THE
PRACTICE
IN THE
HOUSE OF LORDS,
on
APPEALS, WRITS OF ERROR,
and
CLAIMS OF PEERAGE,
with
A COMPENDIOUS ACCOUNT OF DIGNITIES;
to which is prefixed
AN INTRODUCTORY HISTORICAL ESSAY ON
THE APPELLATE JURISDICTION.

By JOHN PALMER,
of Gray's Inn, Gent.

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THE RIGHT HONOURABLE

JOHN FREEMAN-MITFORD,
BARON OF REDESDALE,
IN THE COUNTY OF NORTHUMBERLAND,
&c. &c. &c.

THE FOLLOWING TREATISE ON THE JUDICIAL PROCEEDINGS

OF THAT AUGUST ASSEMBLY,

IN WHICH

HIS LORDSHIP'S GREAT LEGAL ATTAINMENTS HAVE,

FOR A SERIES OF YEARS,

BEEN EMINENTLY CONSPICUOUS,

IS,

WITH THE HIGHEST RESPECT,

HUMBLY INSCRIBED,

BY HIS LORDSHIP'S

VERY OBEDEDIENT SERVANT,

THE AUTHOR.
Preface.

The Author's Uncle and Master, Mr. John Palmer, formerly of Lincoln's Inn, and afterwards of Chancery Lane, having been long a Parliamentary Solicitor and Agent of extensive Practice, the Author had an opportunity, above fifty years ago, of becoming acquainted with judicial Proceedings in the House of Lords, a subject with which he has ever since been professionally conversant.

About thirty years back, Mr. Urquhart's* "Experienced Solicitor in Proceedings under the Appellant Jurisdiction," &c., published in 1773, being very scarce, the Author prepared a work of the like nature, which was committed to the press; and what related to Appeals was nearly printed. But, owing to causes, which would be uninteresting to a Reader, if narrated, the completion was prevented, and the Author's labour was lost.

This was rather discouraging, and it was a great while before the Author resolved to re-commence the Work: still he never wholly abandoned it, but from time to

* This Gentleman's Preface is rather remarkable in its language: it represents Lord Apsley, the then Chancellor, as notoriously generous, liberal, &c.
time collected additional materials, with a view of one day completing it. This purpose, a long confinement, occasioned by severe bodily suffering, has unhappily afforded him leisure, and Divine Goodness has unexpectedly spared him faculties to accomplish, with considerable augmentation, and he hopes some improvement of the original performance.

Of late years, several instances have occurred, particularly in Irish Appeals, where the Lords have been prevented from proceeding to a final Hearing, owing to the defective mode of preparing the Cases, and bringing Causes before the House; which of course must have occasioned much delay and expence to the parties, besides the loss of that time which is of so much value to the Public as well as their Lordships. This has generally arisen from the want of proper information on the part either of the Solicitors in Ireland, or of those employed as Agents here, some of the latter having never been admitted as Solicitors in this Country. In former times, it seldom happened that Suitors were thus turned round, as such Agents were not then known. However, by due attention to the Instructions contained in the following pages, it is hoped that similar inconvenience will in future be avoided. In that case, the Editor's object will be attained. Sensible that he was not destined to become eminent, he will be quite content with the praise of being thought useful.

Having spoken of by-gone times, perhaps a further reference to them may be forgiven.

In the Author's early days, in the old House of Peers, often has he been delighted with the melodious accents, the charming eloquence, "the golden sentences" of the wise, the illustrious Mansfield, "so known, so honoured in the House of Lords." There he has also heard the fervid, but correct, and convincing oratory of his Lordship's
chief rival, the great Camden, both then in the calm evening of life, and gently descending into the vale of years; and there he had a few opportunities of beholding the departing rays of that grand political luminary, England's Demosthenes, the immortal Chatham. There too has he frequently attended to Judicial Opinions, delivered with all the logical precision, and unrivalled perspicuity of the profound De Grey (whose countenance was intelligence), notwithstanding his painful infirmities. At the bar of that House, many times has the Writer listened with admiration, to the acute, ingenious, and elegant pleading of Dunning, whose words flowed like a torrent; to the deep and sonorous tones, the peculiar, emphatic phrase, and the forcible arguments of Thurlow; and the strong and clear, the fluent and polished diction of Wedderburne,—then all in the meridian splendour of their vast powers,—while strenuously contending for the conflicting interests of their respective Clients! Nor should the Writer omit the experienced and energetic Forrester, or that “living library of legal knowledge,” the eccentric Serjeant Hill,* who often amused, and sometimes tired the House. All,—all of them long gone!† But to return from this digression.

The only Publications solely confined to Proceedings in the House of Lords, of which the Author is aware, are 1st, Mr. Urquhart's book before mentioned, which treats of Appeals, Writs of Error, and Claims of Peerage;

* It is told of Serjeant Davy, who was a man of much humour, that some person having mentioned Serjeant Hill as a living library, Davy replied, "Yes, of dead Law;" alluding to Serjeant Hill's knowledge of the old Black-letter Law Books, which he was constantly quoting.

† Respecting the eight very eminent lawyers named in this paragraph, it is remarkable that of six of them there is no descendant living, and no avowed literary production of any of them known to exist, except Mr. Forrester's Reports.
2d, a Work ascribed to Mr. Smith, W. S., of Edinburgh, and published in that city in 1821, entitled "Form of Procedure in the House of Lords upon Appeals from Scotland," which is but little known in London; 3d, "A Treatise on the Modern Practice in Appeals and Claims to Peerage," &c., by Mr. Sydney,* published in 1824. Mr. Urquhart's Work has been long out of print; and since his time there have been several alterations respecting Scotch Appeals, occasioned not only by new Orders, but by Acts of Parliament, particularly by the Stat. 48 Geo. 3d, c.151. It is moreover palpably imperfect in what respects Writs of Error. Mr. Smith's publication is a very judicious one, but it only relates to Appeals and Writs of Error from Scotland; and Mr. Sydney has entirely omitted Writs of Error, and all notice of the Statutes touching Scotch Appeals. More, it is presumed, need not be said, to justify another Work on Judicial Proceedings in the House of Lords.

The present Treatise, in which are comprised many things not to be found in other Works, consists of, 1, An Introduction, containing a History of the Jurisdiction of the House of Lords; 2, The Practice on Appeals; 3, The Practice on Writs of Error; 4, The Proceedings on Claims of Peerage, with a short Account of British Dignities.

Although the Editor has spared no labour, nor neglected any means in his power to render the Compilation correct, he cannot flatter himself that it is free from defects; for these he trusts that some indulgence will be made on the score of ill health and afflictions, and some placed to the account of three score years and ten.

The Editor has in general cited authorities for what he has advanced. In the few instances where this is omitted, he has diligently sought to be accurate. In his

* Now Sir William Robert Sydney, Knight.
quotations he has endeavoured to give the Substance and Effect in a compressed form, and the fewest words; otherwise he might easily have swelled his work to double its present size.

He is aware that parts of the Volume, and particularly the Notes, may be thought irrelevant to the purposes of a Practical Treatise. Granting this to be true, he will only remark that they occupy no great space; and, if of no other use, they may serve as an Index to matters elsewhere much dispersed; and though the Notes may be deemed digressive and superfluous by persons of experience and reading, yet to the junior part of his professional brethren, the Editor trusts they will afford Information not altogether useless; and being placed at the end of the Volume, they will not present any interruption in the perusal of the practice.

The Editor thankfully acknowledges his obligations to the venerable Mr. Chalmer, and those very respectable and intelligent Gentlemen, Mr. Mundell and Mr. Thomas, Parliamentary Agents, as also to the Gentlemen of the King's Bench Error Office, for useful Information received from each of them. Nor must he forget his grateful thanks to Mr. Walmisley, of the Parliament Office, for the readiness and kindness with which he has answered the Editor's enquiries; and it is peculiarly incumbent on him to confess how much he is indebted to Mr. Tidd, whose polite condescension is equal to his great acquirements, for that Gentleman's many obliging Communications, in reply to the numerous questions with which the Writer has taxed his patience.

