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DIE Martis, 13 Martii.

Domini tam Spirituales quam Temporales præsentes fuerunt:

Arch. *Cantuar.*	Ds. Custos Magni Sigilli.	Ds. *Lawarr.*
Epus. *Sarum.*	Dux *Bucks*, C. P. S.	Ds. *Berkeley Ber.*
Epus. *Norwic.*	Dux *Richmond.*	Ds. *Ferrers.*
Epus. *Petrib.*	Dux *Graston.*	Ds. *Fitzwalter.*
Epus. *Cicestr.*	Dux *Bolton.*	Ds. *Wharton.*
Epus. *Bath & Well.*	Dux *Marlborough.*	Ds. *Howard Ess.*
Epus. *Asaph.*	Comes *Lindsey*, Magnus Camerarius.	Ds. *Grey W.*
	Comes *Derby.*	Ds. *Lovelace.*
	Comes *Manchester.*	Ds. *Poulet.*
	Comes *Rivers.*	Ds. *Mohun.*
	Comes *Peterborow.*	Ds. *Vaughan.*
	Comes *Thanet.*	Ds. *Rockingham.*
	Comes *Sunderland.*	Ds. *Berkeley Str.*
	Comes *Scarsdale.*	Ds. *Cornwallis.*
	Comes *Essex.*	Ds. *Dartmouth.*
	Comes *Feversham.*	Ds. *Weston.*

Comes *Berkeley*.
Comes *Rochester*.
Comes *Abingdon*.
Comes *Portland*.
Comes *Scarbrough*.
Comes *Bradford*.
Comes *Orford*.
Comes *Jersey*.
Viscount *Townshend*.

Ds. *Herbert*.
Ds. *Halifax*.
Ds. *Granville*.

PRAYERS.

Pechells & al. Nat. Bill: Report of Reasons for disagreeing to Amendments.

The Lord Bishop of *Salisbury* reported from the Lords Committees, the Reasons for the Lords Disagreement to One of the Amendments made by the Commons to the Bill, intituled, "An Act for naturalizing *Jacob Pechells, Elias Landes, Francis Lacroix*, and others."

Which were read, and agreed to, as follow:

The Lords do agree to all the Amendments made by the Commons to the Bill for naturalizing *Jacob Pechels* and others, except to the Clause (A); and to it they do disagree, for the Reasons following:

1. The greatest Wealth and Strength of any Nation ariseth from the Number of the Inhabitants; which all wife Governments have endeavoured to increase, by giving all possible Encouragement, Privileges, and Freedoms, to such Foreigners who should come and settle among them.

2. The most useful and beneficial Manufactures in *England* were first brought in, and erected here, by those who fled out of *Flanders* from the Inquisition, and the Cruelty of D. *d' Alva*.

3. Many useful Trades have been improved, and many considerable Manufactures set up by, the *French* Protestants, who have lately left their Native County, to preserve their Liberties and Religion from the Tyranny and Persecution of the present *French* King.

4. The greatest Encouragement that can be given to those and any other Strangers, to settle in *England*, is the allowing them all the Freedoms, Liberties, and Privileges of *Englishmen*.

5. That in all Government, ancient and modern, those Persons which they thought sit to naturalize, were admitted to enjoy the same Rights and Privileges as the Natives.

"6. That the restraining those who are able to purchase Lands, or otherwise to entitle themselves thereunto, from giving their Consent to the Election of their Representatives in Parliament, is without Example, and contrary to the Custom of all Nations.

"7. That the admitting this Clause might endanger the taking away of the Votes of all Foreigners, though Naturalized or Denizens; for, unless an Exemplification of this Act were lodged in every Place where an Election is to be made, the Vote of any Foreigner might be refused, under Pretence that he was comprehended in this Act."

Message to H. C. for a Conference about them.

A Message was sent to the House of Commons, by Mr. *Rogers* and Mr. *Hiccocks:*

To desire a present Conference with the House of Commons, in the Painted Chamber, upon the Subjectmatter of the Amendments made by them to the Bill, intituled, "An Act for naturalizing *Jacob Pechels, Elias Landes, Francis Lacroix*, and others."

Militia Bill, Lords Reasons for insisting on their Amendment to it:

The Earl of *Scarbrough* reported from the Committee, the Reason drawn by them, for the Lords insisting on their Amendment made to the Bill, intituled, "An Act for raising the Militia for the Year One Thousand Seven Hundred and Five, although the Month's Pay formerly advanced be not re-paid."

Which was read, and agreed to, as follows; (*videlicet*,)

Because the Clause is too general; and that, neither Persons nor Sums being named, nor any certain Method of accompting being set down, this may occasion much Trouble even to Persons unconcerned, and may be managed with much Partiality."

Message to H. C. for a Conference on the Subject.

A Message was sent to the House of Commons, by Mr. *Rogers* and Mr. *Hiccocks:*

To desire a present Conference, in the Painted Chamber, on the Subject-matter of the last Conference, upon the Amendment made by this House to the Bill, intituled, "An Act for raising the Militia for the Year One Thousand Seven Hundred and Five, although the Month's Pay formerly advanced be not re-paid."

Answer.

The Messengers sent to the House of Commons, to desire a present Conference, upon the Subject-matter of the Amendments made by them to the Bill, intituled, "An Act for naturalizing *Jacob Pechels, Elias Landes, Francis Lacroix*, and others," return Answer:

That the Commons agree to a Conference, as desired.

Then the Lords following were named Managers; (*videlicet*,)

Comes *Peterborow*.	Epus. *Sarum*.	Ds. *Pagett*.
Comes *Sunderland*.		Ds. *Lovelace*.
Comes *Berkeley*.		Ds. *Poulet*.
Comes *Torrington*.		Ds. *Mohun*.
Comes *Scarbrough*.		Ds. *Herbert*.
Viscount *Townshend*.		Ds. *Halifax*.

The Commons being come to the Conference, the Managers Names were read; and the House was adjourned during Pleasure, and the Lords went to the Conference.

Which being ended, the House was resumed.

Conference reported.

And the Lord Bishop of *Salisbury* reported, "That the Lords had attended the Conference, and delivered the Reasons."

Message from H. C. to return the Mutiny Bill.

A Message from the House of Commons, by Mr. *St. John* and others:

To return the Bill, intituled, "An Act for punishing Mutiny and Desertion, and false Musters; and for the better Payment of the Army and Quarters;" and to acquaint this House, that they have agreed to their Lordships Amendment made to the said Bill.

Conference on the Lords Amendment to the Militia Bill:

The Messengers sent to the House of Commons, to desire a Conference on the Subject-matter of the last Conference, upon the Amendment made by this House to the Bill, intituled, "An Act for raising the Militia for the Year One Thousand Seven Hundred and Five, although the Month's Pay formerly advanced be not re-paid," return Answer:

That the Commons agree to a Conference, as desired.

ORDERED, That the Committee who drew the Reason for the Lords insisting on their Amendment to the said Bill be Managers of the Conference.

The Commons being come to the Conference, the Managers Names were read.

Then the House was adjourned during Pleasure, and the Lords went to the Conference.

Which being ended, the House was resumed.

And the Earl of *Scarbrough* reported, "That they had attended the Conference, and delivered their Reason for their Lordships insisting on the said Amendment."

The House was adjourned during Pleasure.

The House was resumed.

Message from H. C. that they agree to it.

A Message was brought from the House of Commons, by Sir *Nathaniel Napper* and others:

To return the Bill, intituled, "An Act for raising the Militia for the Year One Thousand Seven Hundred and Five, although the Month's Pay formerly advanced be not re-paid;" and to acquaint this House, that they do not insist upon their Disagreement to the Amendment made by their Lordships to the said Bill.

The House was adjourned during Pleasure.

The House was resumed.

Representation and Address in relation to the Five Ailesbury Men, &c.

This Day the Duke of *Bolton*, from the Lords Committees appointed to draw up the State of what Proceedings have been in this House, or at Conferences with the House of Commons, in relation to the Five *Ailesbury* Men, (*videlicet*,) *Daniel Horne, Henry Bass, John Paton* Junior, *John Paty*, and *John Oviat*; and an humble Address to be presented to Her Majesty, "That She would please to

grant the Petitions of Two of the *Ailesbury* Men, (*videlicet*,) *John Paty* and *John Oviat*, and to grant them Her Majesty's Warrant for authorizing the Cursitor to make out their Writs of Error, as is usual in such Cases," reported a Representation and Address.

Which, being read, was agreed to by the House, and is as followeth; (*videlicet*,)

We, Your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, are under an unavoidable Necessity of making our humble Application to Your Majesty, upon an Occasion, which, as it is very grievous to us, so, we fear, it may be uneasy to Your Majesty. But the Proceedings of the House of Commons, in relation to Five Burgesses of the Town of *Ailesbury, John Paty*, *John Oviat, John Paton, Henry Bess*, and *Daniel Horne*, have been so very extraordinary, and the Consequences of such Proceedings may prove so fatal to the Properties and Liberties of the People of *England*, and so directly tend to the Interruption of the Course of Justice, to the eluding the Judicature of Parliament, and to the Diminution of Your Royal Prerogative, that we cannot answer it to Your Majesty, to the Kingdom, and to ourselves, without setting them before You in a due Light.

"One *Mathew Ashby*, a Burgess of the Borough of *Ailesbury*, brought an Action upon the Case, at Common Law, against the Constables of the Town of *Ailesbury* (being the proper Officers to return Members to serve in Parliament for that Place), for having by Contrivance fraudulently and maliciously hindered him to give his Vote at an Election. In this Action, a Verdict was found for him; but Judgement was given against him in Your Majesty's Court of Queen's Bench; which was reversed upon a Writ of Error brought in Parliament, where he obtained Judgement, to recover his Damages for the Injury; and afterwards had Execution upon that Judgement.

"The Five Persons above named, being Burgesses of the same Borough, and having (as they conceived) had the like Wrong done them by the Constables there, and supposing the Law to be equally open to all *Englishmen*, did severally commence and prosecute Actions against those Officers, in order to recover their Damages.

"And for so doing, they were sent for to the Bar of the House of Commons, and committed Prisoners to *Newgate*, the Fifth Day of *December* last, during the Pleasure of the House of Commons; as having acted contrary to the Declaration, in Contempt of the Jurisdiction, and in Breach of the Privilege, of that House.

"These Proceedings are wholly new and unprecedented. It is the Birth-right of every *Englishman*, who apprehends himself to be injured, to seek for Redress in Your Majesty's Courts of Justice; and if there be any Power can control this Right, and can prescribe when he shall and when he shall not be allowed the Benefit of the Laws, he ceases to be a Freeman, and his Liberty and Property are precarious.

"The Crown lays Claim to no such Power; and, we are sure, the Law has trusted no such Authority with any Subjects whatsover.

If a Man mistakes his Case, in believing himself to have a good Cause of Suit when he has not; if he mistakes his Court, by applying to an incompetent Jurisdiction; he will fail of Relief, and be liable to Costs; but to no other Punishment: He is not guilty of a Crime, nor is it a Contept of the Court that has the proper Jurisdiction.

"But these Men were guilty of no Mistake: The Point of Law was settled by the Judgement of that Court, which is allowed to be the last Resort; and this will continue to be the Law, till it be altered by the Legislative Authority. They saw their Neighbour quietly and unmolested reap the Fruit of the Judgement he had obtained; and, yet for pursuing the same Remedy, they are condemned to an indesinite Imprisonment, during the Pleasure of the House of Commons.

"This Method does introduce an Uncertainty and Confusion never before known in *England*.

The most arbitrary Governments cannot shew more direct Instances of Partiality and Oppression.

"The Point of Law is Judicially settled; and yet the House of Commons take upon them to punish Men by Imprisonment, for endeavouring to have the Benefit of what is so established for Law.

"We humbly observe to Your Majesty, That the First Thing they aliedged in the Warrant of Commitment, as the Offence of these Five Persons is, "That those Actions were brought contrary to a Declaration of the House of Commons."

"It was never yet heard (when there was a House of Lords in Being, and a King or a Queen upon the Throne) that the House of Commons alone claimed a Power, by any Declaration of theirs, to alter the Law, or to restrain the People of *England* from taking the Benefit of it; nor have their Declarations any such Authority, as to oblige Men to submit to them, at the Peril of their Liberty.

"If they have such a Power in any Case, they may apply it to all Cases as they please; for, when the Law is no longer the Measure, Will and Pleasure will be the only Rule.

