might by this power destroy the freedom of Parliament, and reduce the Lords to as small number as they pleased.” "If the King and his Counsel are not to imprison without a special crime, whence comes this power of the House of Commons, by vote, to enforce a commitment? The Petition of Right has declared that no man should be imprisoned without some charge to which he might answer.” Mr. Coleman, in the Commons, took the side of the Lords, and said, “The law would not justify such a commitment.”

The Committee then advert to the recognition of the law of Parliament by the courts of law, and quote the opinions of all the Judges who refused to take cognizance of their privileges; and yet the recognition of the laws and privileges of Parliament.
by the Judges, does not, in my opinion, make it at all stronger; for tho' it was the duty of the Judges, when the Commons set up an unjust claim, to have resisted it as incompatible with the law of the land, which they are sworn to administer, yet their having either tacitly acquiesced in, or actively confirmed, this claim, does not give it validity, if it can be proved to be an encroachment on the rights of the people, which the Commons were especially delegated to preserve. The whole law of Parliament as it is called, beyond what is requisite for their defence against the power of the Crown, and their own preservation against immediate insult, is an excrescence which has grown out of the constitution, and is now almost become a part of it, for the same power which enables them to commit for a libel, might, by an equal reason, enable them to commit for any other crime. They are at present protected against arrests and assaults, by writs of privilege, and by the 11th Henry VI.; and for all other offences not otherwise punishable, the custody of the Sergeant, and, a reprimand from the Speaker, is punishment sufficient; and a Judge who refuses to release a prisoner brought before him by Habeas Corpus, on a commitment by either Lords or Commons, is a traitor to the law and the constitution. "One precedent creates another; they soon accumulate, and constitute law; what yesterday was fact, to day
is doctrine."—Junius. The first proof given by the Committee, of the recognition of the law of Parliament, is an extract from Sir E. Coke, 4th Institute, and it is worthy of remark, that this passage is grounded on the extract from the Rolls of Parliament before quoted, tho' with the addition, or interpolation, of these words, "or Commons in Parliament assembled," after the words "Peers of the Realm;" and from this passage, thus interpolated, the whole law of Parliament is derived, for I have already remarked, that before the time of James I. no such law was ever heard of, and Sir E. Coke was one of its fathers or godfathers, and the words, 'lex et consuetudo parliamenti,' with which he christened it, are taken from the words, 'lex et consuetudo regni;' but as if the words foisted in were not sufficient to establish the claim, he adds, "Which was so declared to be, concerning the Peers of the Realm, by the King, and all the Lords spiritual and temporal, and the like, pari ratione, is for the Commons, for any thing done or transacted in the House of Commons." While the laws and privileges of Parliament are consistent with the laws of the land, or relate solely to their own body, the Judges, it is true, have nothing to do with them; but when the Lords or Commons assume to themselves a right of punishing at their own discretion, offences which are otherwise punishable by the law, the Judges, if they are
called upon, have a right to interfere, and if they refuse to do it, they violate their oath, and limit their jurisdiction; for the law of Parliament, considered only as a body of precedents of each House separately, is, or ought to be, subject to the law of the land; it is the Parliament only that is supreme, and gives laws to other courts, and not the House of Commons, tho' that House, in a protestation drawn up by Sir E. Coke, told James I. that they were a supreme court: "Neither thought we that the Judges' opinion,* which yet in due place we greatly reverence, being delivered what the common law was, which extends to inferior courts, ought to bring any detriment to this high court of Parliament, whose power being above the law, is not founded on the common law, but have their rights and privileges peculiar to themselves."—(Vide Cobbet's Parl. Hist. vol. i. p. 1037.)

It is by thus confounding the rights of each House separately, with those of the two conjointly, and the King at their head, that has been the means of supporting that claim of an independent legal jurisdiction, which the House of Commons does not, or ought not, to possess, and with which it was not originally invested. That the House should have

* In the case of Thorp. For the reverse of this pernicious doctrine, see the constitutional language of Junius in his Dedication.
power to commit for a manifest contempt, is somewhat reasonable, because it can by no other means be punished; it is not an offence against the law of the land, and, therefore, allowing the House that power, the Judges can have no right to interfere; but when the House punishes offences which are otherwise punishable, the subject has a right to expect a legal relief from the Judges, by whom the law is administered, or the House would become an instrument of oppression.