December 24th, 1829.
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INTRODUCTION.

The expediency of a final Appellate Jurisdiction,* to rectify the Errors or unjust Decisions of inferior Courts, is too evident to admit of dispute; it is essential to the Interests of Justice, and no civilized State is without such a reviewing power. The only doubt can be, in whom it should be vested? That it should not be exercised by the first Magistrate alone,† will readily be allowed, when we consider how much it would occupy of that time, which is and ought to be devoted to national and political Affairs; and that however generally well informed a Prince may be, he cannot be supposed sufficiently conversant with abstruse and difficult Questions of Law, to form correct Opinions upon them. Indeed it would be an unreasonable, invidious, and therefore an improper burthen on the Sovereign.—To him belongs the more amiable Office of tempering the rigour of Justice with Mercy.

Hence the Constitution of this Country has wisely reposed this Authority in other Hands; namely, in the King in Parliament, in some Cases; and in others, in the King in Council. But by this it is not meant that his Majesty actually presides in person;‡ or in any manner interferes; but the King’s name is used, as he is the Fountain of Justice; and because the Authority of all those who are delegated to interpret and administer the Laws, is derived and flows from the Crown.

By Parliament, as the word is above used, is signified, according to the prevailing Opinion, the Lords Spiritual and Temporal assembled in their House, assisted by the learned Judges and other sage Persons, to which Tribunal Writs of

* See Note 1. † See Note 2. ‡ See Note 3.
Error and Appeals lie from the Courts of Common Law and Equity of the United Kingdom; while his Majesty's Privy Council is the Court of last resort for correcting the Errors of the Colonial Courts, and certain others which have a different species of Jurisdiction from the Courts of Law and Equity.

In the following Work it is intended to treat of Appeals and Writs of Error to the House of Lords only; by whom, either alone, or with the advice of the Judges and other learned Men, with perhaps a few exceptions, an Appellate Jurisdiction has been exercised over Judgments of the Law Courts from the commencement of our earliest legal Records, which reach back for 500 years; and a similar Jurisdiction over Decrees in Equity for nearly two centuries.

The House of Lords being a main branch of the High Court of Parliament, it may not be improper to say something of that August Assembly.

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OF THE COURT OF PARLIAMENT.*

This High Court, as at present constituted, consists of the King in his Royal Political Capacity, and the three Estates† of the Realm: viz. 1. The Lords Spiritual; 2. The Lords Temporal, both of whom, with the King, sit in one House; and 3. The Knights, Citizens, and Burgesses, who sit by themselves in another; although originally the whole Parliament sat together in the same Chamber.† The two former compose the Upper House, or House of Lords, and the latter the House of Commons, or Lower House; and the King and the three Estates together, form the great Corporation or Body Politic of the Kingdom, of which the King is said to be Caput, Principium, et Finis. For upon their coming together, the King meets them in Person, or by Representation, without which a Parliament cannot begin, and the King alone can dissolve it.—1. Bl. Com. 153, and the authorities there noticed.

* See Note 4. † See Note 5. ‡ See Note 6.
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The number of the Peers is indefinite; that of the Commons is now 658, viz. 513 for England, 45 for Scotland, and 100 for Ireland. From the reign of Henry 7. to that of Charles 2.* about 200 Members were added to the House of Commons.

This great body, the Parliament, has, in the language of our Law Writers, power and Jurisdiction so transcendent and absolute, that it cannot be confined either for Causes or Persons. It has Sovereign authority in the making, abrogating, repealing, reviving, and expounding of Laws, concerning all matters Ecclesiastical or Temporal, Civil, Military, Maritime or Criminal, as therein rests that absolute and despotic power which in all Governments must reside somewhere; and is the highest and greatest Court, over which none other can have Jurisdiction. In short, the Parliament has been, by a figure rather too bold, termed omnipotent.—1. Bl. Com. 159, 160, 4 Inst. 36, Sir M. Hale of Parl. 49.

Although the Jurisdiction of Parliament, both in Civil and Criminal Cases, is very ancient, yet in modern times this Supreme Court has not exercised any Judicial Functions in the ordinary sense of those words; for as to Acts of Attainder, and for inflicting pains and penalties, they are to all intents and purposes new Laws, enacted by Parliament in its legislative Capacity, and made pro re nata.—4 Bl. Com. 259.

In what manner or in what Cases the whole Parliament, in remote times, acted as a Court of Justice, is, we believe, at present very little understood.* It is presumed it must have been on very extraordinary occasions, when by the usual Course of administering the Law, relief could not be given, and has rarely happened since the Lords and Commons have ceased to sit together; but as the Constitution is now settled, and the powers of its component parts limited and defined, to bring a Suit of any description, whether original or by way of Appeal, before the entire Parliament, would at this day be utterly impracticable; nor can it be easily conceived how, in case of difference of opinion, a Decision could be obtained. And indeed, when it is considered, that the Union of legislative and

* See Note 7.
judicial power should ever be carefully avoided, such a Jurisdiction would not be desirable.

But there are several kinds of Judicature exerciseable by the two Houses, for the most part separately, though sometimes in Conjunction. The Lords have a Judicature for the Trial of Peers upon Indictments found by a Grand Jury; a Judicature for their Privileges, and for deciding controverted Elections of the Representative Peers for Scotland and Ireland. Further, there is a sort of Judicature exerciseable by the Lords over claims of Peerage and Offices of Honour, under references from the Crown. The Commons have a Judicature for their Privileges, and also as to Elections of their Members. There is a Judicature for Impeachments,* under which the Commons, as the grand Inquest of the Nation, first find the alleged crime; and afterwards, as Prosecutors, endeavour to establish it before the Lords. And the latter exercise the Office both of Judge and Jury in trying and deciding on the Accusation.—Hargrave's pref. to Hale's Jurisdict. of the Lords, 3, 4.

"The Lords," says Lord Chief Justice Coke, "in their House have power of Judicature, and both Houses together have power of Judicature; but the handling hereof, according to the worth and weight of the matter, would require a whole Treatise of itself; and to say the truth, it is best understood by reading the Judgments and Records of the Parliament at large, and the Journals of the House of Lords, and the Book of the Clerk of the House of Commons, which is affirmed to be a Record by Stat. 6., Hen. 8., c. 16."—See 4 Inst. 23.

What has been omitted by Lord Coke, has been in a great measure done by Sir Matthew Hale, in his Treatise on "The Jurisdiction of the Lords' House of Parliament considered according to Ancient Records," published by the late learned Mr. Hargrave, in 1796.

Besides the Judicature above mentioned, the House of Lords formerly exercised original Jurisdiction over Civil and Criminal Suits, as they still do an Appellate Jurisdiction in reviewing the Judgments and Decrees of Courts of Law and

* See Note 8.
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Equity. But the exercise of such original Jurisdiction has ceased for more than a Century.

An unanswerable Argument against the longer exercise of original Jurisdiction by their Lordships is, that it would preclude an Appeal to them; and there is no higher Tribunal, except the whole Parliament; but to this, as already observed, an Appeal would now be impracticable.

OF THE HOUSE OF LORDS AND ITS PRIVILEGES.

The Lords, as has been mentioned, are some of them Spiritual, and some Temporal. The Spiritual are the Archbishops and Bishops, being thirty in number, including the four Irish Representative Bishops. The Lords Temporal consist of Dukes, Marquesses, Earls, Viscounts, and Barons, Peers of England, whose number is unlimited, as the King can create as many as his Majesty thinks fit. At present it exceeds three hundred. Of sixteen Representative Peers of Scotland; and twenty-eight Representative Peers of Ireland. Although the ancient distinction between the Lords Spiritual and Temporal still nominally continues, and they are in the Eye of the Law separate bodies, yet in practice they are blended together under the name of the Lords, and intermix in their Votes; so that they are now in every effectual sense but one Estate.—1 Bl. Com. 156.