"The Certainty of our Law is that which makes the chief Felicity of *Englishmen:* But if the House of Commons can alter the Laws by their Declarations, or (which is the same Thing) can deprive Men of their Liberty if they go about to take the Benefit of them, we shall have no longer Reason to boast of that Part of our Constitution.

The next Thing alledged in the Warrant is, "That the commencing and prosecuting these Actions, was a Contempt of the Jurisdiction of the House of Commons."

"Such a Jurisdiction was never claimed by the House of Commons, till upon this Occasion; and if this Novelty of a Jurisdiction be founded on their new Authority of declaring, they will stand and sall together.

"The House of Commons have for a long Time exercised a Jurisdiction over their own Members, by allowing or disallowing their Elections, as they saw Cause: But they have never before entertained a Notion, that they had a Jurisdiction over their Electors, to determine (finally and exclusively of all other Courts) the particular Rights of those to whom they owe their Being.

"Your Majesty's Royal Writ commands, "That the several Electors make Choice of Persons to represent them in Parliament, in order to do and consent to such Things as should be ordained there, relating to the State and Defence of the Kingdom and the Church;" for which the Parliament is called: And they obey the Command, in proceeding to choose Members for the Parliament then summoned. But neither the Writ which requires them to choose, nor the Indenture by which the Return is made, import any Thing whereby it may be inferred, that the Electors put into the Power of their Representatives their several Rights of Election, to be finally disposed of at their Pleasure.

"It was an Interest vested in them by Law before the Election; and which the Law will preserve to them to be exercised again in the like Manner, when Your Majesty shall be pleased to call another Parliament.

"It was not possible for the Electors to suspect that such a Pretence would ever be set up by their Representatives, when, in the Course of so many Ages, the House of Commons had never taken upon them to try or determine the Right of any particular Elector, unless incidentally, and only in order to decide a Question of the Title of some Member of their own House to sit amongst them.

"The Right of Election is a legal Interest, incident to the Freehold, or founded upon Custom, or the Letters Patents of Your Majesty's Royal Ancestors or upon particular Acts of Parliament, and must be tried and determined like other legal Interests. And this Consideration does manifestly shew the Absurdity of pretending that such Rights can be decided by the House of Commons, where there is neither a Power of administering an Oath in order to discover the Truth, nor a Power of giving Damages, which is the only Reparation the Elector is capable of receiving in such a Case. Therefore, if the Electors, when they are deprived of their Rights, have no Place to resort to, but the House of Commons; the Right of Election would be a Right without a Remedy, which indeed is no Right at all. And it is put into the Power of the Officers who have the Return of Members to serve in Parliament, to reject the Votes of as many Electors as they please, without being liable to make any Reparation in Damages to the Parties, which is a Notion not very likely to preserve the Freedom and Impartiality of Elections.

"The Third Thing alledged against these Men, in the Warrant of Commitment, is, "That, by bringing these Actions, they have broken the Privilege of the House of Commons."

"A Breach of the Privileges of Parliament is certainly a great Offence; and of all others, the House of Lords ought to be the last who should go about to lessen or excuse it, as having a like Interest with the Commons in the Preservation of the Privileges of Parliament.

"But, however it might seem the Interest of the Lords to be silent, while the House of Commons are setting a foot new Pretences of Privilege, because they may share in the Advantage; yet we think it our Duty and our Interest to do all we can to preserve the Constitution entire, and not to sit quiet when we see Innovations attempted, which tend to the Diminution of the Rights of the Crown, or to the Prejudice of the Subject; because the best and surest Way to preserve the rightful Privileges of Parliament is, to abide by those that are certain and known; and it is not in the Power of either or both Houses to create new Privileges to themselves.

"It never was thought a Breach of the Privileges of Parliament, to prosecute an Action against any Man who was not entitled to Privilege of Parliament; and therefore, since the late Constables of *Ailesbury* had no Title to Privilege of Parliament at the Time when those Actions were commenced or prosecuted, we cannot imagine upon what Foundation the pursuing these Actions can be voted a Breach of Privilege by the House of Commons.

"It seems very necessary it should be known upon what Rule this Pretence is grounded, that the People of *England* may be at a Certainty, and see some Limits set to the Claims of Privilege.

"To serve the Turn, it has been said, "There are privileged Cases, as well as privileged Persons;" but no Instance has been produced, whereby this Distinction can be applied to justify these Commitments.

"Actions at Common Law have been brought, upon false Returns and double Returns of Members to serve in Parliament; as in the Cases of Sir *Samuel Barnardiston*, and Mr. *Onslow*, which proceeded to Judgement, and a Writ of Error was brought in One of them, and the Plaintiff could not prevail in either of those Suits: And yet it was never pretended that the commencing or prosecuting those Actions was a Breach of Privilege of Parliament, nor were the Persons concerned in them imprisoned or censured, though there was a much greater Colour for such a Pretence in those Cases, because the Question there directed concerned the Right of sitting in Parliament; and consequently those would have been indeed privileged Cases, if any such Distinction had been once thought of in those Days; whereas, in the Actions brought by these Five Men, neither the Plaintiffs nor Defendants were Members of Parliament, nor did the Actions relate in any Manner to the Right of sitting there.

"The Opinion of the House of Commons at that Time was very different from what it is now. When the Judgement of the King's Bench (where Sir *Mathew Hale* sat then Chief Justice), which passed in Favour of Sir *Samuel Barnardiston*, "That the Action was maintainable," was reversed in the Exchequer Chamber; the House of Commons was so far from thinking it for their Advantage to have their Members deprived of the Benefit of the Common Law, that, in the Year One Thousand Six Hundred Seventy-nine, a Committee was appointed, to inquire touching the reversing that Judgement, and by whose Procurement and Solicitation, and by what Ways and Means, the same was reversed, and the Names of the particular Judges that were concerned: And when afterwards that Judgement in the Exchequer Chamber was affirmed in Parliament, the House of Commons never thought themselves secure against the Corruptions of the Officers who were to take the Poll and make Return at Elections, till they had got an Act, in the 7th and 8th Year of the late King, which gave a Remedy in *Westm'r Hall* for false and double Returns; so little contented were they, in their own Cases, with

the Jurisdiction of the House of Commons, and the Remedy to be had there, which now they so siercely contend their Electors should entirely acquiesce in. And we cannot but think it manifest Partiality in those Gentlemen, to go about by such violent Means to deprive their Electors of recovering of Damages when they are wronged in being deprived of giving Votes, since they thought it necessary for themselves to have that Advantage when they are injured in their own Elections.

"The Sufferings of these unfortunate Men have not ended here; and the Rights of the free-born Subjects of *England* have received a further and no less dangerous Wound in their Persons.

"These Five Men, having endured a long and chargeable Imprisonment, and despairing of their Liberty any other Way, were advised to sue out Writs of *Habeas Corpus*, returnable in Your Majesty's Court of Queen's Bench; hoping to obtain their Discharge by the Help of that Court, where the Judgement ought to be given according to the Laws of the Land, without Regard to any Votes or Declarations or Commands to the contrary. But this Endeavour proved unsuccessful; and they were remanded to *Newgate* by Three of the Judges of that Court, contrary to the Opinion of the Lord Chief Justice *Holt*.

"We shall not presume to offer any Opinion to Your Majesty upon Occasion of this Judgement at present, because it is not regularly brought before the House; and we only mention it, because the House of Commons took such Offence at the bringing these Writs of *Habeas Corpus*, that, on the Four and Twentieth of *February* last, they voted, "That whoever had abetted, promoted, countenanced, or assisted, the Prosecution of those Writs, were Disturbers of the Peace of the Kingdom, and endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the of the Kingdom, and Rights and Privleges of the Commons in Parliament."

"This is a very heavy Charge; and, if it be so criminal a Thing for a Prisoner to pray a *Habeas Corpus*, it does not only affect those who are at present concerned, but ought to touch every Commoner of *England* in the most sensible Manner.

"Liberty of Person is of all Rights the most valuable, and of which, above all other Things, the Law of *England* is most tender, and has guarded with the greatest Care, having provided Writs of several Kinds, for the Relief of Men restrained of their Liberty, upon any Pretence, or by any Power, whatsoever; that so, in every Case, they may have some Place to resort to, where an Account may be taken of the Reason and Manner of the Imprisonment, and the Subject may find a proper Relief, according to his Case.

"No Crime whatsoever does put an *Englishman* into so miserable a Condition, that he may not endeavour, in the Methods of Law, to obtain his Liberty; that he may not, by his Friends and Agents, sue out a *Habeas Corpus*, and have the Assistance of Solicitors and Counsel, to plead his Cause before the Court where he is to be brought.

"The Court is bound, by the Law, to assign him Counsel, if there be Occasion; and to give Judgement upon his Case, as it stands upon the Return of the *Habeas Corpus*; and to remand, discharge, or bail the Prisoner, as the Cause of his Commitment appears there sufficient or insufficient in Law; and, if what is alledged as the Cause of Imprisonment appears to be no Crime in Law, it is not the Authority of those who made the Commitment that can excuse that Court for remanding the Prisoner.

This is the Law of *England*: But, according to these Resolutions of the House of Commons, if a Man has the Unhappiness (though through Ignorance or Mistake) to do an Act which shall be voted a Breach of Privilege, he becomes in a worse Condition than any Felon or Traitor; his Consinement makes it impossible for him in Person to solicit and procure a *Habeas Corpus*; and if any have Charity enough to assist him, or to plead for him, in order to shew to the Court the Insufficiency of the Commitment in Matter of Law, they become liable to lose their own Liberty, and are involved in the same Guilt of Breach of Privilege. So that, let the Imprisonment be upon the most trifling Occasion imaginable, if it be by Order of the House of Commons, every Commoner must submit to it without Redress; no Friends can help them, no other Authority can deliver them, till Your Majesty shall put an End to that Session.

"The Lords have as just a Concern as the House of Commons can have, to maintain the Authority, and keep up the Awe, of Parliamentary Commitments; and they will always do it, as far as Justice and the Usage of Parliaments will allow.

"There have been Cases, particularly that of the Earl of *Shaftesbury*, where Persons committed by the House of Lords, even Members of that House, have sued out Writs of *Habeas Corpus*; and, upon the Returns of those Writs, have been brought before the Court of King's Bench; and their Counsel have been heard on their Behalf; and yet no Censure ever passed upon them, for these Endeavours to obtain their Liberty, or upon their Agents, Solicitors, or Counsel.

"The House of Commons formerly acted with more Reserve upon so nice an Occasion as the Liberty of the Subject; for, in the Year 1680, when a Writ of *Habeas Corpus* was served upon the Serjeant at Arms attending the House of commons, in the Behalf of Mr. *Sheridon*, who stood committed by Order of that House; after the House was made acquainted that such a Writ was served upon their Officer, and had entered into very long Debates upon the Matter, they did not think fit to interpose, nor to pass any Censures upon the Persons concerned in procuring the Writ, or in appearing in Behalf of the Prisoner; but left the Serjeant at Arms at Liberty to obey the Command of the *Habeas Corpus*; which he did accordingly, by carrying his Prisoner before the Judge where the *Habeas Corpus* was returnable.

"The House of Commons have, in former Ages, shewn a great and steady Concern for the Freedom of the Persons of their Fellow Subjects; and, upon their Petitions, many excellent Laws have been made, to protect Liberty against all unlawful Restraints by any Authority, even that of the Crown. But now it is insisted, that their own Imprisonments are out of the Reach of those Laws, and their Legality not to be examined.

"In the Third Year of the Reign of Your Royal Grandfather, the House of Commons made a noble Stand for the *English* Liberties; and shewed, by undeniable Evidence, that the Causes of the Imprisonment must be expressed in all Cases, that so it might appear, upon the Return of the *Habeas Corpus*, whether they were sufficient in Point of Law.

It could not then have been imagined, that the Successors of those Men would ever have pretended to an arbitrary and unlimited Power of depriving their Fellow Subjects of their Liberties; or to vote it to be criminal, so much as to inquire into the Validity of their Commitments.

"There is another Occasion of Offence, which the House of Commons have taken against *John Paty* and *John Oviat*, Two of these Prisoners, who, thinking themselves wronged in their being remanded to *Newgate* by the Opinion of the major Number of the Judges of the Court of Queen's Bench, humbly petitioned Your Majesty for a Writ of Error, in order to bring this Judgement before Your Majesty in Parliament; and it is certain, the Subject is never concluded by any Judgement, till he comes to the last Resort fixed by Law in that Case.