The Committee next cite the opinion of Lord Chief Justice North, in the affair of Barnadiston v. Soame, but so partially, that it can hardly be said to be his opinion; for tho' in the quotation given, he has expressed himself very tender of the privileges of Parliament, yet he spoke only of those privileges relating to elections: and Sir R. Atkyns enumerates many matters that concern the Parliament, of which the Judges must take cognizance, and others which they have declined, and left to the Parliament to determine. He particularly instances the power of the Judges to determine on an act of Parliament whether legal or not, a fortiori, they can give judgment on the mere resolutions of either House.

The next case cited by the Committee, is that of the Earl of Shaftesbury, who was committed by the Lords for a breach of privilege, for saying that the
Parliament then assembled was not a legal body, inasmuch as a prorogation for fifteen months amounted to a dissolution. His Lordship was brought by Habeas Corpus before the King’s Bench, but remanded by the opinion of all the Judges; and, perhaps, as he was committed for a contempt, some will think they were in the right; but they who say that no man ought to be committed contrary to Magna Charta, must think they countenanced an arbitrary power, and surrendered their right of protecting the subject by the shield of the law; and it must be noticed, that the Judges did not refuse to bail him because they acknowledged a general power in the Lords to imprison, but merely because the offence was committed in facie curiae, or in face of the court, and could not otherwise be punished. The arguments of his Lordship and his counsel were very powerful and hardly to be answered.—(Vide Cobbett’s State Trials, vol 6) In quoting the opinion of Chief Justice Rainsford, there is an error in the Report of the Committee, which makes nonsense; the last words are a “Prerogative,” which ought to be, a “Prorogation.” A letter of Lord Shaftsbury to a friend, has lately been published, which, as it contains very strong arguments against the power of imprisonment in either House, I will insert.
My dear Lord,

I suppose you concur very heartily with me in despising the worthy set of gentlemen who preside in the King’s Bench; they are, indeed, truly contemptible, and either know nothing of common honesty, or very little of common law. They could not meddle in my affair, they gravely insinuated, for fear of offending the privileges of Parliament! Pray what are their privileges? Can there be any privileges superior to the law of the land? Or can the Parliament, which is appointed for no other purpose but to defend the Constitution, claim a right from this very appointment to violate the Constitution, in the tenderest point, whenever they please? If we examine the end for which the privileges of Parliament were originally granted, we shall find that they were granted to prevent the members of both Houses from being obstructed in the necessary business of the kingdom, and to hinder any impediment in their private affairs from proving prejudicial to the interest of the public. Privileges could never be allowed, surely, with a view of oppressing the subject; nor could it ever be supposed that the Constitution would think of investing any set of men with privileges that must inevitably tend to the destruction of itself, and annihilate the very laws which it designed to support and defend; to make use
of such an argument would be weak; to believe it, absolutely ridiculous. There are two things, my dear Lord, which the people should always carefully guard against; and these are, the arbitrary views of the Crown,—and the aristocratical machinations of the Parliament. The whole kingdom would be in a flame, and justly, if the King pretended a privilege of trampling on the laws and imprisoning the subject at pleasure; yet how is the action less justifiable in him than in either House of Parliament? Power is a natural wish in the mind of men, and if any one branch of the legislature is suffered to make an arbitrary exercise of it, the desire will undoubtedly increase with the means, and those who now plead their pleasure as a right to dispose of our persons, will in a little time look upon the same pleasure as a sufficient reason to dispose of our lives. In short, 'TIS MUCH BETTER TO LIVE UNDER A DESPOTIC PRINCE, THAN UNDER A DESPOTIC PARLIAMENT, for in the latter case we have a thousand tyrants to kneel to, whereas in the former we should have but one! Upon the whole, my dear Lord, my treatment will be an indelible stain to the British annals; and pity it is that our Constitution did not retain some power of punishing those members of Parliament in a most exemplary manner, who should insolently set their wills against the judgment of our laws, and claim a
privilege to enslave their fellow-subjects at every turn of whimsey or caprice. The meanest man in the kingdom, that is not a servant to either House, is not bound in duty to obey the order of it; for as he can be confined by nothing but the laws, and as the laws must be enacted by the joint concurrence of the three estates, there can consequently be no obligatory power resulting from the private resolution of any one.

I am, my dear Lord, &c. &c.

**Shaftesbury.**

To the sentiment expressed by his Lordship, printed in capitals, I by no means agree, on many accounts, which it is not requisite now to specify.