Although the Peerage consists of different Ranks or Titles, some of which are much more ancient than others (the highest not being the oldest), yet in respect of privilege all Peers are equal, as the word pares imports.

Bishops are only Lords of Parliament, and not Peers, for they are not of Trial by Nobility. Standing Order of 23rd May, 1628.—1 Bl. Com. 401.

The Peers are hereditary Counsellors of the Crown, and can

* And at the dissolution of Monasteries by Hen. 8., the Spiritual Lords consisted also of twenty-six Mitred Abbots, and two Priors; in all fifty-four, being equal to the then number of Temporal Peers.—1 Bl. Com. 155.

† In Lord Coke's time, the number of Temporal Peers was 106.—4 Inst. 1.
claim Audience of the King. They are, as before mentioned, a constituent part of the British Legislature, and have besides a judicial as well as legislative character. As Legislators, no Act can pass into a Law without their consent, that is, of a Majority of those who are assembled. In their House, as well as in the Commons, Bills may originate, except what are called Money Bills, which the Commons claim an exclusive right of proposing without being subject to alterations elsewhere, though it has never been formally allowed by the Lords, who, by an Order of 9th Dec. 1702, have declared that annexing any Clause to those Bills, the matter of which is foreign to the matter of such Bills, is unparliamentary, and leads to the destruction of the Government. All bills, on the other hand, respecting the Peerage, must by custom of Parliament, begin with the Lords, and suffer no change in the Commons.—1 Bl. Com. 168. Private Bills, too, such as those for Divorce, Inclosures, &c. generally take their rise in their Lordships' House, because of their power to administer an Oath, which the House of Commons does not possess. In the House of Lords Parliament is opened and prorogued; and in it the Royal Assent or Fiat is given to Acts, by which they pass into Laws, the Commons attending at the Bar.

The Lords have a right to be attended in their House by the Judges and high Officers of the Law, and have many other privileges. They give their Verdict, and put in Answers in Suits, upon their Honour, and not upon Oath; though when examined as witnesses, either in Civil or Criminal Cases, in the inferior Courts, or on Impeachments in the High Court of Parliament, they are sworn, as they are also to Affidavits.—1 Bl. Com. 401.

The persons of Peers, and of their Widows (except Widows of Bishops), and the persons of Peeresses in their own right, are protected from Arrest, in all Civil Suits, either in the first instance, or after judgment, except on judgments on a Statute Staple, or Statute Merchant, or on the Statute of Acton Burnel. Tidd. 121. 11 Edw. 1. Nor are they liable to be attached for non-payment of money, though they are not exempt from an
attachment for not obeying the process of the Courts.—Tidd, 192. But if the Widow of a Peer, not being a Peeress by birth or creation, marries a Commoner, she loses her privilege, so that after his death she may be arrested for debt as a common person, 1 Bl. Com. 401, and the authorities there cited.

Peers are also privileged from being sued in the Marshalsea or other inferior Courts.

The Officers and Attendants on their Lordships' House are also protected from Arrest for Debt, at least while in attendance on their duty. Not many years ago, a Doorkeeper having been arrested, the Writer of this, by the advice of a noble and learned Lord, gave the Attorney and Under Sheriff notice of an application to the House, upon which the Defendant was discharged.

Formerly, the Domestics, Lands, and Goods of Peers were protected; but, much to their Lordships' praise, this privilege was relinquished, and taken away by the Act of 10 Geo. 3. c. 50.

Peers of Scotland and Ireland are also protected from Arrest on Civil process, whether returned representative Peers or not. —Acts of Union, 5 Anne, c. 8. art. 23.—39 and 40 Geo. 3. c. 67. art. 4.

Peers cannot be imprisoned (save by their own House, and as above mentioned), but for Treason, Felony, Breach of the Peace, or refusing to give surety for the Peace.—Standing Order of 18th April, 1626. Nor can they be compelled to attend the House of Commons, nor to answer any Accusation of that House in Person or by Counsel.—Order of 20th January, 1673. 1 Bl. Com. 97.

The Nobility in Criminal Cases, that is, in Treason, Felony, and Misprision of Treason, are to be tried by their Peers;* but in Misdemeanors they are tried, as Commoners are, by a Jury, 1 Bl. Com. 401.; and the Trial of a Peer can only be in full Parliament.—Order of 14th January, 1689.

They can only be bound over in the Court of King's Bench or Court of Chancery.—4 Bl. Com. 253.

By Stat. of 1 Edw. 6. c. 12. Peers are entitled to the benefit

* It is said this does not extend to Bishops.—1 Bl. Com. 401.
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of the Peerage in Criminal Cases, which is equivalent to the benefit of Clergy.—4 Bl. Com. 367. Upon the Conviction of a Peeress for Bigamy, it was the unanimous opinion of the Judges, that Peeresses were intitled under that Statute, like Peers, to the privilege of Peerage, and ought to be immediately discharged without burning in the hand or suffering any punishment.—Duchess of Kingston's Case, 11. St. Tri. 264. 4 Bl. Com. 367-8, Note.

Peers are exempted from serving on Juries (6 Geo. 4. c. 50.) and from attendance on Courts Leet and Sheriffs' Tourns.—4 Bl. Com. 273.

By Stat. 21 Hen. 8. c. 13. Peers and certain Officers of State, and other great Persons, have power to appoint Chaplains, which gives them a right to hold pluralities without incurring the penalties for non-residence.

By an ancient privilege, every Lord, in passing through the King's Forests, is intitled to kill one, or two, of the King's Deer, a privilege, it is believed, now seldom if ever exercised. —1 Bl. Com. 167.

Peers intitled to sit and vote in the House have, by Act of Parliament, the privilege of Franking, viz. of sending ten, and receiving fifteen letters daily, not exceeding one ounce weight each, free of postage, during the continuance of every Parliament, whether it be sitting or prorogued. It ceases with a Dissolution, but recommences forty days before the day for which the new Parliament is summoned. The Members of the House of Commons have a similar privilege while they are in Parliament, but no longer. This privilege was formerly unlimited, both as to number and weight of letters.

The honour of Peers is so highly esteemed by the Law, that scandal against them is esteemed scandalum magnatum, and is subject to peculiar punishments by several Statutes.—1 Bl. Com. 401.

By the Stat. of 31 Hen. 8. c. 10. the mode is declared in which the Peers and great Officers of State are to take their places and sit in the House of Lords, and the Order of Precedence established.
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The Lords do not send messages to the Commons by their own Members, but generally by Masters in Chancery, some of whom constantly attend the House. On important occasions, particularly when the Royal Family are concerned, the Judges are the Messengers. But messages from the Commons are brought by Members of that Body.—Order of 5th April, 1707.

Conferences between the two Houses are held in a room distinct from both, called the Painted Chamber, on which occasions the Lords are covered, but not the Commons.—Standing Order of same date.

A Peer can not lose his Nobility but by death or attainder, though there was a singular instance of it in the reign of Edward 4, when Nevile, Duke of Bedford, was degraded on account of his poverty; but this was by Act of Parliament.—1 Bl. Com. 402.

A Minor under twenty-one cannot sit in either House of Parliament; and by the Stat. 12 and 13, W. 3, c. 2, no Alien, even though naturalized, is capable of being a Member of either House; and it is said, that if any Person is made a Peer, or elected to serve in the House of Commons, yet the respective Houses may, upon complaint and proof of a Crime, adjudge him disabled and incapable to sit: and this by the Law and Custom of Parliament.—See 1 Bl. Com. 162-3, and the Authorities there mentioned.

It has been said, that a Peer may sit covered in a Court of Justice; but if this privilege exists, it may be doubted whether it extends to the Court of King’s Bench, for the King is supposed to sit there in Person, and a Peer cannot be covered in the Royal presence. Lord Melville, when the impeachment was moved against him, sat covered in the House of Commons.

It is declared a breach of privilege for any person to print or publish any thing relating to the proceedings of the House without leave.—Order 27 February, 1698. Or to print the Works, Lives, and Wills of the Lords without consent of their Representatives.—Order of 31 January, 1721.