"The House of Commons, being informed of these Petitions, came to a Resolution, which they laid before Your Majesty, "That the Commitments of that House were not examinable in any other Courts whatsoever; that no Writ of Error lay in this Case; and that, as they had expressed their Duty to Your Majesty in giving Dispatch to the Supplies, so they had an entire Confidence in Your Majesty, that You would not give Leave for the bringing any Writ of Error."

"The First Position in this Vote is very general, and the Consequences of it are plain. If the Commitments of the House of Commons are examinable in no other Place, then no Man in *England*, how innocent soever, is secure of his Liberty, longer than the House of Commons pleases: And Men may be allowed at least to wish that it were not so, though they may have a very high Opinion of the Justice of that House.

"It has been held as an undeniable Maxim, "That whoever executes an illegal Command, to the Prejudice of his Fellow Subjects, must be answerable for it to the Party grieved."

"Let it be supposed then, that an Action of false Imprisonment was brought against the Serjeant of the House of Commons, and that the Defendant justifies his taking the Plaintiff into Custody by virtue of a Warrant of that House; and it appears, upon the Face of the Warrant, that the Cause of the Commitment was no Crime in Law; and the Plaintiff demurs: What must the Judges do in such a Case? Will it be possible for them to avoid examining into the Commitment, and so give Judgement one Way or ether? or can it be pretended, that a Writ of Error may not be brought upon such a Judgement? And is not the Court, before which the Writ of Error is brought, under a Necessity to do Justice thereupon, as the Law requires.

"As to the Second Thing they have taken upon them to assert, "That no Writ of Error lies in the Case;" we affirm to Your Majesty, with great Assurance, That, by our Constitution, the House of Commons have no Right or Pretence to determine whether that be so or not. The Right of judging when a Writ of Error is properly brought, is by Law entrusted to that Court to which the Writ of Error is directed; and therefore we shall not at present say any Thing to Your Majesty in an extrajudicial Way, and before the proper Time, as to that Point, whether a Writ of Error, brought upon a Judgement for remanding Prisoners upon a *Habeas Corpus*, can be maintained.

"Which Way that Question will be decided hereafter, when the Writs of Error are returned into the Parliament, is not at all material in respect to the Petitions of the Prisoners which now lie before Your Majesty: For unless Your Majesty be pleased to grant the Writs of Error according to their Prayer, the Matter cannot come to the proper Decision in Parliament, and Justice will be manifestly obstructed.

"Whether the Writs of Error ought to be granted, and what ought to be done upon the Writs of Error afterwards, are very different Things. The only Matter under Your Majesty's Consideration is, whether, in Right and Justice, the Petitioners are not entitled to have the Writs of Error granted.

"We are sure, the House of Commons, in the Year 1689, was of Opinion, that a Writ of Error, (fn. 1) ever in Cases of Felony and Treason, is the Right of the Subject, and ought to be granted at his Desire, and is not an Act of Grace and Favour, which may be denied or granted at Pleasure: So that, as far as the Opinion of the House of Commons ought to have Weight in such a Question (whatever the present Opinion of that House is), they then thought a Writ of Error was the Right of the Subject in Capital Cases (where only it had been at any Time doubted of).

"But that it is a Writ of Right in all other Cases, has been affirmed in the Law Books, is verified by the constant Practice, and is the Opinion of all Your present Judges, except Mr. Baron *Price* and Mr. Baron *Smith*.

"The Law, for the better Protection of Property and Liberty, has formed a Subordination of Courts, that Men may not be finally concluded in the First Instance; but this is a very vain Institution, if they be left precarious in the Method of coming to the superior Court. All Suits are begun, as well as carried on, by the Authority of Your Majesty's Writs; and the Subject has a like legal Claim to all of them. The Petition for a Writ of Errorreturnable in Parliament, is only Matter of Form and Respect to Your Majesty (like the Petitions which the Speaker makes, in the Name of the Commons, at the Beginning of every Parliament, for those Privileges which they do not believe to depend upon the Answer to those Petitions), and is no more to be refused than any other Writ throughout the Cause.

"To affirm the contrary, is to allow an arbitrary Latitude, to intercept Justice, and to make it depend upon private Advices and extrajudicial Determinations, whether any Causes at all shall be brought to Judgement before the High Court of Parliament.

"These Things being considered; how extremely surprizing is an Address from such a Body as the House of Commons, "That Your Majesty would not give Leave for such a Writ!"

"And no less surprizing is what they insinuate as the Reason of their Confidence in Your Majesty, that You would hearken to such an Address, "that they have given Dispatch to the Supplies." They proceeded surely in the Matter of the Supplies with a nobler Aim, for

the Safety of Your Majesty's Crown and Person, and for the delivering the Kingdom from the Oppression of *French* Power, employed to set an unjust Pretender upon Your Majesty's Throne.

"These are good Reasons for disposing of the People's Money: Their Liberties and all that is valuable to them depend entirely upon the good Success of the War; and they have used, in all Ages, to part freely with their Money, for the Defence of their Liberties and Properties, and the removing of Grievances and Oppressions.

"But this is the First Time a House of Commons have made Use of their having given the People's Money, as an Argument, why the Prince should deny Writs of Right to the Subject, obstruct the Course of Justice, and deprive them of their Birth-rights.

"On the Six and Twentieth Day of *February*, the House of Commons proceeded to carry on their Resentments to greater Extremities; and voted, "That the Gentlemen who pleaded as Counsel for the Five Prisoners, upon the Returns of the Writs of *Habeas Corpus*, and the Agents and Solicitors who assisted them, were guilty of a Breach of Privilege;" and ordered them to be taken into Custody; which Order has been executed.

"This seems to be so great an Excess, that it is hard to find Words proper for expressing it. When *Cronwell* committed Mr. *Maynard* to *The Tower*, for assisting one *Coney* as his Counsel upon a *Habeas Corpus*, a celebrated Author expresses the Detestation due to such a Fact in these Words: "It was the highest Act of Tyranny that ever was seen in *England*; it was shutting up the Law itself close Prisoner, that no Man might have Relief from or Access to it."

"But, as strange and unjustisiable as this appears, we beg Leave to take Notice of another Thing yet more irregular (if it be possible). While the Matter was depending before Your Majesty, upon the Petitions for Writs of Error; after the House of Commons had made an Address to Your Majesty, "That You would not give Leave for the bringing Writs of Error;" after Your Majesty had, by Your Gracious Answer, signified to them, "That this Matter, relating to the Course of Judicial Proceedings, was of the highest Importance; and therefore Your Majesty thought it necessary to weigh and consider very carefully what was proper for You to do;" and after they had voted to take this very Answer of Your Majesty's into Consideration; the Day following, they ordered the Five Prisoners to be removed from *Newgate*, and taken into the Custody of the Serjeant at Arms attending the House of Commons; and this Order was executed at Midnight, with such Circumstances of Severity and Terror as has been seldom exercised towards the greatest Offenders.

"Your Majesty is the only proper Judge how highly disrespectful this Action is to Your Royal Person and Authority.

"But it concerns us to say, that such a Proceeding tends directly to the depriving the Petitioners of that Justice, which they were endeavouring to obtain by Means of the Writs of Error.

"While Your Majesty was deliberating how to put an End to a Matter, which they only had made difficult by an unreasonable Address; the House of Commons rightly apprehended, that Justice would prevail with Your Majesty over all other Considerations; and therefore (as far as possible to disappoint the Prisoners of the Fruit they expected from these Writs of Error, when granted) they transferred them in the mean Time to another Prison.

"This Practice, of removing Prisoners from one Custody to another, has been ever complained of, as manifest Oppression, and most evidently destructive of the Liberty of the Subject. It is a Mischief provided against, in express Words, by the Act made in the Reign of Your Royal Uncle King *Charles* the Second, for better securing the Liberty of the Subject, "That if any Person, being a Subject of this Realm, shall be committed to any Prison, or in Custody of any Officer whatsoever, for any criminal or supposed criminal Matter, that the Person shall not be removed from the said Prison or Custody, into the Custody of any other Officer (unless it be by *Habeas Corpus*, or some other legal Writ);" and this upon the great Penalties mentioned in that Act. The Penalties in the Act were new; but the Law of *Engl'd* was the same before the making it. The shifting of Men from one Prison to any other, while they are using Means in a Course of Law to recover their Liberty, is inexcusable Cruelty, and against the plain Rules of natural Justice; for, by such Artifices, Imprisonments, however unlawful, might be made perpetual; and the Subject, as he was at the Point of being discharged from one Prison, might be, without End, removed to another.

"May it please Your Majesty,

"Your dutiful Subjects, the Lords Spiritual and Temporal, were so solicitous to avoid any Thing which might give a Pretence to interrupt the necessary and early Provision for the War, in order to improve the wonderful Successes God had given to Your Arms, that, though they were sensible the Imprisonment of these Men, in the Manner and upon the Pretences abovementioned, was a manifest Attempt to clude the Judicature of Parliament, and of pernicious Example to the Liberty and Property of the Subject, yet they forbore to take Notice of it, till they were in a Manner enforced by Petitions from the Prisoners, presented the Four and Twentieth of *February* last, and by the unjustifiable Proceedings of the House of Commons the same Day; which we have already mentioned to Your Majesty.

But then the Lords found it absolutely necessary to enter into a Consideration of the whole Matter, as it appeared to them; and, upon the Seven and Twentieth of *February*, they came to the following Resolutions:

"Resolved, That neither House of Parliament have Power, by any Vote or Declaration, to create to themselves new Privileges, not warranted by the known Laws and Customs of Parliament.

"Resolved, That every Freeman of *England*, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the commencing and prosecuting an Action at the Common Law, against any Person (who is not entitled to Privilege of Parliament), is no Breach of the Privilege of Parliament.

"Resolved, That the House of Commons, in committing, to the Prison of *Newgate, John Paty, John Oviat, John Paton, Henry Bass*, and *Daniel Horne*, for commencing and prosecuting Actions at the Common Law against the late Constables of *Ailesbury*, for not allowing their Votes in the Election of Members to serve in Parliament, upon Pretence that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege, of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration; have claimed a Jurisdiction not warranted by the Constitution; and have assumed a new Privilege, to which they can shew no Title by the Law and Custom of Parliaments; and have thereby, as far as in them lies, subjected the Rights of *Englishmen*, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

"Resolved, That every *Englishman*, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain, a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law.

"Resolved, That for the House of Commons to censure or punish any Person for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or, by Vote or otherwise, to deter Men from soliciting, prosecuting, or pleading upon, such Writ of *Habeas Corpus*, in Behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

"Resolved, That a Writ of Error is not a Writ of Grace, but of Right; and ought not to be denied to the Subject, when duly applied for (though at the Request of either House of Parliament); the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.

"These Resolutions were delivered to the Commons, at a Conference, the Eight and Twentieth of *February*; and they took Time to consider of them till the Seventh of *March*; upon which Day, at their Desire, a Second Conference was had: And though it was too apparent, by what was delivered by the Commons at that Conference (which consisted of injurious Invectives against the House of Lords, and tedious Recitals of Precedents, in no Sort applicable to the present Subject of Debate), that their Design was either to provoke the Lords to such a Degree as might necessitate them to break off all Correspondence, or, by engaging them in new Matters, to draw Things to such a Length as might prevent the bringing these Debates to any Issue during the Session; yet the Lords immediately desired a Free Conference, which was afterwards had, with the Commons.

"We are so desirous that Your Majesty should be made fully acquainted with all the Passages relating to this Dispute between the Two Houses, that we humbly beg Leave to annex, to this our Representation, what passed at the First and Second Conferences; and also (as far as we have been capable of recollecting in so short a Time) the Substance of what was said at the Free Conference, and in our Debates, in Maintenance of the Resolutions of the House of Lords.

"But we take it to be a Duty necessarily incumbent on us, to observe to Your Majesty, the Manner in which we have been treated by the House of Commons at these Conferences; so that, from thence, Your Majesty, according to Your great Wisdom, may judge to what such Proceedings do naturally tend. They told us, "That the Judicature of the House of Lords was unaccountable in its Foundation, and inconsistent with the Constitution." If they mean it so ancient that no Account can be given of its Foundation, it is true; but there is Reason to believe it began with the Monarchy; and we are sure it has continued without Interruption, unless during that unhappy Interval when a pretended House of Commons destroyed the Church and the Monarchy, as well as the House of Lords. As many Ages as the Constitution of the *English* Government has lasted, this Judicature has consisted with it, and formed a noble and necessary Part of it; and therefore these Gentlemen will hardly be believed, against so long an Experience, "That it is inconsistent with the Constitution."