The Committee forgot to add, that the whole of the proceedings in Lord Shaftesbury's case, were a few years after voted by the House to be unparliamentary, and struck out of the Journals—"That they might never be drawn into precedent in future." (Lords' Journals, Nov. 13, 1680.) And yet what compensation was all this to his Lordship for twelve months imprisonment, so rigorous that he was not even permitted to see his friends and relations, and from which his age and infirmities only compelled him to petition for a release: had the Judges known their duty or performed it, he would have been
spared at least nine months deprivation of that dearest of all earthly blessings, liberty.

The arguments of the Judges in the case of A. Murray, all tend to express their ignorance of the privileges of the House of Commons; an ignorance of which they ought to have been ashamed, for as Johnson says, "Where knowledge is a duty, ignorance is a crime;" and every Judge ought to be well acquainted with the constitution. It is to be remarked, however, that their argument rests chiefly on the idea that Mr. Murray was committed for a contempt. Now a contempt ought to have a definite meaning; a libel is not a contempt, because the mere accusing a man, or body of men, of doing wrong, does not imply, nor include contempt. Mr. Justice Forster said, "The law of Parliament is the law of the land, and there would be an end of all law, if the House of Commons could not commit for a contempt." It is to be hoped that the law does not rest on so slender a foundation. Forster is at least, however, one peg lower than Coke, when he calls the law of Parliament the law of the land, for the latter says, "it is superior to all law." We have heard much of prerogative lawyers, but Coke was a privilege lawyer.

The Lord Chief Justice de Grey, in Crosby's case, next cited by the Committee, says, "The House of Commons could always commit in many cases"—
we have seen that they could not—"and it is now agreed that they can commit generally for all contempts;" and thus we see it acknowledged that the power of committing for all contempts, is a new privilege, lately acquired, and not inherent in the House of Commons. His Lordship might have been a very good lawyer, but he knew little of the Constitution, with which every Judge ought to be well acquainted. In another part of his speech, his Lordship shewed still greater ignorance of the State law, for he asserted that the judges have no cognizance of the Acts of the Houses of Parliament, and yet we have seen that former Judges never hesitated, nor ought they to hesitate, in saying what is, or what is not, an Act of Parliament.* Judge Gould, in the same case, repeated the words of the Chief Justice, and Blackstone, that great luminary of the law, followed to the same purport; but if an hundred Judges had all said the same thing, it would have signified no more, as Lord Erskine said, "Than the hum of so many great flies buzzing against a wall," provided their opinions contradicted the Great Charter, which is the palladium of our liberty; for by the 25th Edward I. "All judgments given by the Justices against that Charter, are to be holden for nought." When once a certain set of

terms and ideas become familiar with any clas of men, it is surprising with what facility they pass from one to another without the slightest proof or examination.

The case of Mr. Alderman Oliver was similar to that of Crosby, tho' it was argued in the Exchequer, and all the Judges of that court were alike unanimous; the law of Parliament was on their tongues, tho' they knew not what it meant.

The last case cited by the Committee, as an acknowledgment of the law of Parliament, by legal authorities, is that of my friend Mr. Flower, and it happens it was thro' me that that case ever came before either the House of Lords or the King's Bench, for having many years ago, when a resident member of the Senate of the University of Cambridge, taken great pains to recall the Bishop of Landaff to his duty as Professor of Divinity, and finding it all to no purpose, I ventured to address a letter to his Lordship in the Cambridge Intelligencer, published by Mr. Flower, which he did me the honor to answer, explaining his reasons for having given up his residence at Cambridge, and stating that in order to enable him to give up his professorship, he had solicited Mr. Pitt for preferment, not as a private, but as a public man, and a laborious servant of the university. Pitt, who was too much of a statesman to reward any services but those per-
formed for himself, treated his letter with contempt, and gave him no answer; but his Lordship, I imagine, felt somewhat ashamed of his policy, and requested me not to publish his reply, which I, too readily assented to, for as our correspondence was of a public nature, it ought to have been published. I showed the letter, however, to my friend Flower, and he sometime after accused the Bishop of turning apostate, and soliciting Pitt for preferment; in this there was a little confusion of dates, because the Bishop did not vote with Pitt till long after he had solicited preferment. For this, however, Mr. Flower was voted guilty of a libel by the House of Lords, and sentenced to six months imprisonment. This was the ostensible reason, the real one I believe to have been his general severity against Pitt's administration: a few days after his commitment, he moved for a Habeas Corpus, and his case was most fully and ably argued by Mr. Clifford, and yet Lord Kenyon, in the face of argument, law, and reason, ordered him to be remanded. So much for the opinion of the Judges in support of the privileges of either House; they may be weighty as precedents, but weighed in the balance against Magna Charta, against reason, and the principles of liberty, they are lighter than the lightest particle of matter.