The Lord Chancellor or Lord Keeper (whose authority is
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the same*), is by prescription the Prolocutor or Speaker of the House of Lords. In his absence, if no Person is authorized under the Great Seal to supply his place, the House choose their own Speaker.—Order of 9 June, 1660. The Speaker has no authority beyond any other Lord in maintaining Order in the House, nor has he any Voice or Vote when he is not a Peer.—3 Bl. Com. 47. And has not, when a Peer, a casting Vote as Speaker, his Vote being counted with the rest of the House, but he may, and usually does take a part in Debates, which is not the case in the House of Commons, where the Speaker does not take any share in Debates, nor does he Vote unless the numbers are equal; and in case of an equality of Votes in the Lords, the non-contents or negative voices have the same effect as if they were a majority.—Semper prae- mitur pro negante.—Lords' Journ. 25 June, 1661. Lord Mountmorres, vol. 1. 105. Hence the mode of putting the Question on Appeals and Writs of Error is this—"Is it your Lordship's pleasure that the Decree or Judgment shall be reversed," for if the Votes are equal the Decision of the Court below is affirmed.†—1 lb. 11. 81.—1 Bl. Com. 181, Note.

In Voting, the puisne Lord begins first, and every Lord in his turn rises and says, Content or not Content.‡ On a Division the Contents go below the Bar; the Non-contents remain in the Body of the House.—Standing Orders of 30 March, 1670.

Peers have the privilege of appointing other Lords as Proxies to Vote for them when absent—1 Bl. Com. 168; but this is allowed only when they sit as a House, and in Matters of Legislation, Proxies not being admitted in Committees, nor in judicial Causes.

* It is said, that the difference between a Lord Chancellor and a Lord Keeper is this,—the former has Letters Patent, the latter none.

† So on a motion in Arrest of Judgment in the Courts of Law, if the Judges are equally divided, the Judgment will not be stayed, but will be given for the Plaintiff. But should a Rule to shew Cause be granted, and the Court be afterwards equally divided as to making it Absolute, no Judgment can be given.—1 Salk. 17—1 Str. 87.

‡ The Commons say Aye and No.
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The Commons do not possess this privilege, being themselves only Deputies, and therefore not competent to delegate their power.

Peers may also enter Protests against Proceedings of which they disapprove.—1 Bl. Com. 168.

Three Lords make a House. Prayers are always read before they proceed to business.

Five Lords make an Appeal Committee, and a Committee on private Bills, and these are held in the Committee Rooms.

Seven make a Committee of Privileges, which is always held in the House before Prayers.

OF THE JURISDICTION OF THE HOUSE OF LORDS.

The Jurisdiction of the House of Lords, as exercised within the last two centuries, has been a subject of much and warm controversy, not only among celebrated Lawyers and Antiquaries, but between the two Houses of Parliament; and whoever wishes to learn the early history of that Jurisdiction, as far as it can be ascertained, and of those disputes (long happily subsided) to which the subsequent exercise of it has given rise, may have his curiosity gratified, and will moreover derive much information on a subject involved in great obscurity, namely, the origin and progressive formation of our principal Courts, by consulting Sir Matthew Hale's Treatise, already mentioned, and Mr. Hargrave's very learned and elaborate Preface introductory to that work.

According to Lord Chief Justice Hale, the Jurisdiction of the House of Lords may be traced up to the Consilium Regis Ordinarium for its commencement. He contends that their Lordships had no inherent Jurisdiction over Appeals from Courts of Equity, any more than over Judgments of Courts of Law, and that they were not, nor are the legal dernier resort in any case, the power of final decision being in his opinion lodged in the King and both Houses of Parliament; and that profound
Lawyer, impartial Judge, and excellent Man,* maintains this opinion throughout his Treatise, in which he has with great labour traced the Origin of our Courts as far back as Records were to be found.

The Writer of this will endeavour, in a small compass, to give in substance the Result of Lord Hale's researches, the conclusions which he has drawn, and the plan proposed by him for the establishment of a Court of Appeal, together with the manner in which the Contest between the two Houses terminated, as narrated by Mr. Hargrave; which will be followed by the Opinion of Sir William Blackstone and some other eminent Authors, on the Origin, and in defence of the legality and expediency of the Jurisdiction of the House of Lords. But first it may not be improper to specify the several Courts and Councils described by Lord Hale, who, it is remarkable, has not in his Work once mentioned the "Aula Regis."

Summary of Lord Hale's Treatise on the Jurisdiction of the House of Lords.

After stating what cannot be denied, that all Jurisdiction in this Kingdom, as well in matters Ecclesiastical as Civil, is originally derived from the Crown, Lord Hale proceeds to notice the various Sorts of Courts, and the different Councils of the Kings of England.

1. Their Consilium privatum et assiduum, now commonly called the Privy Council, consisting of Select Persons of the Nobility, and the great Officers of State.

2. The Consilium ordinarium, called in Acts of Parliament Consilium Regis, which in ancient times generally consisted,
   1. Of the Privy Council. 2. The great Officers of State, as the Chancellor, Treasurer, Lord Steward, Lord Admiral, Lord Marshal, Keeper of the Privy Seal, Chancellors to the Exchequer and Duchy, who were likewise commonly of the Privy Council. 3. The Master of the Wardrobe, Treasurer

* "That pattern of judicial ability, learning, and integrity."—Hargrave's pref. 168.

"Sir Matthew Hale was eminently skilled in the Antient Records of this Country."—Report of the Lords' Committees on the Dignity of a Peer.
and Comptroller of the Household, and the Chamberlain of the
Exchequer. 4. The Judges of both Benches, Barons of the
Exchequer, Masters in Chancery, the King’s Serjeant and
Attorney General. 5. Sometimes were added the Judges
itinerant, Master of the Rolls, and others of ability and experi-
ence. But the whole of this Body was not assembled except
on great occasions, the Chancellor and Judges only being called
together when the advice concerned matters in Law.

3. Besides this Consilium Ordinaria, there was the Magnum
Consilium, or the Lords spiritual and temporal, which had
the former annexed to them; and this was of two kinds, a
Magnum Consilium out of Parliament, and a Magnum Consi-
ilium in Parliament. The former was called on emergent occa-
sions. Sometimes a few of the Prelates and Nobles were
summoned; at others they and the Consilium ordinaria were
called; and also Knights of Shires, Citizens, and Burgesses.
But this Magnum Consilium had no legislative power or juris-
diction.

These grand Councils have been rarely summoned. The
only one in Lord Hale’s remembrance being that at York, on
the coming of the Scots.

The second Magnum Consilium was the Lords’ House in
Parliament, who usually had joined with them the Consilium
ordinaria, but the name was sometimes applied to both
Houses of Parliament.

4. There is also the Commune Consilium, which consists of
both Houses of Parliament, and which, with the King, is the
highest and greatest Court in England; and the constituent
parts of the two Houses are the three Estates, viz. the Secular
Lords, the Spiritual Lords, and the Commonalty, of which
three Estates the King is the Head. Hence it is clearly erro-
neous to consider the King as one of the three Estates of the
Realm, as Lord Hale makes manifest from the Rolls of Par-
liament.

Lord Hale sets forth very minutely the various Styles, not
only of the different, but of the same Courts or Judicatures,
and the changes they underwent; whence it appears that there
is great uncertainty and ambiguity in the ancient use of the words Consilium Regis, Coram Rege et Consilio, Coram Rege in Parliamento, Coram Nobis in Parliamento, Plenum parli-mentum, Coram Consilio in Parliamento, &c. &c. The latter sometimes meant the Consilium ordinarium; sometimes the Lords and Commons; sometimes the Lords alone, and sometimes the Lords and Consilium ordinarium in conjunction.