"They also charged the Lords, in direct Terms, with usurping the hearing Appeals; with making Advances upon the Constitution; with contriving to bring Liberty and Property into the bottomless and insatiable Gulph of the Lords Judicature, and with direct Reproaches as to the Manner in which that Judicature has been exercised; and, in the most contemptuous Way, told us, "They forbore to mention the Instances, because they hoped we would reform."

"We desire no other Judge but Your Majesty, how such a Treatment of us becomes these Gentlemen; and we dare appeal to all Your Subjects, for Witnesses of the irreproachable Manner of administering Justice in the House of Lords.

"We hope, the great Displeasure the House of Commons has conceived against us may prove of some real Service, and of useful Caution to Your Majesty; for it has drawn them directly to own (what was but too visible before), that they are aiming at more Power, and a larger Share of the Administration, than is trusted with them by the Nature of our Government.

They directly complained, "That, by the Constitution, the Judicature in the last Resort was not placed in the same Hands with the Legislature;" though they cannot shew it to be so, in any Country where the Government is not arbitrary, and the Prince's Will the Law. They have been long endeavouring to break in upon the Lords Share in the Legislature, of which we could mention too many Instances to Your Majesty, from an ancient Claim, "That Aids to the Crown are to begin in the House of Commons, and that the Lords could not alter the Sums." They have of late Years pretended (but without any Reason, and against the known Usage of Parliament), that we could make no Alterations in any Parts of a Money Bill, though it have no Relation to the Money: And upon that Foot, when they have had a Mind to get any Thing passed into a Law, of the Reasonableness of which they have despaired to convince the Lords, they have tacked it to a Money Bill, in order to put the Crown and the Lords under the unhappy Necessity, either to agree to a Law they might think prejudicial to the Public, or to lose the Money; which perhaps, at that Time, was absolutely necessary to the saving the Kingdom.

"By this Method, they assume to themselves the whole Legislative Authority; taking, in Effect, the Negative Voice from the Crown, and depriving the Lords of the Right of deliberating upon what is for the Good of the Kingdom. For this Reason, the Lords had, in a very solemn Manner, resolved never to suffer such Impositions for the future, let the Importance of the Bill be never so great. This Resolution was well known; and yet, in this present Session (as appears by the Printed Votes of the Eight and Twentieth of *November*

last), a great Number of the Gentlemen of the House of Commons, to the manifest Danger of disappointing the Supplies of the Year, which must have been the Ruin of the whole Consederacy, and delivering up of *Europe* into the Hands of *France*, made an Attempt to tack to the Land Tax a Bill, which had been rejected in Two precendent Sessions of Parliament.

"Thus the House of Commons have formerly set on Foot several Attempts against that Share in the Legislature which is placed in the Lords; but this is the First Time they have published their Desire to be let into the Judicature of Parliament.

"Whatever they would insinuate upon this Occasion, we desire not to meddle with the Choice of the Commons Representatives: We willingly leave that Matter where it is; and in what Manner it is exercised there, how impartially, and how steadily, is so well known by Experience to most Parts of the Kingdom, and so universally understood, that the People will be extremely desirous their Estates and Properties should be subject to such Determinations!

"It is not strange the Free Conference ended without Success, when the Commons came to it with such a Temper, as appears by the Votes of the Eighth of *March*, made after they themselves had consented to the Free Conference: If those Votes had been published soon enough, it would have fully convinced the Lords, how vain a Thing it was to conser with them further upon the Matters in Debate at the former Conferences; for, not content with what they had done before, upon Information that their Serjeant had been served with Two Writs of *Habeas Corpus*, returnable before the Lord Keeper, in Behalf of Mr. *Montague* and Mr. *Denton*, Two of the Gentlemen who had been of Counsel with the Five Prisoners, they came to a Resolution, "That no Commoner, committed by them for Breach of Privilege, or Contempt of the House, ought to be, by *Habeas Corpus*, made to appear before any other Judicature;" and required their Serjeant to make no Return, or yield any Obedience, to those Writs; and that, for such Refusal, he had the Protection of the House of Commons.

"It has been always held the undoubted Prerogative of the Crown, to have an Account of the Reason why any Subject is deprived of Liberty; and it has ever been allowed, that, by the known Common Law, it is the Right of every Subject under Restraint, upon Demand, to have his Writ of *Habeas Corpus*; and thereupon to be brought before some proper Court, where it may be examined, "whether he be detained for a lawful Cause:" And the Statutes made in the Reign of Your Royal Grandfather, and Your Royal Uncle, have Enacted, "That, in all Cases, Writs of *Habeas Corpus* be granted, and obeyed by the respective Officers," upon great Penalties.

"But these Votes import a direct Repeal of those Laws, as to all Persons committed by the House of Commons. It is no longer worth disputing, whether a Person committed by them, though for a Fact which appears to be both lawful and necessary, may be delivered by any Court; for, by this new Law, he shall never be brought thither; and the Serjeant is not only warranted, but commanded openly, to contemn Your Majesty's Royal Writs of *Habeas Corpus*, brought upon the Act of the One and Thirtieth of King *Charles* the Second; which is an Invasion of Your Prerogative, never before heard of in *England*.

"Your Majesty does not claim an Authority to protect any of Your Officers for disobeying a known LawThe *Habeas Corpus* Act, in Times of imminent and visible Danger, was, in the late Reign, suspended by Acts of Parliament for some short Time; and yet (so sacred was that Law held) that those Acts passed with great Reluctancy; and One of the Arguments that prevailed most, for agreeing to that temporary Suspension, was, "That it would be an unanswerable Evidence to all future Times, that this Act could never be suspended afterwards by any less Authority than that of the whole Legislature." But we live to see a House of Commons take upon them to suspend this Law by a Vote.

"They ordered, "That the Lord Keeper of Your Great Seal should be acquainted with their Resolutions, to the End the Writs of *Habeas Corpus* may be superseded, as contrary to Law and the Privileges of their House." They are contrary to no Law, but that of these Votes; which surely are none of the Laws the Lord Keeper was sworn to observe.

"But yet he is to act at his Peril." They have ordered this Law to be published to him by their Clerk.

"The Lord Keeper is a Commoner; and, if he disobeys, tis a Breach of Privilege; and if they should carry it so far as to order him into Custody, he may seek, but is not to have, Relief from any *Habeas Corpus*.

"We humbly beg Pardon of Your Majesty, for this long and melancholy Representation; which we could not avoid, without being guilty of Treachery to Your Majesty, and to our native Country.

The Five Persons immediately concerned are but poor Men; but, we well know, Your Majesty's Justice and Compassion extends itself to the meanest of Your Subjects.

"The Matters in Dispute are of the highest Consequence: Your Majesty's Prerogative, the Reverence due to Laws, and the Liberties and Properties of all the People of *England*, are concerned, and at Stake, if these Encroachments prevail.

"We do not pretend to solicit Your Majesty to put a Stop to these Innovations: Your own Wisdom will suggest the most proper Methods. We have endeavoured to do our Duty, in laying the whole Matter before You.

"We humbly beg Leave so far to resume what has been said, as to present Your Majesty a short View of the unhappy Condition of such of Your Subjects as have Right of giving Votes for chusing Members to serve in Parliament; which has been hitherto thought a great and valuable Privilege; but, by the late Proceedings of the House of Commons, is likely to be made only a dangerous Snare to them, in case they who may be hereafter chosen to serve in Parliament shall think fit to pursue the Methods of this present House of Commons.

"If they restrain from making Use of their Right, in giving their Votes, they are wanting in their Duty to their Country, by not doing their Parts towards the chusing such Representatives as will use their Trust for the Good of the Kingdom, and not for the Oppression of

their Fellow Subjects.

"If the Officer who has the Right of taking the Suffrages refuse to admit them to give their Votes, they must either fit down by it, and submit to be wrongfully and maliciously deprived of their Rights; or, if they bring their Actions at Law, in order to assert their Rights, and recover Damages for the Injury (as all other injured Men may do in like Cases), they become liable to indefinite Imprisonment, by incurring the Displeasure of those who are elected.

"If, being thus imprisoned, they seek their Liberty by *Habeas Corpus* (the known Remedy of all other Subjects), they do not only tie their own Chains faster, but bring all their Friends and Agents, their Solicitors and Counsel, into the same Misfortune with themselves.

"If they think themselves to have received Injury by the Judgement upon the *Habeas Corpus*, and seek Relief by Writ of Error (the known Refuge of those who suffer by any wrong Judgement); all that assist them in that Matter are likewise to lose their Liberties for it; and they themselves will be removed to new Prisons, in order to avoid the Justice of the Law.

"We humbly conclude, with acquainting Your Majesty, That we have been informed, by the Petition of Two of the Prisoners, that they have been long delayed (though they have made their Applications in due Manner for Writs of Error). We are under a necessary Obligation, for the Sake of Justice, and asserting the Judicature of Parliament, to make this humble Address to Your Majesty, That no Importunity of the House of Commons, nor any other Consideration whatsoever, may prevail with Your Majesty to suffer a Stop to be put to the known Course of Justice; but that You will be pleased to give effectual Orders for the immediate issuing of the Writs of Error."

The Substance of what was offered by the Lords, at the First Conference with the Commons:

"The Lords have desired this Conference with the House of Commons, in order to a good Correspondence between the Two Houses; which they will always endeavour to preserve.

"When either House of Parliament have apprehended the Proceedings of the other to be liable to Exception, the ancient Parliamentary Method hath been, to ask a Conference; it being ever supposed, that when the Matters are sairly laid open and debated, that which may have been amiss will be rectisied; or else, the House that made the Objections will be satisfied that their Complaint was not well grounded.

"Such Hopes as these have induced the Lords to command us to acquaint you, "That, upon Consideration of the Petition of *Daniel Horne, Henry Bass*, and *John Paton* Junior, and also of the Petition of *John Paty* and *John Oviat*; complaining to the House of Lords, That they have been Prisoners in *Newgate* for about Twelve Weeks, upon several Warrants signed by the Speaker of the House of Commons, bearing Date the Fifth of *December* last, for their having commenced and prosecuted Aclinor at Common Law against the late Constables of *Alusbury* for not allowing their Votes at an Election of Members to serve in Parliament; which Actions, they alledgeo, they were encouraged to bring, by reason of a Judgement given in Parliament, upon a Writ of Error, brought in the last Session, by one *Ashby*, against *White* and others; and also representing, by the same Petitions, what had been done by them respectively, since their said Commitment, in order to obtain their Liberty; and praying the Consideration of the House of Peers upon the whole Matter; and also upon Consideration of a Printed Paper, intituled, "The Votes of the House of Commons," signed with the Speaker's Name, and dated the Twenty-fourth of this Instant *February*; the House of Lords found themselves obliged to come to several Resolutions, which they have commanded us to communicate to you at this Conference; and are as follow:

"1. It is Resolved, by the Lords Spiritual and Temporal in Parliament assembled, That neither House of Parliament hath any Power, by any Vote or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament.

2. Resolved, That every Freeman of *England*, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the commencing and prosecuting an Action at Common Law, against any Person (not entitled to Privilege of Parliament), is no Breach of the Privilege of Parliament.

3. Resolved, That the House of Commons, in committing to *Newgate Daniel Horne, Henry Bass*, and *John Paton* Junior, *John Paty*, and *John Oviat*, for commencing and prosecuting an Action at Common Law against the late Constables of *Ailesbury*, for not allowing their Votes in Election of Members to serve in Parliament, upon Pretence that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege, of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration; have claimed a Jurisdiction not warranted by the Constitution; and have assumed a new Privilege, to which they can shew no Title by the Law and Custom of Parliament; and have thereby, as far as in them lies, subjected the Rights of *Englishmen*, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

"4. Resolved, That every *Englishman*, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain, a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law.

"5. Resolved, That for the House of Commons to censure or punish any Person, for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or, by Vote or otherwise, to deter Men from soliciting, prosecuting, or pleading upon, such Writ of *Habeas Corpus*, in Behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons; which has ever been allowed, upon all Commitments by any Authority whatsoever.

"6. Resolved, That a Writ of Error is not a Writ of Grace, but of Right; and ought not to be denied to the Subject, when duly applied for (though at the Request of either House of Parliament); the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*."