Having thus far followed the Committee, in examining the opinions of all the Judges they have
quoted, I will now produce the opinions of other Judges on the contrary side of the question; and first I need not long insist on those which they gave in Thorp’s case, with the great Fortescue at their head, for tho’ their language has been the groundwork and origin of all the unconstitutional doctrines that have since been delivered on the subject of parliamentary privilege, yet their conduct was the model which all other Judges ought to have imitated, tho’ they have forsaken it, for they declared the law upon the case, and they thereby shewed the law to be superior to privilege.

The next instance of the Judges giving an opinion against privilege, is in the case of Ryver v. Cosyns, p. 17, wherein they all agreed, that the defendant ought not to be exempted from being impleaded in a civil action by reason of privilege. We have seen that the Lord Chancellor Bromley refused to allow a claim of privilege, p. 24. I have before referred to the argument of Sir R. Atkyns, where many instances are cited of the Judges examining the validity of Acts of Parliament. The opinion of Lord Clarendon, on the extent to which privilege was carried by the Long Parliament, is equally applicable to the doctrines that have been since mentioned on the indefinite nature of those privileges, and if the opinion of so great a man is of any weight, it ought to have some effect in stemming that torrent which
is likely to sweep away even the remains of our ancient liberty. "The great error of the King," he says, "was that of not submitting the case to the Judges, for they would have declared that privilege of Parliament extended not to high treason." The Commons are judges of their own privileges, so far as the law hath declared them to be such, for there can be no privilege of which the law doth not take notice, and which is not pleasurable at law. Freedom from arrests, and liberty of speech, are the chiefest privileges of Parliament; that their being judges of their own privileges should qualify them to make new privileges, or that their judgment should make them to be such, as it was a doctrine never before heard of, could not but produce such effects as we have seen; by which they have swallowed all the liberties of the nation in the bottomless gulf of their own privileges, and no doubt these pretences of privilege will hereafter be esteemed the most capital breaches of privilege that ever were attempted."—(Clarendon's Hist. Book iv. p. 396.)

The opinions of another Judge on this subject, are in my opinion incontrovertible, nor have they ever been answered. Jenkins, a Welsh Judge, who was tried by the Parliament for aiding the cause of Charles I. refused to acknowledge their jurisdiction, and the substance of his argument against it, is comprehended in the following positions:
"The Houfe of Commons is no court; every court hath power to examine upon oath, this power the Houfe hath never claimed; every court of Record, or not of Record, hath power to examine upon oath; an examination without oath is only a communication. There is no court without a power of trial; the Houfe of Commons hath no power to try any offence, nor ever practised it by bill, indictment, information, plaint, or original writ, to reduce it to trial by verdict, demurrer, or examination of witnesses upon oath, without which there can be no trial nor judgment. A court must be either by the King's patent, by statute, or by the common law, which is common and constant usage. The Houfe of Commons hath no patent to be a court, nor statute to be a court, nor common usage; they have no Journal Book before Edward VI. It is ordained that no man shall be imprisoned, or put out of his franchise, but by indictment, or presentment, or by original writ, at the common law, for so is the lex terræ, mentioned in Magna Charta, c. 29, expounded by the 25th Edward I. c. 1. All judges and commissioners are to proceed secundum legem et consuetudinem regni Angliae, and, therefore, the Houfe of Commons by themselves, proceeding not by indictment, presentment, or original writ, have no power to imprison men, or to put them out of their franchise,"
The law and custom of the land is, that a Parliament hath power over my life, liberty, and goods, but the House of Commons hath no such power. Lord Coke says, the House of Commons have imposed fines and imprisoned men in Queen Elizabeth's time, since 1st Inst. 19, 6. A few facts, of late time, never questioned, make no power, nor court; for the words of the Statute of 6th Henry VIII. c. 16, that a licence for any member to depart from the House of Commons, is to be recorded in the book of the clerk of that House, doth not conclude that House to be a court of Record, 4th Inst. (Vide Cobbett's State Trials, vol. iv, p. 922, &c.)