Lord Hale observes, that different opinions have prevailed respecting the Consilium Regis ordinarium, some thinking it the most ancient Court next to the Parliament; that in it was lodged the plenitude of all civil jurisdiction, and that it was the Mother of all the present four great Courts of Westminster; while others have thought that those Courts were the primitive jurisdictions next under the Parliament, and were called to be Members of that Council, which of itself had no coercive jurisdic-\*tion; that the ordinary jurisdiction belonged to those Courts, and that the supreme appellate jurisdiction was in the King and the two Houses of Parliament; but he says the subject is too obscure to be ascertained, and he confines himself to what appears of Record.

He then proceeds to shew the powers exercised by the Consilium Regis at different periods, sometimes in conjunction with the Lords,\* and sometimes exercising original jurisdiction alone, until the erection of the Star Chamber in the third year of Henry 7, but remarks that the Commons complained of such exercise as illegal.

He states that though some ancient Records in the time of Edward 1, and before, tell us of the Reversal of Judgments by Writs of Error Coram Consilio Regis, yet they were either before the Lords' House, or the King's Bench, in both of which the Consilium Regis were Assistants; and he gives several instances of Writs of Error where, by the like words, the Lords' House was meant.

He notices the relation of the Consilium Regis to the Courts of Chancery, King's Bench, and Exchequer, and proceeds to consider its relation to the House of Lords. Though much of its

\* See Note 9.
ancient power was altered, yet in the great Court of Parliament the model of it was preserved, for thither were summoned the great Officers of State, the Judges, &c. And at length, in the time of Edward 3. the Consilium became only Assistants to the Lords, though previously, in conjunction with the Lords, they had power to proceed in Errors on Judgments, until, by degrees, that power was appropriated to the Lords.

He next considers the Jurisdiction of the House of Lords, first in their legislative capacity, which it is needless to detail further than observing that in this respect they had Jurisdiction in two matters, namely, of Breach of Privilege, and Trials of Peers for Treason and Felony: and secondly, as the Magnum Consilium, consisting of a Junction of the Lords and the Consilium Regis. In this capacity they did in the time of Edward 1. de facto exercise Civil and Criminal Jurisdiction. He says the Consilium Regis, great Officers, Judges, &c. at first gave their Suffrages with the Lords, but that the latter gained ground on the Consilium, especially in the time of Richard 2. and downwards, and assumed the authoritative Jurisdiction, and called in the Judges and Consilium as Assistants. He adds that the King's consent in matters of contentious Jurisdiction was frequently given. He admits the Lords did de facto, as well anciently in concurrence with the Consilium, as since the latter became Assistants, take Cognizance of Causes in the first instance, which he considers as against Law, and that they took Cognizance of Causes adjourned to their House by Writ of Error.

He refers to Rol. Parl. 2. H. 6. by which it is provided "that Matters terminable at Law shall be remitted thither, but if the Council see too great Might on the one side, and of Unmight on the other, then they might directly interpose, that suits might be fairly carried."

He next treats of the Lords' criminal Jurisdiction, which it is not requisite to state particularly; but it may be observed, that it was frequently exercised in Cases of great Riots, or where by the outrageous oppression and violence of men of power the proceeding of the Common Law was obstructed, which by the
Interposition of the Lords' House was removed. He then considers their exercise of Jurisdiction in original Causes, as they concerned the King and private persons, which need not here be set forth.

He next considers the Jurisdiction of the Lords' House in Causes begun in other Courts. Some of these were Causes begun but not determined in the Court below, and sent to the Lords by adjournment; others were removed by Petitions or Writs of Error after Judgment. Of the first there were many instances in the time of Edward 3. Some, of such moment that they were referred to both Houses, as directed by the Stat. of Westm. 2 (14 and 15, Edw. 3.), but afterwards these adjournments were to the Exchequer Chamber. He goes on then to state, out of what Courts, and into what Courts Records may be removed; and observes that if Judgments be given by a Court having none superior to it but Parliament, the Writ of Error lies there; but if there be an intermediate higher Court where Errors can be examined, the Appeal is not to go per saltum into Parliament. He says that if a Judgment is given in full Parliament (viz. by the King and both Houses), it can only be reversed in pleno parliamento. But if a Judgment be given in the Lords' House, a Writ of Error lies in another, or possibly in the same Session.

Anciently, he observes, there were two Courts for examining Errors, the plenum parliamentum, and the curia parliamenti. The former extraordinary, because in latter ages much disused; the latter ordinary, it being the method then mostly, if not altogether in use. Of the former he gives instances in the time of Edward 3; but they were chiefly cases of Attainder, and they were upon Petitions. He finds only one instance of a Writ of Error (1st. Hen. 7), returnable in pleno parliamento, and there the Judges were of opinion the Commons had no Voice.* And says, that from the beginning of Rich. 2, downwards, there are no instances of Writs of Error before both Houses, except that just mentioned, which is encountered by the opinion of the Judges; and he notices that the Judicature of the Lords

* See Note 10.
was admitted by the Commons in the Parliament of 1st Hen. 4.

Lord Hale then comes to consider the methods of prosecuting Writs or Petitions of Error in the Lords' House, and contends, that though Writs of Error in the Ordinary Courts are Breve de Cursu, yet a Writ of Error in Parliament should not be granted without a Petition to, and a Bill signed by the King; for which he assigns several reasons, such as the Delay to parties, that the time of the Lords, who are occupied in State Affairs, should not be taken up with trivial and inferior matters, and because the Judges of the King's Bench are persons of great learning. Hence their Judgments should not be examined without due consideration and advice; and he observes, that there is no precedent of a Writ of Error in Parliament in the Register, as Application to correct Judgments was originally by Petition, though Writs of Error have been generally used since Edward 4.

In ancient times, Petitions of Error were variously directed; to the King, to the King and his Council, or to the King and his Council in Parliament, &c. From the beginning of Henry 4, the Prayer of the Petitions usually was, to remove the Record before the Prelates and Lords in Parliament; and this, he says, was because the Lords wished to exclude the Commons, and also the Consilium ordinarium, from a Voice: and he notices, that though the removal was to the Lords' House, the King often committed the discussion of the Errors to a select number of Lords and Judges, and sometimes of Judges alone.

He observes, that Writs of Error superseded the mode of Petition, but when this happened does not exactly appear. That though to some purpose the Writ was made out as of course, it ought not to pass without a Petition and the King's Signature; and this obtained till the long Parliament, when, owing to the King's absence, the then Attorney General granted his Warrant for the Writs of Error in Parliament, which practice prevailed since the Restoration, but which Lord Hale says was erroneous, and ought to be reformed.
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After noticing the ancient mode of removing the Record into Parliament, he treats of the Persons by whom Judgment is given in Parliament. The King, he observes, is a Party to the Judgments, which is entered Consideratum est per Dominum Regem ex Assensu Magnatum, &c. If a Writ of Error were before both Houses, as anciently had sometimes been the case, then both Houses must have consented to the Judgment, or nothing would be done; but such Writs, he observes, had been very long out of use. When the Writ is returnable before the Lords as now in use, the Judgment is by the Lords, sometimes per Curiam, or in Curia Parliamenti, and is by a majority of Voices, of which Lord Hale complains as a grievance, their Lordships not being acquainted with Municipal Laws; whereas, formerly, even after the decay of the Consilium Regis, the decision was by a select number of Lords and Judges* named by the King. This course, he thinks, would greatly dispatch business, and avoid the inconvenience of determining matters of Law by those, many of whom are strangers to Judicial Proceedings.

He next treats of the Execution of Judgments on Writs of Error; of superseding Writs of Error; and of the effect of Prorogations and Dissolutions, which it is not material to notice here; and he gives instances of Petitions of Error appearing in the Parliament Rolls from the beginning of Edward 3 to the 10th Henry 6. Several of these Petitions were returnable in full Parliament, and mostly relate to Attainders; but they might have been, and probably most of them were, decided by the Lords only. Among them are some brought upon Judgments in former Parliaments; and there is one to the Lords in the 8th Henry 6 by the Prior of Lanthony, against a Judgment of the Irish Parliament, in reversal of a Judgment in the King's Bench in Ireland.

He maintains, that at no period were Errors in Judgments examined by any Court without the King's Writ or Commission.