"In these Resolutions, the House of Lords have expressed that Regard and Tenderness which they have always had, and will ever maintain, for the Rights of the People of *England*, and for the Liberties of their Persons; and also their Zeal against all Innovations to the Prejudice of the known Course of the Law, whereupon the Happiness of our Constitution does depend: And they hope that, upon Recollection, the House of Commons will be of the same Opinion, in all the Particulars resolved by the Lords, and agree with their Lordships therein."

"The Substance of what was offered by the Commons, at the Second Conference with the Lords:

"The Commons have desired this Conference with your Lordships, in order to preserve that good Correspondence between the Two Houses, which the Commons shall always endeavour sincerely to maintain; and which is so particularly necessary at this Time of common Danger, that the Commons would not engage in any Thing that looks like a Dispute with your Lordships, were it not for the Necessity of vindicating, from a manifest Invasion, the Privileges of all the Commons of *England*, (with which the House of Commons is entrusted); even those Privileges which are essential, not only to the Well-being, but to the very Being of an House of Commons; and the preventing the ill Consequences of those Misunderstandings, which, if they are not speedily removed, must otherwise interrupt the happy Conclusion of this Session, and the Proceedings of all future Parliaments.

"It was this Consideration alone has so long prevailed with the House of Commons, not to insist on due Reparation, for those violent and unparliamentary Attempts made by your Lordships upon their Rights and Privileges at the End of the last Session of Parliament; but to apply themselves to the giving the speediest Dispatch to those Supplies, which Her Majesty so earnestly recommended from the Throne; which are so necessary, to enable Her Majesty to pursue the Advantages that have been obtained against the common Enemy, by the great and glorious Successes of Her Majesty's Arms, and which are now delayed in your Lordships House in so unusual a Manner.

"The Commons do agree to your Lordships, "That, when either House of Parliament have apprehended the Proceedings of the other to be liable to Exception, the ancient Parliamentary Method has often been to ask a Conference; because it ought to be supposed, that when the Matters are fairly laid open and debated, that which may have been amiss will be rectified; or else, the House that made the Objections will be satisfied that their Complaint was not wellgrounded:" But your Lordships seem so little to desire to have Matters fairly laid open and debated, that, to the great Surprize of the Commons, when your Lordships had invited them to a Conference about some ancient fundamental Liberties of the Kingdom, they found only the ancient and fundamental Rights of the House of Commons and their Proceedings censured, and treated in a Manner unknown to former Parliaments; and that your Lordships had anticipated all Debates, by delivering positive Resolutions: And these Proceedings of your Lordships grounded only upon the Petitions of Criminals, that had fallen under the just Censure and Displeasure of the Commons, and upon a printed Paper, which was not regularly before your Lordships.

"Though this Manner of proceeding, as well as the Matter of your Lordships Resolutions, might have justified the House of Commons in refusing to continue Conferences with your Lordships, as their Predecessors have done upon less Occasions; and though the Commons cannot submit their Privileges to be determined or examined by your Lordships, upon any Pretence whatsoever; yet, that nothing may be wanting on their Part to induce your Lordships to retract these Resolutions, they proceed to take them into their Consideration.

"Your Lordships First Resolution is; (*videlicet,*)

"That neither House of Parliament hath any Power, by any Vote or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament."

"As the Commons have guided themselves by this Rule, in asserting their Privileges; so they with your Lordships had observed it in all your Proceedings: This had entirely taken away all Colour for Disputes between Her Majesty's Two Houses of Parliament, and many just Occasions of Complaint from those the Commons represent. This would effectually put an End to that Encroachment in Judicature, so lately assumed by your Lordships, and so often complained of by the Commons; we mean, the Hearing of Appeals from Courts of Equity in your Lordships House. This would have hindered the bringing of original Causes before your Lordships; and your unwarrantable Proceedings upon the Petition of *Thomas* Lord *Wharton*, complaining of an Order of the Court of Exchequer, bearing Date the Fifteenth of *July* 1701, for filing the Record of a Survey of the Honour of *Richmond* and Lordship of *Middleham*, in the County of *York:* An Attempt, which (contrary to the ancient legal Judicature of Parliament, heretofore exercised for the Relief of the Subject oppressed by the Power of the Great Men of the Realm) was, in Favour of One of your own Body, to suppress a Public Record, which all Her Majesty's Subjects had an undoubted Right to make Use of: An Attempt that tends to render all Fines and Recoveries, and other Records (upon which Estates and Titles depend), precarious; and, consequently, subjects the Rights and Properties of all the Commons of *England* to an illegal and arbitrary Power.

"A due Regard to the same Rule would have prevented your Lordships entertaining the Petitions mentioned at the last Conference; which set forth,

"That the Lords having given Judgement, in the Case of *Ashby* and *White*, (*videlicet,*)

"That, by the known Laws of this Kingdom, every Freeholder, or other Person having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied, or hindered so to do, by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury:" The Petitioners thereupon brought the like Actions in their own Cases:"

"Whereby an extrajudicial Vote of your Lordships is stated as a Judgement of Parliament, and Standing Law, in that Case; your Lordships having no Foundation for the entertaining such Petitions, unless that, after having assumed to yourselves the Hearing of Appeals from Courts of Equity, you would now bring Appeals to your Lordships from the Proceedings of the Commons, who are not accountable to your Lordships for them.

"Your Lordships Second Resolution is;

"That every Freeman of *England*, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the commencing and prosecuting an Action at Common Law against any Person (not entitled to Privilege of Parliament) is no Breach of the Privilege of Parliament."

"To which the Commons say, That every Freeman and every Subject of *England* has a Right to seek Redress for any Injury; but then such Person must apply for that Redress to the proper Court, which hath, by ancient Laws and Usage, the Cognizance of such Matters: For, should your Lordships Resolution be taken as an universal Proposition, all Distinction of the several Courts, (*videlicet*,) Common Law, Equity, Ecclesiastical, Admiralty, and other Courts, will be destroyed; and in this Confusion of Jurisdiction the High Court of Parliament is involved, in your Lordships Resolution.

"However, the Commons conceive it no Wonder your Lordships should favour the universal Proposition, "That all Rights whatsoever are to be redressed by Actions at Law," when your Lordships pretend to have the last Resort, in Cases of Judicature, by Writs of Error; so that your Lordships are in this only extending your own Judicature, under the Colour of a Regard and Tenderness for the Rights of the People and Liberties of their Persons.

"The Commons are surprized to find your Lordships assert, "That the commencing and prosecuring an Action against a Person, not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament;" since it is most certain, that to commence and prosecute an Action, which would bring any Matter or Cause, solely cognizable in Parliament, to the Examination and Determination of any other Court, is more destructive to the Privileges of Parliament, than to commence and prosecute an Action against a Person only who is entitled to such Privilege.

"That some Matters and Causes are solely cognizable in Parliament, hath ever been allowed by the sage Judges of Law, and is evident from many Precedents; and to bring such Causes to the Determination of other Courts, strikes at the very Foundation of all Parliamentary Jurisdiction, which is the only Basis and Support even of that Personal Privilege to which the Members of either House of Parliament are entitled; and, consequently, to commence and prosecute any Action, whereby to draw such Causes to the Examination of other Courts, is equally a Breach of the Privilege of Parliament, whether the Defendant, against whom such Action is brought, is entitled to the Privilege of Parliament or not; which, besides the Nature and Reason of the Thing, is fully evident from the constant Usage of each House of Parliament, in committing for Contempts only against their respective Bodies, as appears from many Precedents upon the Journals of both Houses.

"Your Lordships Third Resolution is thus; (*videlicet*,)

"That the House of Commons, in committing to *Newgate Daniel Horne, Henry Bass*, and *John Paton* Junior, *John Paty*, and *John Oviat*, for commencing and prosecuting an Action at Common Law against the Constables of *Ailesbury*, for not allowing their Votes in Election of Members to serve in Parliament, upon Pretence that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege, of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration, have claimed a Jurisdiction not warranted by the Constitution, and have assumed a new Privilege, to which they can shew no Title by the Laws and Customs of Parliament; and have thereby, as far as in them lies, subjected the Rights of *Englishmen*, and the Freedom of their Persons to the arbitrary Votes of the House of Commons."

"In Answer to which, the Commons affirm, That the said Commitment is justified by ancient Precedents, and by the Usage and Customs of Parliament, which is the Law of Parliament, and the Rule by which either House ought to govern their Proceedings; and that the Terms of "assuming to themselves alone a Legislative Authority, of attributing the Force of a Law to their Declaration, of claiming a Jurisdiction not warranted by the Constitution, of assuming a new Privilege, to which they can shew no Title by the Law and Custom of Parliament, and of arbitrary Votes," are more applicable to this Resolution of your Lordships, which hath no One Precedent to justify it.

"According to the known Laws and Usage of Parliament, it is the sole Right of the Commons of *England*, in Parliament assembled, (except in Cases otherwise provided for by Act of Parliament) to examine and determine all Matters relating to the Right of Election of their own Members.

"And, according to the known Laws and Usage of Parliament, neither the Qualification of any Elector, nor the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, excepting such Cases as are specially provided for by Act of Parliament.

"And, were it otherwise, the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be exposed to Multiplicity of Actions, vexatious Suits, and insupportable Expences; and such Officers would be subjected to different and independent Jurisdictions, and inconsistent Determinations, in the same Case, without Relief.

"And the Exercise of this Power by the House of Commons is warranted by a long uncontested Possession, and confirmed by the Act that passed 7° & 8° *Gul.* Tertii, Cap. 7. And the House of Commons must be owned to be the only Jurisdiction that can allow the

Elector his Vote, and settle and establish the Right of it; the last Determination in that House being, by that Act of Parliament, declared to be the Standing Rule for the Right of Election in each respective Place.

"Nor can any Elector suffer either Injury or Damage by the Officer's denying his Vote; for, when the Elector hath named the Person he would have to represent him, his Vote is effectually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election, and is ever allowed when it comes in Question in the House of Commons, whether the Officer had any Regard to it or no.

"In the Beginning of the Parliament held the 28 *Eliz*. Mr. Speaker acquaints the House, "That he had received, by the Lord Chancellor, Her Majesty's Pleasure, That She was sorry the House was troubled with the Matter of determining the chusing and returning of Knights for the County of *Norfolke*; that it was improper for the House to meddle in it, which was proper for the Lord Chancellor, whence the Writs issued out, and whither they were returnable; that Her Majesty had appointed the Lord Chancellor to confer therein with the Judges, and, upon examining the same, to set down such Course as to Justice and Right should appertain."

"*November* 9th, A Committee was appointed, to examine and state the Circumstances of the Return of the Knights for the County of *Norfolke*.

"And on *Friday, November* 11, Mr. *Cromwell* reports the Case of the *Norfolke* Election very largely; in which Report are these following Resolutions:

"1. That the said Writ was duly executed.

"2. That it was a pernicious Precedent, that a new Writ should issue, without the Order of this House.

"3. That the discussing or judging of this and such like Differences only belonged to the said House.

"4. That, though the Lord Chancellor and Judges are competent Judges in their Courts, they are not so in Parliament.

"5. That it should be entered in the Journal Book of the House, "That the First Election is good; and that the Knights then chosen were received and allowed as Members of the House, not out of any Respect the House had or gave to the Lord Chancellor's Judgement therein passed, but merely by reason of the Resolution of the House itself, by which the said Election had been approved."

"6. That there should be no Message sent to the Lord Chancellor, not so much as to let him know what was done therein, because it was derogatory to the Power and Privilege of the said House."

"It also appears, that Sir *Edmond Anderson*, Lord Chief Justice of the Common Pleas, was acquainted, "That the Explanation and Ordering of the Cause appertained only to the Censure of the House of Commons, not to the Lord Chancellor and the Judges; and that they should take no Notice of their having done any Thing in it."

"Accordingly Mr. *Farmer* and Mr. *Gresham* were received into the House, and took the Oaths; being admitted only upon the Censure of the House, not as allowed by the Lord Chancellor or the Judges; and so ordered to be set down and entered by the Clerk.

"And this Right of the Commons to determine their own Elections has never been disputed since the Case of Sir *Francis Goodwyn*, 1 *Jac*. I. when the Lords would have inquired into the Proceedings of the House of Commons upon his Election. But the Commons then told their Lordships, "It did not stand with the Honour of the House, to give Account to their Lordships of any their Proceedings or Doings."

"And in the Reasons of their Proceedings in that Case, which they laid by Petition before the King, among other Things, they say, "They are a Part of the Body to make new Laws; yet for any Matter of Privileges of their House, they are, and ever have been, a Court of themselves, of sufficient Power to discern and determine without the Lords, as the Lords have always used to do theirs without them.