Mr. Hargrave, in his preface to Lord Hale, on the Jurisdiction of the House of Lords, says, that he possesses a full report in MS. of Lord Chief Justice Bridgeman's judgment in the case of Benyon v. Evelyn, in which the authority of the Judges to take cognizance of questions of privilege, is asserted, and was exercised, 14th Charles II. The opinions maintained by the Lords in the case of Ashby v. White, to that effect, are full, clear, and incontestible; of which the following are specimens.—"If commitments by the Commons are examinable in no other place, then Englishmen are sure of their liberty no longer than the House pleases; and men may be allowed at least to wish it were not so, tho' they may have a high opinion of the justice of that
The courts of Westminster must of necessity judge of the privileges of Parliament in many cases. When any person prays a writ of privilege (an ancient custom and yet often practised upon occasion) the court where the writ is prayed must exercise a discretionary power whether the party has a right to privilege or not. Suppose the Serjeant of the House should kill or be killed in the execution of a warrant of the House, on an indictment for murder, the court must judge of the legality of the warrant. In case of affronts to the person of the Speaker, or words spoken against the whole House of Commons, such offences might be prosecuted in courts below, which would be no breach of privilege were they noticed by those courts.

"The votes of the House of Commons were never yet likened to the Queen's writs, and yet the Judges are bound not to take notice of them, but to act according to law." "The Judges are sworn to proceed to do justice, notwithstanding any command under the Great or Privy Seal, or any other authority whatever. And subjects of England have no longer an inheritance in the law, if the Judges are to take notice of the votes of either House of Parliament, and regulate their judgments by this standard. The votes are not always uniform in either House, and the two Houses often differ, the
Judges would, therefore, be under a great difficulty which to yield to."

The sentiments of the Lords on the Commons committing men of the law for pleading in behalf of their prisoners, are very forcible, tho' too long to be all repeated. "No lawyer ever suffered, for serving his client even against the Crown." Even Lord Kenyon acknowledged that the Judges might, on some occasions, determine on Parliamentary privilege.—"I do not say there can be no case in which the House of Commons, and House of Lords too, may carry their privileges beyond the law, and when that is the case, and the subject comes judicially before a court of law, a court of law will not swerve from its duty, but will determine according to law. (Vide Cobbett's State Trials, vol. vi. p. 1123.)

The cases of commitment for contempt by courts of Justice, as applied by the Committee to the House of Commons, are numerous, but are all of too modern a date to give any sanction to the proceedings of the House in similar circumstances, and they are incompetent to prove any right by analogy, inasmuch as courts of law when committing for libels, have exceeded their Jurisdiction, and encroached on the right of the subject. Every court has a right to punish for an actual contempt, or interruption of process; it is an immediate obstruction to the exer-
cife of its functions, and, therefore, must be immediately removed; but an implied, or constructive contempt, such as a libel, is of a different nature, it is more slow in its operation, and therefore requires not so speedy a remedy. The instances of attachment by courts of law, are all for libels, and except one, are of no earlier a date than 11th Anne, and that one is not only doubtful, but unequal of itself to prove an ancient and uninterrupted custom.

The long opinion of Sir Eardly Wilmot, as it was neither delivered in court, nor published, carries with it little authority, but if it had been, it would have derived its whole weight from those circumstances, as its intrinsic merits are not such as to enforce conviction with any impartial man; to prove this, I need only give one specimen of the learned Judges reasoning.—"The offence of libelling Judges in their judicial capacity, is in my opinion a more proper subject of attachment than any other whatever. The arraigning the King's Judges, is arraigning the King's justice, it is an impeachment of his wisdom and goodness, and excites in the minds of men a general dissatisfaction with all judicial determinations."—Let Judges be impartial and uncorrupt, and they may laugh at the paltry efforts of libellers.

It has been already remarked, that courts of law have only in modern times assumed the right of pu-
punishing by attachment those who have ventured to impeach their proceedings, or cast reflections on their character, the ancient mode of punishment was more slow, and more regular, tho' more tedious. One of the earliest instances upon record of any man being punished for a libel upon a Judge in the execution of his office, is that of John Cavendish, a fishmonger of London, who accused Michael de la Pole, the Lord Chancellor, of taking bribes from him for expediting a suit, and then afterwards refusing to determine it, thus delaying and denying justice to the subjects of the realm, 7th Richard II. He presented a petition to Parliament, containing these allegations, which being denied by the Chancellor, he retracted, and said he only meant to accuse his Lordship's clerk, one John Otter, on which the Parliament referred the matter to a special commission, composed of the two Lord Chief Justices, one Judge, and other great officers of State, the said Cavendish was tried, found guilty, and sentenced to fine and imprisonment. Let it be remarked, that the Parliament did not refer the punishment of the offender to the Chancellor, making him a judge in his own cause, but to another court, and that he did not at first venture to punish him in a summary way by his own mere authority, but submitted himself to the Parliament. (Vide Rolls of Parliament, vol. iii. p. 168.) Thomas Wilbraham petitioned the Parliament.
against the Justices of the King’s Bench, “That they had not acted according to law and reason;” the Parliament sent the matter to the same court, where the offenders were indicted, convicted, and fined.—

(Vide Cobbett’s State Trials, vol. ii. p. 1074.)