Lord Hale then goes on to treat of Appeals from Decrees of

* See Note 11.
Courts of Equity, and the Jurisdiction of the Lords in relation to them. The Jurisdiction of the Court of Chancery in Causes in Equity, he observes, was not very ancient, though it had de facto obtained such an ample Jurisdiction as nearly to swallow up the Courts of Law. The consequence of this late arrival to such Jurisdiction is, that ancient Precedents are not to be found of Appeals.

He observes, that the modes of rectifying erroneous Decrees had been, 1. By a Rehearing. 2. By Bill of Review. 3. By Petition or Appeal to the King, praying for a Rehearing before the King himself, or Commissioners, upon which a Commission issued under the Great Seal, to some of the privy Council and Judges, which, he says, was the regular and legal mode; but it was attended with great charge and delay. Those Commissions issued in or out of Parliament, and if a Petition of Appeal to the King was answered by him, the Answer would of itself be a Commission; and a reference of the Petition to the Lords in Parliament, or to the Judges, &c. would give as full a Commission to determine it as if it were under the Great Seal.

He then comes to what he considers the true Question; namely, whether the House of Lords has, by an inherent Jurisdiction, power without any Commission or Delegation, to hear Petitions against Decrees in Chancery [which Question must also apply to Decrees of the Exchequer, though not mentioned by his Lordship]. He here states the reasons for and against such Jurisdiction; and though he admits that there should be the means of reforming Errors in Decrees, and that the Law and Government would be defective without it, he contends that the House of Lords has no radical power to do it without the King's Commission, as there is no Jurisdiction in this Kingdom but what is derived from the Crown; and that, as the Lords cannot examine Judgments without the King's Commission (which is given by a Writ of Error), so neither ought they to exercise a Jurisdiction over Decrees in Equity without a similar Delegation or Commission from the Crown.

He then proceeds to consider the Precedents of the exercise
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of the Appellate Jurisdiction by the House of Lords, which commenced in the 18th year of James 1, and had its rise from what must ever be lamented, namely, the iniquitous Decrees of that mighty Genius, that greatest of Philosophers; but most corrupt Judge, Lord Chancellor Bacon, whose Decisions, Lord Hale says, were easily set aside. The earliest Petition of Appeal (viz. that in which the word Appeal first appears on the Journals of the House), was in the Parliament of 18th James 1. Before that time the usual Course for the revision of Decrees was, either by a Rehearing, a Bill of Review, or by Petition to the King, on which a Commission issued to examine the Decree. And even in the Case alluded to, and in several in the next Reign, the reversal of Decrees by inherent Jurisdiction was not known; and he gives an instance, 21st James, where, upon an Appeal in the Case of Mathew v. Mathew, the House directed an Application to the King by the Lord Keeper, for a Commission to be directed to himself and certain Lords and Judges, for reviewing the Cause in Chancery. This, he says, was the true and regular way, and holds analogy with the reversal of Judgments; though he observes, that those Commissions did not issue so often as they otherwise would, on account of the great expense and delay; and he decidedly concludes against an inherent Jurisdiction in the Lords without authority from the Crown.

He observes, that in matters of Equity there is often a great diversity of opinion* among learned men, and asks what must be the uncertainty when a hundred or more are the Judges? He lastly alludes to the danger of private Applications, and the influence of Friends and Relations, among such a multitude of Judges.

He then proposes a remedy that would, he thinks, preserve the Rights of the Crown, the Security of the Subject, and the Dignity of Parliament, viz.

That the appointment of Triers of Petitions, which was done by the King on the first day of a Session, might not be a mere formality. He suggests that a select number of Lords spiritual and temporal, with the Judges, should be appointed and com-

* Not more assuredly than in matters of Law.
missionated under the Great Seal, to whom Petitions for the Reversal of Decrees should be referred; and the like for examining Judgments on Writs of Error, omitting the Judges of the Court whence the Record was removed. 2. That all Petitions for Reversal of Decrees should be, as they were anciently, directed to the King, or the King and Council; and if they should not be determined in that Session, then that there should be a special Commission to the Triers to examine them, and that the Judges should not only be assistants, but should have authority to assent or dissent.

This, he says, would suit with the ancient form of the Lords' House in reversing Judgments; would prevent the mischiefs that may happen from determining Causes by the Vote, perhaps of one person, who may not be a competent Judge; would preserve stability in proceedings, and is consonant to the true interest of Justice; and Causes might receive a determination, though the Parliament should not be sitting.

He maintains that the high Court of Parliament, consisting of the King, Lords, and Commons, is the dernier Resort. That if this were in the House of Lords, there also would be virtually the legislative power.

What he proposes would also prevent the whole House being prejudicated by their own Judgment, and leave them free to give their opinion to the whole Parliament.

Having given a Summary of Lord Hale's Treatise, which was written shortly before his death (his Lordship died in the latter end of 1676), it may, we think, be observed, that it appears to be, almost throughout, a conflict between Theory and Practice; for while he denies the right of the Lords to exclusive Appellate Jurisdiction, he shews that in fact they exercised it from the earliest date of which there are legal Records.

The further result or inference to be drawn from Lord Hale's Work seems to be, that anciently the House of Lords or Magnum Consilium, sometimes alone, and sometimes in conjunction with inferior Courts, exercised original as well as appellate Judicature, both in civil and criminal Cases, especially
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in Matters of great importance and moment. The Constitution was then in its infancy, the power of the Crown had hardly any Limits, the Laws were imperfect, and their execution more so. The Jurisdiction of the different Tribunals was not distinctly marked and fixed. The ordinary Courts were in many instances comparatively powerless, and unable to repress great public offences, or to punish enormous delinquents. Hence it became necessary to resort to a more potent Body, who on some occasions united or mixed* the power of the Legislator, with the office of the Judge. In short, it was often found needful to exert "a Vigour beyond the Law." In those times, too, the extreme inequality between the higher and the lower Classes, rendered it difficult to obtain an even-handed dispensation of Justice; and this naturally led individuals to seek for redress of Wrongs in a quarter the least likely to be biassed by influence, or tainted by corruption. But as Causes cease, so will Effects. When property became diffused, the people grew more independent, and enlightened; the Laws were better administered, and it was no longer requisite to call in the aid of an extraordinary Forum further than as a Court of Appeal.

We shall now give an Abstract of Mr. Hargrave's Preface, which was prefixed to Lord Hale's Work, and published with it in 1796.

Summary of Mr. Hargrave's Preface.

Mr. Hargrave observes, that the printed Parliament Rolls begin with the 6th of Edward 1 (about 1278), from which period to the end of Henry 4 (1413), they record a great variety of judicial matters, civil and criminal, and are full of Petitions and Writs of Error.

After that time, though the Form of the King's appointing Receivers and Triers of Petitions at the beginning of each Session, which may be traced as far back as the 33rd of Edward 1, and is still adhered to, was continued, yet the exercise of Jurisdiction over Causes gradually fell much into disuse, and

* See Note 12.
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Lord Hale concludes his instances of Writs of Error with one in the 10th of Henry 6, (1432). Mr. H. observes, that the Report of the Lords' Committees in 1791, on the impeachment against Mr. Hastings, scarce supplies any instance of the Judicature of Parliament between the Accession of Henry 5, and that of James 1. The chief, or only instances of legal Proceedings in civil Causes during that period, are two Petitions of Error in the 27th and 30th of Elizabeth, preferred to the Queen, and signed by her; so that from the 3rd of Henry 5, until the third Parliament of James 1, 1620, being nearly two centuries, there was but little exercise of Jurisdiction in Parliament. That Parliament was much occupied in criminal Proceedings. There had been previously an interval of six years (from 1614) without any Parliament, during which time there was a great accumulation of grievances, and much corruption in the administration of Justice, which called into action the long dormant criminal Judicature of Parliament; but no controversy on that subject arose between the two Houses; upon which Mr. Hargrave observes that the Lord's being confessedly Judges in Impeachments, were easily led to attribute to themselves Judicature in other Cases, though he makes a distinction between their judging where the Commons call upon them to judge, and precedents warrant it, and becoming Judges by their own Acts, without the participation of the King or the Commons.