"In which Reasons, as well as in their Apology afterwards to that Prince, the House of Commons did, above a Hundred Years since, so clearly, and with so much Strength of Reason, assert their Rights in the Matter of the Election of their Members, that the Commons think it their Duty to resist all Attempts whatsoever to invade them.

"And, upon this Occasion, it may not be improper to cite the Opinion the House of Commons had of the Judges intermeddling in Matters of their Elections, as they have delivered it in the aforesaid Apology, in these Words; (*videlicet*,)

"Neither thought we that the Judges Opinion (which yet in due Place we greatly reverence) being delivered with the Common Law (which extends only to inferior and standing Courts) ought to bring any Prejudice to this High Court of Parliament; whose Power, being above the Law, is not founded on the Common Laws; but they have their Rights and Privileges peculiar to themselves."

"When the Earl of *Shaftesbury* was Lord Chancellor, Writs issued, during a Prorogation of Parliament, for electing Members in the Room of those that were dead; the King Himself was so cautious, as to the Regularity of this Proceeding, and had so much Regard to the Privileges of the House of Commons, that, at the next Session of Parliament, 5° *February* 1672, He spoke to the Commons from the Throne, in these Words:

"One Thing I forgot to mention, which happened during this Prorogation. I did give Orders for the issuing some Writs for the Election of Members, instead of those that are dead, that the House might be full at their Meeting; and I am mistaken if this be not according to former Precedents. But I desire you will not fall to other Business till you have examined that Particular; and I doubt not but Precedents will justify what is done. I am as careful of all your Privileges, as of My own Prerogative."

"6th *February* 1672, the House of Commons took that Matter into Consideration; and several Precedents being cited, and the Matter at large debated, and the general Sense and Opinion of the House being, "That, during the Continuance of the High Court of Parliament, the Right and Power of issuing Writs, for electing Members to serve in this House, in such Places as are vacant, is in this House; who are the proper Judges also of Elections and Returns of their Members."

"Thereupon it was Resolved, "That all the Elections upon the Writs issued since the last Session are void; and that Mr. Speaker do issue out his Warrant to the Clerk of the Crown, to make out new Writs for those Places." Which was done accordingly.

"No other Court than the House of Commons hath ever had the Determination of the Elections, or any Cognizance of such Causes, except where by Acts of Parliament directed. And such an Action as those against the late Constables of *Ailesbury*, to bring the Right of voting in an Election in Question in the Courts of Law, is a new Invention, never heard of before; which (as new Devices in the Law are generally attended with Inconveniencies and Absurdities) was plainly to subject the Elections of all the Members of the House of Commons to the Determination of other Courts.

"This undoubted Privilege and Jurisdiction, the Commons think, will warrant these Commitments, if the late Declaration (which is agreeable to, and cannot lessen, their ancient Right) had never been made.

"For it is the ancient and undoubted Right of the House of Commons, to commit for Breach of Privilege; and the Instances of their committing Persons (not Members of the House) for Breach of Privilege, and that to any Her Majesty's Prisons, are ancient, so many, and so well known to your Lordships, that the Commons think it needless to produce them.

"And it being the Privilege of the House of Commons, to have the sole Examination and Determination of all Causes relating to their Elections, as aforesaid:

"It follows, that any Attempt to draw such Causes to the Determination of any other Court, is a Breach of the Privilege of the House of Commons, for which the Person offending may be committed by the Commons.

"And here we cannot but take Notice of that unreasonable, as well as unnatural, Insinuation, whereby your Lordships endeavour to separate the Interest of the People from their Representatives in Parliament; who pretend to no Privileges, but upon their Account, and for their Benefit; and are sorry to say, they are thus severely reflected on by your Lordships, for no other Reason, but for their interposing to preserve the Rights of the People, and their Liberties, from your Lordships arbitrary Determinations.

"Your Lordships Fourth Resolution is,

"That every *Englishman*, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain, a Writ of *Habeas Corpus*, in order to procure his Liberty, by due Course of Law."

"The Commons do not deny that every *Englishman*, who is imprisoned by any Authority whatsoever, has an undoubted Right to apply, by his Agents or Friends, in order to procure his Liberty by due Course of Law, provided such Application be made to the proper Place, and in a proper Manner; as, upon the Commitments of the House of Commons (which sometimes are not, as other Commitments, in order to bring to Trial, but are, in Cases of Breach of Privilege and Contempt, the proper Punishment of the House of Commons), the Application ought to be to that House.

"The Commons are so willing to allow and encourage every *Englishman* to apply, by his Friends or Agents, to obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law, that they have not censured any Person merely for applying for such Writ of *Habeas Corpus*, even in Cases where, by due Process of Law, the Prisoners cannot be discharged; for the Commons must observe, that in many Cases a Prisoner cannot, upon a Writ of *Habeas Corpus*, obtain his Liberty, as in Cases of Commitment in Execution, or for Contempt to any Court of Record, or by Virtue of Mesne Process, or the like; and in the Act of *Habeas Corpus* several Cases are expressly excepted.

"And that no Person, committed for any Contempt or Breach of Privilege by the House of Commons, can be discharged upon a Writ of *Habeas Corpus*, or by any other Authority than that of the House, during that Session of Parliament, is plain from the following Precedents:

"23 *Maii* 1° *Jac*. I, *Jones* the Prisoner to be sent for hither, and to attend his Discharge from the House.

"That the Prisoners committed by us, cannot be taken from us and committed by any other:

"In *May* 1675, the House of Commons having Resolved, "That there lay no Appeal to the Judicature of the Lords from Courts of Equity; and that no Member of the House should prosecute any Appeal from any Court of Equity before the House of Lords;" Serjeant *Pemberton*, Serjeant *Peck*, Sir *John Churchill*, and *Charles Porter* Esquire, were committed to the Custody of the Serjeant of the House, for Breach of Privilege, in having been of Counsel, at the Bar of the House of Lords, in the Prosecution of a Cause depending upon an Appeal, wherein Mr. *Dalmaboy*, a Member of the House of Commons, was concerned. But the Serjeant having been by Force prevented keeping them in Custody, the Commons did, the 4th *June* 1675, acquaint the Lords, at a Conference, as followeth; (*videlicet*,)

"We are further commanded to acquaint you, That the Enlargement of the Persons, imprisoned by Order of the House of Commons, by the Gentleman Usher of the Black Rod, and the Prohibition, with Threats, to all Officers and other Persons whatsoever, not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons; and they have therefore caused them to be re-taken into the Custody of the Serjeant at Arms, and have committed them to *The Tower*."

"The said Counsel were afterwards committed to *The Tower*, for a Breach of Privilege, and Contempt of the Authority, of the House.

"And the House being informed, "That the Lords had ordered Writs of *Habeas Corpus*, for bringing the Counsel to the Bar of their House;" the Commons passed the following (fn. 2) Resolutions:

"7th *June*, 1675. Resolved, *nemine contradicente*, That no Person, committed for Breach of Privilege by Order of this House, ought to be discharged, during the Session of Parliament, but by Order or Warrant of this House.

"Resolved, *nemine contradicente*, That the Lieutenant of *The Tower*, in receiving and detaining in Custody Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, performed his Duty according to Law; and for so doing, he shall have the Assistance and Protection of this House.

"Resolved, *nemine contradicente*, That the Lieutenant of *The Tower*, in case he hath received, or shall receive, any Writ, Warrant, Order, or Commandment, to remove or deliver any Person or Persons committed for Breach of Privilege, by any Order or Warrant of this House, shall not make any Return thereof, or yield any Obedience thereunto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

"ORDERED, That these Resolutions be immediately sent to the Lieutenant of *The Tower*."

"Afterwards the Lieutenant of *The Tower* gave the House an Account, "That he had refused to deliver the Counsel, upon the Lords Order, signified to him by the Black Rod, because they were committed by this House; and that, after he had received the Votes of this House, he had Writs of *Habeas Corpus* brought him, to bring the Counsel to the House of Lords at Ten of the Clock the next Morning;" and humbly craved the Direction of the House what to do.

"Mr. Speaker intimated to him, "He should forbear to return the Writs."

"And the House came to several other Resolutions:

"9th *June* 1675. Resolved, *nemine contradicente*, That no Commoner of *England*, committed by Order or Warrant of the House of Commons, for Breach of Privilege, or Contempt of that House, ought, without Order of that House, to be, by any Writ of *Habeas Corpus* or other Authority whatsoever, made to appear and answer, and do and receive a Determination in the House of Peers, during the Session of Parliament wherein such Person was committed.

"Resolved, *nemine contradicente*, That the Order of the House of Peers, for the issuing out of Writs of *Habeas Corpus*, concerning Serjeant *Peck*, Sir *John Churchill*, Serjeant *Pemberton*, and Mr. *Charles Porter*, is insufficient and illegal; for that it is general, and expresses no particular Cause of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the said House of Peers.

"Resolved, *nemine contradicente*, That the Lord Keeper be acquainted with these Resolutions, to the End that the said Writ of *Habeas Corpus* may be superseded, as contrary to Law and the Privileges of this House.

"Resolved, *nemine contradicente*, That a Message be sent to the Lords, to acquaint them, "That Serjeant *Peck*, Sir *John Churchill*, Serjeant *Pemberton*, and Mr. *Charles Porter*, were committed, by Order and Warrant of this House, for Breach of the Privilege, and Contempt of the Authority, of this House."

"22d *March* 1697, *Charles Duncombe* Esquire, having been committed by Order of this House, and afterwards discharged by Order of the House of Lords, without the Consent of this House;

"Resolved, That no Person, committed by this House, can, during the same Session, be discharged by any other Authority whatsoever.

"Resolved, That the said *Charles Duncombe* be taken into the Custody of the Serjeant at Arms attending this House."

"These are some Instances, among many others that might be produced upon this Occasion; and the last cannot but be particularly remembered by some Noble Lords, that then sat in the House of Commons, and strenuously asserted this Privilege of the Commons.

"Your Lordships Fifth Resolution; (*videlicet*,)

"Resolved, That, for the House of Commons to censure or punish any Person, for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or, by Vote or otherwise, to deter Men from soliciting, prosecuting, and pleading upon, such Writs of *Habeas Corpus*, in Behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons; which has ever been allowed upon all Commitments by any Authority whatsoever."

"The Commons take this to be another Instance of your Lordships Breach of your own Rule: Your Lordships being no Judges of their Privileges; though, by this Resolution, you seem to make a Judgement, without having heard, and knowing, what the Commons have to alledge for them.

"This Attempt, therefore, in your Lordships, is of dangerous Consequence, tending to a Breach of the good Understanding between the Two Houses, and of most pernicious Example. The Commons late Proceedings, in censuring and punishing the Counsel that have pleaded upon the Return of the Writs of *Habeas Corpus* in Behalf of these Prisoners, if duly considered, is a great Instance of the Temper of the House of Commons: For this House did not interpose, when the Prisoners applied to the Lord Keeper and the Judges to be bailed; and had the Lawyers shewn so much Modesty as to have acquiesced in the Opinion of the Lord Keeper and all the Judges,

that these Prisoners were not bailable by the Statute of *Habeas Corpus*, the Commons had never taken any Notice of it; but they would not rest satisfied without bringing on again this Case; and the Privileges of the Commons were, with great Licentiousness of Speech, denied and insulted in public Court, not with any Hope or Prospect of Relief of the Prisoners (who, in this whole Proceeding, have apparently been only the Tools of some ill-designing Persons, that are contriving every Way to disturb the Freedom of the Commons Elections), but in order to vent these new Doctrines against the Commons of *England*, and with a Design to overthrow their fundamental Rights. And, after so much Inveteracy shewn to the Commons, they could not do less than declare the Abettors, Promoters, Countenancers, or Assisters, of a Prosecution so carried on, to be guilty of conspiring to make a Difference between the Two Houses of Parliament, to be Disturbers of the Peace of the Kingdom, and to have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of *England* in Parliament assembled.

"And the Commons, in committing the Lawyers, have only done that Right to their Body, which your Lordships have frequently practiced in Cases of Personal Privilege, where any single Member of your Lordships House is concerned.

"Your Lordships last Resolution; (*videlicet*,)

"That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (though at the Request of either House of Parliament) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*."

"The Commons shall not enter into any Consideration, whether a Writ of Error is of Right or of Grace; they conceiving it not material in this Case, in which no Writ of Error lies: Nor was ever any Writ of Error brought or attempted in the like Case before; and the allowing it in such Cases would not only subject all the Privileges of the House of Commons, but the Liberties of all the People of *England*, to the Will and Pleasure of the House of Lords.