The State Trials furnish us with many instances of offences committed against the Judges, and of one even in the King’s own palace, being punished by the regular form of trial, and not by summary commitment. 33d Henry VIII. Sir E. Knevett was tried by a special commission, and found guilty by a jury, of striking a servant of the Earl of Surry, in the King’s palace, at Greenwich, and sentenced to have his right hand cut off, but for his noble behaviour in requesting rather to have the left, that he might be better able to save his Majesty, the King remitted the punishment.—(Cobbett’s State Trials, vol. i. p. 443 to 446.)

The next is that of Sir John Hollis, Sir John Wentworth, and Mr. Lumfden, for having traduced the public justice, by writing, and verbally declaring, that the murderers of Sir John Overbury were unjustly punished; for which they were all tried by the court of the Star Chamber, and on conviction, imprisoned each one year, and heavily fined. (Vide Cobbett’s State Trials, vol. ii. p. 1022.) The next is that of Mr. Wraynham, for a libel on the Lord Chancellor Bacon, in the form of a petition, presented to James I. He was tried in the Star
Chamber court, found guilty, and sentenced to the same punishment as in the case of Forth: what that was we are not informed. In the course of this trial, the Judges quote many precedents of similar offenders being punished by the regular process of trial, and not by the summary mode of commitment. (Vide Cobbett’s State Trials, vol. ii. p. 1059.) The next case is that of one Harrison, a clergymen, for libelling Judge Hutton, by saying aloud in the open court, “That Judge Hutton had been guilty of High Treason, for the opinion he gave in the affair of Ship money.” Harrison was indicted in the King’s Bench, tried by a jury, and found guilty; his sentence was to be fined 5000l. to be imprisoned during the king’s pleasure, and to ride round to all the courts of Westminster with a paper printed on his head, declaring his offence. Mr. Justice Hutton afterwards brought an action for damages, in which he got 10,000l. All this was abominable; I only cite the case to shew the ancient mode of proceeding in these cases, and to prove that the summary process of commitment is a modern innovation. The Statutes 3d Edward I. 32; 2d Richard II. 5; 12th Richard II. 2, de scandalo magnatum, were all enacted for the great officers of the Crown and Judges of the realm, against false or malicious words, or libellous writings; the privilege of commitment extends only to a contempt of the authority of the
court, or to any act of violence. The practice of summary commitment by courts of Justice for alleged libels, is wholly of modern origin, and Sir E. Wilmot’s argument, cited by the Committee of Precedents, allows it to be such, for the first part of that argument relates only to attachments for contempt, or obstruction of process, and the latter part, which relates to attachment for libels, does not defend it by precedents, but by assumptions. No court can have a right to do that for itself which another court can do for it, as no man has a right to defend himself, where he can be defended by law; for that is to take the law into his own hands, and neither courts, nor individuals, nor bodies of men, have any right to defend themselves, but in cases of sudden emergency; for they who live under the law, must submit to the law, or the law becomes of none effect, and its efficacy is superseded.

Two pamphlets written by lawyers, in defence of the present claims of the House, have attempted to defend the use of force in executing the Speaker’s warrant; in that attempt both Mr. Holt and Mr. Christian have failed; for the warrant of the Speaker is not a legal one; it has been proved by Sir F. Burdett to want every requisite which constitutes such a warrant; and, therefore, to give it legal, and even military enforcement, tends to create a new power in the State, and so far as all power is an en-
croachment on liberty, to diminish the liberty which Englishmen before enjoyed. Should such a precedent, however, be established by a court of law, contrary to the expectations of all impartial men, it will then be time for us to petition against such an invasion of our liberty. Let us be mindful of that period when the privileges of Parliament subverted the liberties of the nation, and see that we suffer not from the repetition of a similar calamity.