In that Parliament, viz. the third which met in Jan. 1620, the Lords exercised, as before observed, criminal Jurisdiction in several instances, particularly in that of Lord Chancellor Bacon, to which the Commons were Parties. And it appears that the Commons were themselves disposed to follow the example of the Lords, having gone so far as to fine a Mr. Floyd, a Roman Catholic Barrister, £1000 for a Libel. But the Lords having questioned the Power of the Commons, and having sent to them the Roll of 1st of Henry 4, by which the then House of Commons acknowledged the Judgments of Parliament to belong to the King and Lords, the Commons waived the Sentence, but under a Protest; upon which the Lords took up the Prosecu-
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ition against this Gentleman, and passed a Sentence of much greater, indeed of excessive severity, including Fine, Pillory, Whipping, and Imprisonment, insomuch that the Lords themselves suspended the execution of it.—Com. Journ. 1621.—Lords' Journ. 1621.

With respect to Civil Judicature, the Lords soon afterwards exercised it in several Cases, independent of the King and Commons. Mr. Hargrave then gives a statement of the Case of Sir John Bourchier v. Mompesson, in Chancery, in which the term "Appeal" was first used in Applications to the Lords. The result of this proceeding was, that upon a reference to a Committee, a Report was made, that the word Appeal was not usual, and that all matters complained of were by Petition, the Form of which was to the King and his Great Council, and the Complaint was dismissed. Hence Mr. Hargrave infers that the Lords then declined to exercise Appellant Jurisdiction over Decrees in Equity, though they had no difficulty in exercising Jurisdiction over Suits at Law, under the delegation of Writs of Error, of which there are several entered in the Journals in 1620 and 1621.

It seems that a Controversy was now beginning on the subject of their Lordships' Jurisdiction; and Mr. Hargrave notices several Publications by Mr. Selden and others on the subject; and here he observes that Parliamentary Judicature cannot be comprehended without understanding the ancient mode of disposing of Petitions by Receivers and Triers, which he thought was still open to any person at the beginning of a new Parliament, by presenting a Petition, to call into Action and resuscitate, or put to the Test.

Mr. Hargrave then proceeds to notice instances in which the Lords, in the year 1624, exercised Jurisdiction in Cases of Misdemeanor, upon the complaint of the Commons, and that they claimed a right to impose Fines.*

He observes, that before this time it had become the habit to make Writs of Error returnable before the Lords, without the Commons, who were formerly mentioned. But the Lords did

* See Note 13.
not confine themselves to Writs of Error, but made Orders on
Petitions of original complaint between Party and Party, by
referring the matters of such Petitions sometimes to particular
Lords, and sometimes to the Judges, or other Assistants of
their own; thus applying to themselves alone what they found in
the Placita Parliamentaria, in the time of Edward 1, but they
still abstained from the Appellant Jurisdiction over Decrees in
Equity.

Mr. Hargrave adverts to the Case of Mathews v. Mathews,
in May, 1624, where one of the Parties petitioned the Lords
against a Decree in Chancery, which was referred to a Com-
mitee; but upon a Petition from the other Party, the House
ordered the Cause to be reviewed by the Lord Keeper, assisted
by certain Lords and two Judges, and added, which Mr. Har-
grave notices emphatically, "that for such end the Lord Keeper
was to be an humble Suitor to his Majesty from the House, for
a Commission to himself and the Lords that should be named by
the House for such Review;" which Commissioners, Mr. Har-
grave says, were of ancient origin, though discontinued since
15th Car. 1. As a further proof of the doubt entertained by the
Lords as to their power of reversing Decrees, he mentions Bills
for that purpose having been brought into Parliament, though
it is not said that they passed.

In the first Parliament of Charles 1, there was little judicial
business. In his second Parliament there were several criminal
Proceedings before the Lords, some of which have been con-
sidered as against Law. The civil Cases, though but few,
show that the Lords persevered in claiming original Jurisdic-
tion, and a power of Delegation; and that they exercised Ap-
pellant Jurisdiction over Courts of Equity, so far as ordering a
Case to be heard at the Bar, but before the day, Parliament
was dissolved.

In the third Parliament of Charles there was little criminal
Jurisdiction; but in one of the cases they exercised original
Jurisdiction over a Misdemeanor, not connected with privilege
or Impeachment. There were many Civil Cases, and Mr.
Hargrave says the Lords were making advances towards Juris-
diction Original and Appellant, over Causes spiritual as well as temporal. Yet, as evidence against the exercise of Appellant Jurisdiction, there were three Bills depending for the reversal of Chancery Decrees, when Charles's fourth Parliament was dissolved.

After an interval of eleven years, the fifth Parliament met, in which, it having continued a very short time, there was no business of Judicature. This was, in 1640, succeeded by the long Parliament; and in the boisterous period that followed, there were few precedents of any kind, says Mr. Hargrave, that can be trusted. Judicature was left to the Lords, and the powers of Government to the Commons, till, by the King's death, Monarchy and Aristocracy were abolished; but while the Lords continued, they exercised Original and Appellant Jurisdiction in Equity and at Law; punished Misdemeanors, awarded Damages, and invaded the province of Judge and Jury. He observes, that the first direct reversal of a Decree was in February, 1640-1; but remarks, that from such a period no precedents should be drawn.

During the Interregnum Writs of Error, and Commissions to Delegates, supplied the place of the Appellate Jurisdiction.

Mr. Hargrave notices the writings of the famous William Prynne in support of the Lords' Jurisdiction, and objects to him that he ascribes to them that Judicature which Lord Hale attributes to a Council of the King in Parliament, distinct from the Lords and Commons, and subordinate to both.

Upon the Restoration, and during the Convention Parliament, there were not only numerous Petitions of Appeal, but of original complaint, addressed to the Lords, who made judicial Orders in as great latitude as during the Civil Wars, at which the Commons began to be dissatisfied; but it was in the next Parliament that the great disputes took place between the two Houses respecting Parliamentary Judicature. Mr. Hargrave then notices the Case of Mr. Fitton and Mr. Carr, for a Libel on Lord Brandon, in 1663, who were both fined and imprisoned by the Lords, and one of them ordered to stand in the Pillory. They both petitioned the Commons in 1667; but,
being mixed with contempt and breach of privilege, they were not judged fit Cases to make a stand upon. Still Mr. Hargrave contends against the legality of continuing imprisonment after the prorogation of Parliament; and he observes these were the first instances of complaints to the Commons against the Lords for excess of Judicature.

Mr. Hargrave then proceeds to the famous Case of Skinner v. The East India Company, in 1668, which brought the question of Original Jurisdiction in the Lords to a Test. This produced a violent contest between the two Houses, of which he gives the particulars, and which was continued for several Sessions, and was at length terminated by the recommendation of the King. But Mr. Hargrave considers the result as having been fatal to the claim of Original Jurisdiction in the Lords in Civil Cases, which has ever since been relinquished.

Mr. Hargrave goes on to narrate the next conflict between the two Houses in 1675, respecting the exercise of Appellant Jurisdiction by the Lords over Decrees in Equity. This arose out of three Appeals, viz. first, Shirley v. Sir John Fagg; second, Sir Nicholas Sloughton v. Onslow; third, Sir Nicholas Crispe v. Dalmanoy and others. These cases were taken up by the Commons, first on the ground of privilege, the complaining Parties being Members of the House of Commons; but the Lords’ Appellant Jurisdiction was soon brought under consideration. Very violent Resolutions, and even Commitments ensued, which were terminated for a while by a prorogation; but in the next Session the Contest was renewed, and the Commons voted that prosecuting an Appeal against a Member of their House, was a breach of privilege (dropping the question of Jurisdiction), and that whoever prosecuted such an Appeal, was a Betrayer of the Rights and Liberties of the people of England. The Lords on their part voted very strong Resolutions, and the dispute was again stopped by a prorogation for fifteen months, viz. to Feb. 1676-7.