"And, when your Lordships Exercise of Judicature upon Writs of Error is considered, how unaccountable in its Foundation, how inconsistent it is with our Constitution (which in all other respects is the wisest and the happiest in the World), to suppose the last Refort in Judicature and the Legislature to be differently placed:

"And when it is considered how that Usurpation in hearing of Appeals from Courts of Equity, so easily traced, though often denied and protested against, yet still exercised, and almost every Session of Parliament extended:

"It is not to be wondered, that, after the Success your Lordships have had in these great Advances upon our Constitution, you should now at once make an Attempt upon the whole Frame of it, by drawing the Choice of the Commons Representatives to your, Determination; for that is a necessary Consequence, from your Lordships encouraging the late Actions, and your countenancing a Writ of Error, which, if allowed upon such a Proceeding, might as well be introduced upon all Acts and Proceedings of Courts or Magistrates of Justice. And though the present Instance has been brought on under the specious Pretence of preserving Liberty; it is obvious, the same will as well hold to control the bailing and discharging Prisoners in all Cases.

"And the Commons cannot but see how your Lordships are contriving, by all Methods, to bring the Determination of Liberty and Property into the bottomless and insatiable Gulph of your Lordships Judicature; which would swallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which, your Lordships must give the Commons Leave to say, they have the greater Reason to dread, when they consider in what Manner it has been exercised; the Instances whereof they forbear, because they hope your Lordships will reform; and they desire rather to compose the old, than to create any new Differences.

"Upon the Whole, the Commons hope, that, upon due Consideration of what they have laid before your Lordships, you will be fully satisfied they have acted nothing in all these Proceedings, but what they are sufficiently justified in, from Precedents and the known Laws and Customs of Parliament; and that your Lordships have assumed and exercised Judicature contrary to the known Laws and Customs of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of *England*."

"Some of the Arguments that were made Use of by the Lords, in their Debates, and at the Free Conference, to maintain their own Resolutions, and answer the Objections of the Commons.

"The House of Commons made Two Objections to the Manner in which the Lords proceeded at the First Conference. They said, "They had anticipated all Debates, by delivering positive Resolutions; whereas this is the proper and ordinary Method of Proceedings between the Two Houses: When One House has formed an Opinion, they communicate it to the other, to the End that, if it be found reasonable, it may be approved; or if, upon Examination, it be disliked, the Causes of the Disagreement may be shewn, in order to convince the other House of their Mistake."

"The Second Objection made to the Manner of the Lords Proceedings was, "That the Resolutions were grounded upon the Petitions of Criminals, who had fallen under the just Displeasure of the Commons; and upon a printed Paper, not regularly before the House of Lords."

"As to the First Part of the Objection; the Lords did (as just Judges always do) consider the Matter of the Petitions, and not the Persons of the Petitioners. And as to the Second Part; the Lords said, "The printed Paper, mentioned by the Commons, was the Votes of the House of Commons, of the 24th of *February*, signed by the Speaker. If the Commons had disowned that Paper, there had been some Weight in this Objection; but, if they think it regular to print and publish their Votes to the People, the Lords will always think it regular to take Notice, and make Use of those Papers, as they see Occasion. And it seemed strange, for the Commons to object to the taking Notice of their Votes, when the only Colour they have hitherto pretended for their First Displeasure at the Five Prisoners was, that they did not take Notice of some Votes of theirs (which they call their Declaration) made during their last Session. And the printing their Votes is the only Method they have yet taken for the Promulgation of the new Laws they take upon them to make.

"The Lords had no Occasion to say any Thing in Defence of their First Resolution, because the Commons did not think fit to avow in Words, that they had a Power to create new Privileges by their Votes; though they have manifestly attempted it in Practice, and particularly in the Case of the Five Prisoners.

"As to the unjust Reflections which the Commons made upon the House of Lords, as if they had entertained original Causes, and were guilty of some Encroachments in hearing Appeals from Courts of Equity:

"The Lords avowed their Claim of a Jurisdiction in hearing and determining Appeals from Courts of Equity; and could shew a continued Exercise of it, more ancient than the Determination of Elections in the House of Commons, which yet the Lords do not go about to call in Question. But they deny their having meddled with any original Causes, or that the Case particularly mentioned by the Commons was at all of that Nature.

"The Lords did not understand what the Commons meant, by saying "the Lords had founded their Second Resolution upon an extrajudicial Vote." The Judgement, in the Case of *Ashby* and *White*, was given with great Deliberation, and founded upon undeniable Reasons and unquestionable Authorities; and the Lords condescended so far in that Matter, as to direct the State of that Case, and the Grounds of that Judgement, to be drawn up and printed.

"The Second Resolution of the Lords consists of Two Assertions:

"First, That every Man, who apprehends himself to be injured, has a Right to seek Redress by Action at Law.

Secondly, That the prosecuting Actions at the Common Law, against any Person not entitled to Privilege of Parliament, is no Breach of Privilege."

"What the Commons objected to the Universality of the First Part of that Resolution, as if it would destroy all Distinctions of Courts, and make a Confusion of Jurisdictions, did arise only upon a plain Mistake. The Lords mentioned Actions in general, without confining what they said to Actions at Common Law, or affirming that Actions for all Sorts of Injuries may be brought in any One Court.

"As to the Insinuation, "That the Lords had no other Aim, than to extend their own Jurisdiction, by the seeming Regard and Tenderness they shewed for the Rights and Liberties of the People:" The Answer is, "The only just Way of interpreting Men's Meaning, is by observing what they act."

"The Lords have acted with true Regard to Liberty and Property on this Occasion, as well as in all others. They have voluntarily owned themselves to be restrained; at the same Time they desire the Commons not to go about to create new Privileges: The Lords claimed nothing new; and the Commons cannot with Reason desire them to give up, what the Law and the Constitution have placed in them, the Judicature in the last Resort.

"The principal Thing insisted upon by the House of Commons against this Resolution was, "That there are privileged Cases as well as privileged Persons;" but they did not think fit to give any Instances of such privileged Cases as were any Ways applicable to the Matters in Dispute; that is, that were so entirely of the Cognizance of the House of Commons, that the bringing an Action at Common Law in those Cases was a Contempt to the House of Commons: And, unless that could be done, this Distinction of privileged Cases from privileged Persons will have no Weight to justify the Commitment of the Five *Ailesbury* Men. If Men mistake, and bring Actions in *Westminster Hall* for Matters cognizable in Parliament, so that they can have no Relief in the Courts below; it does not follow from thence, that they ought to be committed for Breach of Privilege on that account.

"The determining of Elections is admitted to be the Business of the House of Commons; and yet it is certain, that the prosecuting Actions at Common Law for false or double Returns was never thought to be a Contempt to the House of Commons, nor was any body punished or committed upon that Account in the Cases of Sir *Samuel Barnardiston* and Mr. *Onslow*.

"The Freedom of Speech in Parliament is the most necessary and the most acknowledged Privilege of the House of Commons; and yet, when an Information was brought in the King's Bench, against Sir *John Elliot* and others, for Words spoken in the House of Commons, and Judgement was given against them in that Court, the Commons did not think it sufficient to condemn that Judgement by Votes of their own House, but brought those Votes up to the Lords, and desired their Concurrence; which was given: And immediately thereupon a Writ of Error was brought in Parliament, and the Judgement regularly reversed there. And it cannot be denied that, upon this Occasion, the most valuable Privilege of the House of Commons was brought under the Judgement of the Lords, as well in their Judicial as in their Legislative Capacity.

"The Case of *Richard Strode*, and the Act of Parliament which passed upon that account in the Fourth Year of King *Henry* the Eighth, was that which was principally insisted on by the House of Commons, in the Case of Sir *John Elliot*, for justifying their undoubted Privilege of Freedom of Speech, and shewing the Injustice of what was done in that Case by the Court of King's Bench.

"The Case of *Strode* might be used by the Lords as another Instance, to shew that this Distinction of privileged Cases will not serve the Purpose of the House of Commons, to justify the Commitments of the *Ailesbury* Men. He was prosecuted in the Stannary Courts, for Words spoken, and Bills offered, in the House of Commons, in order to be passed into Laws; and upon that account was imprisoned, and condemned to pay considerable Sums, and petitioned the House of Commons to be relieved in that Matter: The House of Commons did not then pretend to put a Stop to those Suits, or to commit the Persons concerned in them; but thought the only Remedy, against those Prosecutions and others of like Sort, was, to prepare a Bill, in order to be passed into a Law, for making void the Judgements against *Strode;* and took that Occasion, by the same Bill, to declare the Law in general, and to give an Action to all Persons who should be afterwards vexed or molested for the like Causes, in which they should recover Treble Damages, and Costs of Suit.

There is no Case that can more properly be called a privileged Case, with respect to the House of Peers, than the determining of Peerage: And yet, if that Matter comes to be incidentally a Point in any Case depending in the Courts in *Westminster Hall*, they must proceed to determine of it as they think the Law to be; and the Lords have not gone about to hinder it, nor found Fault with them upon that account.

The Courts in *Westm'r Hall* must of Necessity judge of the Privileges of Parliament in many Cases. When any Person prays a Writ of Privilege (which was always the Way anciently when Men desired the Benefit of Privilege, and it is often practised yet upon Occasion); the Court where the Writ is prayed must judge whether the Party has Right to Privilege or not.

Suppose the Serjeant of the House of Commons should kill, or be killed, in the Execution of a Warrant of that House: Upon an Indictment for Murder, the Court must necessarily judge of the Legality of the Warrant.

The Commons supposed Cases, of Affronts to the Person of the Speaker, or of reproachful Words spoken of the whole House of Commons, as Instances of what they called privileged Cases.

There is no Doubt but either of these Cases would be Contempts, and such as might be punished by the House. But most certainly these were also such Offences as might be prosecuted in *Westminster Hall*; and if the Attorney General should bring Informations upon them, it could never be pretended that he would be guilty of a Breach of Privilege of the House of Commons.

It was urged, "That in privileged Cases, the Votes of the House of Commons were like Prohibitions to the Ecclesiastical Courts; and that, when Prohibitions were served upon the Judges in the Admiralty or Ecclesiastical Courts, it was a Contempt for them to proceed farther."

The Answer to this is, "That Prohibitions to Ecclesiastical and Admiralty Courts were founded upon a particular Reason: The Proceedings in those Courts are according to the Civil or Canon Law; and therefore it was necessary, to preserve the Constitution, and restrain those Courts from making Invasions upon the Common Law, that a Guard should be set upon them, and a Power fixed to restrain them: And this Power is lodged in the Courts of *Westminster Hall*; who are trusted with the issuing Writs of Prohibition to the Ecclesiastical and Admiralty Courts, from Time to Time, upon Complaints made to them; and these Writs of Prohibition must be served personally upon the Judge of the Admiralty or the Ecclesiastical Judges, who will be liable to Attachments if they proceed, after such Service, until such Time as they have shewn the Nature of the Suit to the Courts from which the Prohibition issued; and if the Suit be properly of Ecclesiastical or Admiralty Cognizance, the Court must grant a Consultation, whereby they are at Liberty to proceed again. This is a known and settled Method of legal Proceedings. But the Votes of the House of Commons were never yet resembled to the Queen's Writs; no Court is bound to take Notice of them; on the contrary, the Judges are bound, not to take Notice of them, but to act according to the known Law. No body has Power to prohibit the Courts in *Westminster Hall*; the Judges there are sworn to proceed to do Justice, notwithstanding any Command under the Great Seal or Privy Seal, or by any other Authority whatsoever. And the Subjects of *England* have no longer an Inheritance in the Common Law, if the Judges are to take Notice of the Votes of either House of Parliament, and regulate their Judgements accordingly.

"The Votes would not always be uniform in either House; and it appears, by the present Dispute, that the Two Houses might often differ in Matters of Importance: And the Judges would be under Difficulty which of the Houses to obey; and if they yielded Obedience to both, they would be obliged to act very contradictorily."

What was said against the Third Resolution of the Lords was, First, "That thereby the Lords took upon them to judge of their Privileges."

To this it was said, "That if the House of Commons, under the Name of Privilege, would proceed to do Things inconsistent with the known Prerogatives of the Crown, with the known Privileges of the Lords, contrary to the Laws, or destructive to the Liberties of the People, the Lords were bound to tell them, "These were not the Commons Privileges." If, by saying, "They only are Judges of their own Privileges," they would deprive the Crown and the Lords from taking Notice of manifest Innovations, and objecting to them as there was Occasion, the Commons might take to themselves the whole Government without Control."