All the arguments that have been used in various instances, against the arbitrary power of imprisonment, whether by a Protector or a King, are equally applicable to the same authority exerted by either House of Parliament; and, as the exertions of many great and magnanimous men have succeeded in limiting this encroachment of the royal prerogative, it is to be hoped they may be equally successful against the privilege of Parliament, for it has no better foundation.

The reader has now had it in his power to judge of the most material precedents, both for and against the jurisdiction of the House of Commons in regard to commitment for libels, and he will find that these precedents are not numerous; he will find too, that the power of commitment generally, was not derived to it from the Crown, by whom it was called, nor given to it by the people, by whom it sent, but exercised by itself no earlier than the
of Henry VIII. with his tacit permission; he will find also, that commitment for words spoken in the House was first referred to in the time of Edward VI. 1551, for words spoken out of the House in 1559, and for a printed libel in 1580; and that from this time the power above mentioned has been frequently exercised, tho' more frequently dormant; on this account, therefore, it would well become the Commons, as the elected guardians of the rights of the people, to forbear any further claim to a power, the legality of which is at least doubtful, and its exercise always inconsistent with the boasted freedom of the nation. All that has been hitherto said in its defence, has consisted of general assertions without proofs, its advocates have never shewn the particular utility of it either to the House or the nation. Mr. Ponsonby has affirmed that this privilege of commitment has never been exerted but for things said or written against the proceedings of the House, and therefore the people are in no danger from it in any other case whatever. I have shewn that this is not true, as in the cases of the man sent to the Tower for a supposed libel on the Bishops, of Pigott for libelling the Scotch, of Floyde for speaking against the Princess Palatine, &c. &c. It has been urged also, that the House ought not to wait for redress from the slow process of the law, or it may in time be brought into such contempt as to endanger
even its existence. In my opinion the House can never be brought into contempt but by its own proceedings, and the people have such a natural partiality for it, that they are very slow either to speak or believe ill of it, till they can no longer doubt the evidence of facts, accumulated and repeated. It has been said also, that those who abuse this power, or misconduct themselves as members, may be turned out at a general election, in short that a whole House may be renewed; but those who use this as an argument seem to forget that a majority of the House is not chosen by the people, but by the Crown and the aristocracy. On the whole, it is almost impossible to urge any thing in defence of a power which has no legitimate origin, which is not indispensibly requisite, and is attended with considerable objections as intrenching upon public liberty. The origin of this power I have stated to be a concession from Henry VIII., an arbitrary and tyrannical Monarch, who, to execute more speedy vengeance than the law allowed on those who had caused one of his servants to be arrested (who was also a member of the House of Commons) permitted that House, says Lord Herbert in his Life of Henry, to send their Serjeant for the persons,

* "Precedents are rather to facilitate assent, than to impose belief."—Mr. Seymours speech on the Impeachment of Lord Clarendon—Cobbett's State Trials, vol. vi. p. 336.
† "No precedent can be against the law."—Cobbett, vol. vi. p. 358.
and when they refused to obey so novel an authority, permitted the House to send them all to prison. From this period the practice of committing for contempts first began, till it is now claimed for every thing which gives offence to the House under the name of contempt or breach of privilege: this is its origin, and it will be difficult to prove it of greater antiquity: its only support is the doctrine of precedents*, a sound and legitimate doctrine when used by lawyers and founded on law, but of no avail against the law†, or the liberty of the subject; a doctrine applied by lawyers to the constitution where it does not hold, and derived from the law where it does hold; a doctrine too narrow for the enlightened minds of philosophers and statesmen, because they act or ought to act, on the broad and general principles of justice and humanity. The necessity of it cannot be proved, because the House existed three hundred years without it, from Henry III. to Henry VIII.; and because the law is open for all who are libelled or insulted; and as the law is an emanation from the three estates of the realm in their united and legislative capacity, surely it can be no degradation for any of them separately, to submit its authority to that which is created by the whole; it would be arrogating too much for one to set itself above the joint will of the three together; and to set the law at defiance would be a bad example
to those who are expected to yield it a due submission; a resolution of either House is no more a law, than an ordinance of the Crown; it wants every requisite for a law which is required by the constitution; it does not emanate from the general will, it is not enacted by the supreme power of the State, in Parliament assembled, nor can it intend the general good. 13th Charles I. c. 1, it was enacted, "That whoever shall affirm that either House of Parliament can enact laws by its own authority, shall suffer the penalties of a premunire."