They were challenged to produce Precedents, to warrant the Commitments of Men only for proceeding in Suits at Law against those who had done them Wrong, and had no Pretence of Privilege.

The Lords did not dispute the Power of the Commons in examining and determining the Elections of their own Members, nor of inquiring into all Matters relating to the Determination of that Question, particularly their examining into the Qualifications of Electors; and agreed, that what they determined would be binding as to the Right of the Member to sit in the House: But that Determination would not bind the Right of any Elector; for he was no Party to that Dispute of the Election; he was not heard for himself, nor was his Cause in Agitation before the House; and the Action brought by the Elector has no Manner of Relation to the Sitting of the Member, but is only for Recovery of Damages upon account of the particular Injury done him by the Officer at the Election.

Suppose there was a Contest about Two Persons, which was Mayor of a Town: The Court where that Cause was tried, in order to a Determination of the Right, must perhaps examine into the Rights of those voted. But would it be pretended, that the Electors would be bound by the Opinion of the Court in that Case; and that they could not bring their Actions, to recover Damages against the Officer who wilfully refused their Votes, however the Question was decided as to the Mayor? So that it was begging the Question, to pretend that, because the House of Commons can try the Right of the Member to sit, therefore they only have a Power to decide finally the Rights of the several Electors.

There is no Weight in the Objection, "That, if these Suits were allowed, the Officers who are obliged to take the Poll would be exposed to Multiplicity of Actions."

The Law is so in all Cases of Elections of Officers. He who is to take the Poll is bound to do his Duty at his Peril: If he acts with an honest Intention, though he should be guilty of a Mistake, he is in no Danger; for no Jury ought to find him guilty. But, if an Officer wilfully and maliciously refuses to admit those who have Right to give their Votes, every One of them may sue him, in any proper Court, as they see Cause; and the more he wrongs, the more he ought to suffer. And which would be the greater Mischief, that the Officer who does Injustice should be subject to Actions; or that he should be at Liberty to reject as many rightful Votes as he thinks fit, without being liable to make any Reparation? And which is the Part a House of Commons ought to take?"

The Lords observed, "That the natural Order of Things seemed to be quite inverted in this Dispute; the House of Commons were taking Part against the Freedom of Law, against the Liberty of Men's Persons, and against the Right of their Electors.

As to the several Precedents insisted upon, they conclude nothing to the present Question; every One of them relating to the Right the House of Commons claims of determining the Elections or Returns of their Members, which they are in the quiet Possession of; and the general Expressions, which are found in the Relation of these Precedents, can be understood only with respect to the Subject-matter of those Cases.

The First Precedent, in the 28th of Queen *Elizabeth*, is of a double Return for the County of *Norfolke*. Though the Lords do not deny that such Cases are proper to be determined by the House of Commons; yet this Precedent does not go far towards asserting their Right; for, in that Case, the Second Writ was quashed by the Chancellor and Judges, before the Determination made by the House of Commons: And in the citing this Precedent, they have not rightly stated the Words of the Queen's Message, or of the Resolutions of the House of Commons, as will appear by Sir *Simon D' Ewes'* Journal; and they could not say they had any original Journal of that Time.

As to the Second Precedent they cited, which is the Case of Sir *Francis Goodwin*, in the First Year of King *James* the First, which they made Use of to prove their own Power of determining Elections, and that they were not to give an Account of their Proceedings therein to the Lords: It appears by their own Journal, that they had not stated that Case fairly; and that in Fact the Lords, at the Desire of the Commons themselves, were Mediators between them and the King in that Dispute; and that the Commons at last yielded the Point, and, notwithstanding their Determination in Favour of him, submitted that a new Writ should issue, for choosing a Member in the Place of Sir *Francis Goodwin*: And though there be Mention in the Journal, of a Letter wrote by Sir *Francis Goodwin*, desiring that this Third Writ should issue; yet that could make no Difference in the Case; for it will not be pretended that a Member could give up the Right of his Electors, and the Judgement of the House.

But all this makes nothing to the Justification of the Commitment of the *Ailesbury* Men.

The Precedent cited in 1672 relates only to the Right of issuing Writs for the Election of Members during the Continuance of the Parliament; the ordering of which was voted to be in the House of Commons only, and is not at all disputed at this Time.

The Lords never disputed the Commons Power of committing, for Breach of Privilege, as well Persons who are not of the House of Commons, as those who are. The Question is only, "Whether a Matter, that has no Relation to the Sitting of any Member in Parliament, may be made a Breach of Privilege, by being called so in a Vote, or having that Name given to it in a Warrant of Commitment;" that is, in other Words, "Whether they have Power to create to themselves new Privileges by their Votes;" for they will never be able to prove an Usage of committing Men for resorting to Law in such Cases; and it will be hard for them to convince those whom they represent, that this arbitrary oppressing poor Men is, or can be understood to be, only an interposing to preserve the Rights and Liberties of the People of *England*.

The Commons did not deny the Lords Fourth Resolution, otherwise than by saying, "That the Application was to be made to the proper Place; and that, where the Commitment is by the House of Commons, there is no Place to apply to for Liberty, but that House."

The Lords thought this to be a Position very fatal to Liberty; for it places an arbitrary and absolute Power of Commitment in the House of Commons. Tyranny may be in many, as well as in a single Person. The Thirty Tyrants of *Athens* carry that Name with as heavy an Imputation as any single Person.

The Lords never said, "That every Prisoner who brings his *Habeas Corpus* ought to be discharged, or that there are not Cases expected out of the *Habeas Corpus* Act." What they insist upon is, that a Prisoner, brought before a proper Court by *Habeas Corpus*, where it does appear that the Matter he stands committed for is no Crime in Law, ought to be discharged, by whatsoever Authority he was committed, or by whatsoever Name the Fact is called in that Commitment.

Several Precedents were mentioned by the Commons. First, the Case of one *Jones*; but it did not appear who he was, nor what his Case was, nor who would have taken him from the Commons; and therefore there can be no Pretence to draw any Inference from such a Precedent.

The Lords wondered to find any Weight laid on the Votes passed in the Year 1675. It is well known, the Kingdom was at that Time generally grown weary of that Parliament, which had been continued above Thirteen Years; and there was a great Number in both Houses, who watched for any Advantage to make their longer Continuance impracticable.

And there happening a Question at that Time, "Whether there might be a Proceeding in Appeals before the House of Lords, in Cases where Members of the House of Commons were Parties; this was so managed, that, in about a Month's Time, Matters were grown to

such a Height between the Two Houses, that all Correspondence was in a Manner broken off between them; and they proceeded to make such Votes, and to do such Acts, from Day to Day, on either Side, as they thought would most provoke.

The Commons cited some of these Votes, which were passed in their House towards the Height of the Contest; and the Lords might as well have cited other Votes of the House of Lords, in Contradiction to them, which were altogether as high, and are at least of as much Authority, as those of the House of Commons: So that it is hard to imagine what Use there can be of citing such Precedents, which did occasion Two Prorogations one after the other, and must always have as bad Consequences whenever they are followed.

The House of Commons took the same Exception to the Lords Fifth Resolution as they did to their Third, "That they therein made themselves Judges of the Privileges of the House of Commons." And the Lords contented themselves with giving them the same Answer.

What the House of Commons said in respect to their censuring and punishing the Counsel who pleaded at the Queen's Bench Bar, upon the Return of the *Habeas Corpus*, in Behalf of the Prisoners, seemed very remarkable: "That it was because they were not so modest as to acquiesce in the Opinion of the Lord Keeper and the Judges, that the Prisoners were not bailable by the *Habeas Corpus* Act; and they would not have taken Notice of them, but because they would not rest satisfied, but would bring on the Cause again; where the Privileges of the House of Commons were, with great Licentiousness of Speech, denied and insulted in public Court, without any Hopes or Prospect of Relief of the Prisoners, but in order to vent new Doctrines against the Commons."

This seemed to be a Kind of Excuse for the committing of the Counsel; but it does in no Sort agree with the Votes relating to this Matter, which passed in general Terms, and may be cited for Precedents hereafter for committing Counsel (with as good Reason as the Votes in 1675) when these secret Motives which induced the House of Commons in this Case will not appear.

The Vote of the 24th of *February* ordered the Committee to examine what Persons had been concerned in pleading upon the Writ of *Habeas Corpus*, not what was said by Counsel in their Pleadings. And the Votes against the several Gentlemen of the 26th of *February* are, "That, by pleading upon the Return of the *Habeas Corpus* on Behalf of the Prisoners, they were guilty of breaking the Privileges of the House of Commons."

It does not appear that there was any Complaint of what they said, at least there was no Vote against them for their Words; and indeed, if the Charge against them had been for Words supposed to be spoken, it would have been a most unaccountable Hardship to have hurried them into Custody, without ever bringing them to the House, to hear their Accusation, or to be heard as to what they had to say for themselves.

"It does not appear that these Gentlemen were ever heard, or indeed were at all concerned, as to the Writs of *Habeas Corpus* brought before the Lord Keeper and the Judges in the Vacation Time: But suppose they had, and suppose they were satisfied that, as the *Habeas Corpus* Act was drawn, these Men might not be so clearly bailable by the Judges in Vacation Time, by virtue of these Writs which were formed upon that Statute; and yet they might be of Opinion, that the Prisoners had a reasonable Prospect of obtaining Relief upon Writs of *Habeas Corpus* brought at Common Law.

If they thought so, it was not upon slight Grounds, as appeared by the Consequence; for the Lord Chief Justice of the Court of Queen's Bench, whose Learning and Judgement is well known, and as universally esteemed as his Integrity, was clearly of Opinion, that they were entitled to the Relief they prayed for their Clients.

The Commons may give what hard Words they please to these Gentlemen's appearing to plead in Behalf of the Prisoners upon the Writs of *Habeas Corpus*. They may call it Inveteracy shown to the Commons, and a Conspiring to make a Difference between the Two Houses, and to disturb the Peace of the Kingdom. But, after all that can be said, the Fact will only be, that Four Gentlemen, Lawyers by Profession, retained in a Case of Liberty upon a *Habeas Corpus* brought by Five poor Prisoners, did their Duty in their Profession, and, for doing so, were themselves imprisoned by the House of Commons, and denied the Benefit of the *Habeas Corpus* Act; and this the House of Commons called "doing Right to their Body."

"No Lawyer has suffered for serving his Client, even against the Crown. If the Learned in that Profession may safely open the Law, when the Prerogatives of the Crown are in Question, it will seem very hard they should be punished for doing it in a Case of Privilege. To deprive Men under Restraint of Assistance of their Friends, exceeds the Severity of any Court but that of the Inquisition, the very Name of which ought to strike all *Englishmen* and Protestants with Horror.

The last Resolution of the Lords was not contradicted by the House of Commons; and therefore the Lords took it for granted, that as it was no longer contested, but that a Writ of Error is a Writ of Right, and not of Grace, consequently that the Commons did no longer insist upon that Part of their Address, "That the Queen would not give Leave for a Writ of Error."

As to what was said by the Commons, "That it was not material, whether Writs of Error were of Grace or not, because they did not lie in the Case of the Petitioners:" The Lords said, "That, whether the Writs of Error could be maintained or not, in Point of Law, was not the Cognizance of the House of Commons, nor the Matter in Dispute between the Two Houses."

Then the following Orders were made; (*videlicet*,)

Whole House to attend Her Majesty, with the Representation and Address:

"It is ORDERED, by the Lords Spiritual and Temporal in Parliament assembled, That the Representation, Address, and other Papers agreed to this Day, shall be presented and laid before the Queen by the whole House."

D. Boltor attend H Major.

It is ORDERED, by the Lords Spiritual and Temporal in Parliament assembled, That the Duke of *Bolton* do attend Her Majesty, humbly to desire, from this House, to know what Time Her Majesty will please to appoint, for this House to attend Her, with their Representation and Address agreed to this Day."

Adjourn

Dominus Custos Magni Sigilli declaravit præsens Parliamentum continuandum esse usque ad et in diem Mercurii, decimum quartum diem instantis Martii, hora undecima Auroræ, Dominis sic decernentibus.

Veneris, 30° die Martii, 1705, hitherto examined by us,

Stamford.
Jo. Chichester.
Guilford.
Herbert.

Footnotes

1 . Sic.
2 . Origin. Resolution; vide Journals of H. C. XIV. p. 562. b.

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