One of the greatest evils which arises from the undefined privileges of the House of Commons, is the uncertainty they create in the minds of all those whom they may ultimately affect; men know not how to square their conduct by a rule whose measure is indefinite, how to conform to an arbitrary and unlimited will, and that, not the will of one man, but of a great body of men, who may have different ends to answer by the exertion of their power, a power which, being without limit or restriction, may become the instrument of private revenge or malice, because it is now at the will of every man who conceives himself offended by remarks on his conduct, to employ the authority of the House against a harmless and unconscious offender; it is also no small evil that it tends to remove that salutary restraint which the people ought at all
times to have over their representatives, by censuring their conduct when they neglect or abuse their confidence; for the custom of consulting their constituents and receiving their pay being abolished, the only connection now subsisting between the electors and the elected is by means of the press, and when that liberty is infringed or diminished, a member of Parliament is no longer a steward for the good of another, but an independent agent, who has nothing but his own interest to consult; and thus, the relation and sympathy between the representative and the constituent being diminished and impaired, the constitution will be in time subverted.

The greatest evil of the power now claimed by the House arises from its connection with the executive government; for as it is a known and avowed fact that the Minister must have a majority to carry on his measures, it from thence naturally follows that the power of the House is only an instrument in his hands to oppress all those who dare to censure or oppose his authority; and Junius has well remarked, that "We contradict the spirit of our laws, and shake the whole system of our jurisprudence, whenever we entrust a discretionary power over the life, liberty, or fortune of the subject to any man, or set of men whatever, upon the presumption that it will not be abused."—Vol. ii. p. 120, Almon's edition.
The jealousy which our ancestors have always shewn of any infringement on Magna Charta ought to be a strong motive to us, both from prudence and gratitude, to shew the same regard for its preservation; for tho' much of it is now obsolete, yet there are some articles which may justly be considered as the foundation of our liberty; and how much that foundation is weakened by the arbitrary power of commitment, it needs no trouble on my part to explain.

The different laws by which Magna Charta was either confirmed or added to, are very numerous. I have found in Patton's Statutes thirty of the former, and six of the latter. 9th Henry III, is a renewal of the Great Charter, or rather a new Charter. 12th Henry III. a sentence of curse was given by the Archbishops and Bishops against the breakers of the Great Charter. 25th Edward I. c. 2, All judgments against Magna Charta to be void and null; c. 3, It is commanded that a copy of the Magna Charta shall be sent to every cathedral in England, there to remain, and be read twice in the year to the people; c. 4, The Archbishops and Bishops are commanded to pronounce excommunication on all the breakers of this Charter, and if the Bishops be remiss in so doing, the Archbishops are commanded to compel and distraint them to the duty aforesaid. 5th Edward III. c. 9, No man to be attached or for
judged against the Great Charter and the law of the land. 25th Edward III. c. 4, None to be imprisoned or put out of his freehold, but by the law of the land, and due presentment. 28th Edward III. None to be condemned nor imprisoned without making an answer. 18th Edward III. c. 7, Not to delay right for any order by the Great or Little Seal, on any account. 36th Edward III. Rolls of Parl. vol. ii, None shall be imprisoned by special mandate, or without a due process of law, or legal presentment. 42d Edward III. All statutes against Magna Charta void and null.—Whoever wishes for more complete information on this subject, must consult the Appendix to the Trial of Penn and Mead, Cobbett's State Trials, vol. vi. and the same Trial published in a pamphlet by Flower.

Hartford, near Morpeth, October 7, 1810.
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ERRATA.

Page 6, note at the bottom, for “gemotrem,” read “gemotum.”
P. 7, l. 16 from the bottom, after “Edward,” insert “11th.”
P. 12, l. 1, for “periods,” read “points.”
P. 17, l. 16 from the bottom, after “in which” insert “an act.”
P. 24, l. 14 from the bottom, for “p. 18” read “p. 21.”
P. 28, l. 3 from the bottom, for “to” read “and.”
P. 32, l. 2 from the bottom, after “the king answers” insert “that he.”
P. 64, l. 9, after “and” delete “the”
P. 111, l. 9, for “question” read “quotation.”
P. 130, l. 4 from the bottom, for “mentioned” read “maintained.”
P. 86. The action of Ashby v. White, was first tried at the Assizes for
the county of Buckingham, and a verdict given for Ashby. It was re-
moved to the Queen’s Bench by White—Vide Cobbett’s Parl. Reg. vol.
vi. p. 225, note at the bottom:

Newcastle upon Tyne,
Printed by K. Anderson.