In the next Session the Lords persevered in receiving Appeals, which the Commons did not attempt to interrupt. And they fined a Dr. Carey £1000 for a Contempt, and com-
mitted him for nonpayment. This was brought before the Commons, but went off without further notice.

Mr. Hargrave accounts for this luke-warm conduct on the part of the Commons, by supposing that the wresting of the Appellant Jurisdiction from the Lords, would too much augment the power of the Crown, in whom would be placed the Appointment of Commissioners, and this at a time when on account of the dangers apprehended from the Royal power, it rather required diminution; and he observes that a further inducement to acquiescence by the Commons might be, that there still would remain a right of Appeal to the whole Parliament; and beside, that the Lords would only possess a Jurisdiction over Decrees in Equity, similar to that over Judgments at Law. But whatever was the reason, the Lords remained in possession of the object which had been so much contested.

Mr. Hargrave adverts to the Impeachment of Lord Danby and the five Roman Catholic Lords, in 1678, in which various important points relative to Parliamentary Judicature were agitated; viz. the effect of a Dissolution of Parliament on Impeachments, &c.; the Right of Bishops to Vote on Trials in capital Cases; whether the King's Pardon could be pleaded to an Impeachment; whether the King's Appointment of a High Steward was essential to the Trial of a Peer on Impeachments; whether a Commoner is triable on an Impeachment for a capital offence; and whether the proceedings on an Impeachment are postponable by the Lords, on the ground of an Indictment having been directed at Common Law, and he refers to learned writings on some of these topics.

Mr. Hargrave, in the course of his remarks, adduces the authority of Lord Chancellor Nottingham, as unfavourable to the Lords' Jurisdiction; and he notices a work entitled, *Jus Appellandi a Regem ipsum a Cancellaria*, by Mr. Williams, a Barrister, in which he maintains, that Error in Parliament may be rectified in a subsequent Session, or in another Parliament; Mr. Hargrave also quotes the Case of Mr. Knollis, in 1692, claiming to be Earl of Banbury, in which Lord Holt asserted, that an Order of the Lords was not a Judgment, and that they
were not a Court of Original Jurisdiction, but at the same time he allowed their Supreme Appellate Jurisdiction. Mr. Hargrave likewise cites the Case of *Bridgeman v. Halt*, where, upon a complaint to the Lords against the Judges of the King’s Bench, in 1693, for not receiving a Bill of Exceptions, the Judges declined the Jurisdiction of the House, contending the complaint was in the nature of an original Suit, in consequence of which it was withdrawn. This Mr. Hargrave considers as giving the finish to their Lordships’ claim to original Jurisdiction.

Mr. Hargrave next takes notice of a Publication by Sir Robert Atkyns, a retired Judge, in 1699, against the Jurisdiction of the Lords over Decrees in Equity, and another Publication by him, being “An Enquiry into the Jurisdiction of Chancery in Causes in Equity,” complaining of excesses in that Court, and proposing that the Courts of Common Law should be empowered by Parliament, to issue *Prohibition* to restrain Chancery within due Bounds.

Mr. Hargrave then goes on to notice some controversy between the two Houses, on the Impeachment of Lord Somers and other Lords, in 1701, as to the mode of Proceeding; the result of which was, a disposal of the Impeachment by the Lords *ex parte*.

The next quarrel between the two Houses respecting Parliamentary Jurisdiction, was in 1702, in the case of *Lord Wharton* and Squire, which will be noticed in a subsequent part of this Work.

Mr. Hargrave proceeds to notice the famous Aylesbury Case, which was the last serious dispute between the two Houses, and arose out of an Action against a returning Officer, for refusing a Vote at the election of a Member for Aylesbury. This was ended by a prorogation and dissolution of Parliament, and was not renewed.

He mentions, that there were symptoms of a rising storm in the year 1717, on the Impeachment of Harley, Earl of Oxford, which blew over; since which time, there has been a cessation

* See Note 14.
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of hostilities between the two Houses on the right of Jurisdiction. The Lords have ceased to meddle with original Jurisdiction; to meddle with Appeals from Ecclesiastical Sentences; with Appeals in Maritime and Prize Causes; and Appeals from the Colonial Courts. These have all fallen into the hands of the Privy Council, which Mr. Hargrave says fortifies Lord Hale's principle, the Jurisdiction of the Privy Council being bottomed on the Commissary Delegation of the Crown. On the other hand, the Commons ceased to interrupt the Lords' Appellant Jurisdiction, and even forbore to question their Lordships' right to impose Fines for breaches of Privilege, and Imprisonment beyond the sitting of Parliament.

It is observable, that Mr. Hargrave in his very long Preface has not gone into an examination to shew what is meant by the Court of Parliament, as employed in ancient Judicial Proceedings, nor denied the Fact of the House of Lords having from very early times exercised an Appellate Jurisdiction without the Commens.

From the foregoing compendium may be sufficiently collected not only the Sentiments of Sir Matthew Hale, but of other great Authorities of his time. Mr. Hargrave, his Publisher too, a man of great legal and constitutional knowledge, in his Preface, written 120 years after Lord Hale's Work, notwithstanding his habitual Dubitation and Indecision, appears to have had a strong bias in favour of Sir Matthew Hale's Doctrine, which could hardly have been expected, considering that the Lords' Appellate Jurisdiction had then been acquiesced in by the Commons for almost a century.

Among the Writers on the opposite side of the Question, besides Lords Anglesea and Holles, who as Peers may be considered as Parties in the dispute, and as such objectionable, were the deeply learned, the illustrious Selden, and that prodigy of industry and labour in research, collecting and compiling, the indefatigable, though eccentric Prynne. To these may be added, that very eminent Lawyer and Writer, Lord Chief Baron Gilbert, and also the immortal Author of the
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Commentaries on the Laws of England. The opinions of the two latter, which Mr. Hargrave has not noticed in his Preface, are to the following effect:

By the Saxon Constitution there was only one Superior Court of Justice in the Kingdom; viz. the Wittenagemote,* which had Cognizance both of Civil and Spiritual Causes, and which assembled annually or oftener, as well to do private justice as to consult on public business. At the Conquest, the Ecclesiastical Jurisdiction was diverted into another channel, and the Conqueror established a constant Court in his own Hall, thence called by Bracton and other ancient authors, Aula Regia or Aula Regis, which was composed of the King's great Officers of State, such as the Lord High Constable and Lord Mareschal, who chiefly presided in matters of honour and of arms; the Lord High Steward, and Lord Great Chamberlain; the Steward of the Household; the Lord Chancellor, who was Keeper of the King's Seal; and the Lord High Treasurer, who was the principal Adviser in matters of revenue. These high officers were assisted by the King's Justiciars or Justices, and by the greater Barons of Parliament, all of whom had a Seat in the Aula Regis, and formed a sort of Court of Appeal or Advice in matters of difficulty. These in their several departments transacted all Secular business, both Criminal and Civil, and likewise the matters of the Revenue; and over all, presided one special Magistrate, called the Chief Justiciar, or Capitallis Justiciarius totius Angliae, who was also the principal Minister of State, the second man in the Kingdom, and Guardian of the Realm in the King's absence.—3 Bl. Com. 37, 38.

The Aula Regis, the members of which were pares Curtis with the King, was considered as the Grand Court Baron of of the Kingdom, where all Petitions against great persons and the Prince's Officers were heard. This Court had not only an original Jurisdiction of determining Causes brought before it by Petition, but was also the dernier resort to correct the errors of inferior Judicatures. When these Applications increased,

* See Note 15.
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Receivers and Triers of Petitions were appointed, who determined what Petitions were proper to be received or rejected; but as Petitions began to multiply, there are several instances where original Causes have been referred to inferior Courts.—2 Bac. Abr.* 136.

This great Court being bound to follow the King's Household in his progresses and expeditions, the trial of Common Causes therein was found very burthensome to the Subject; wherefore King John consented to that article now forming the eleventh Chapter of Magna Carta, which enacts, "That Communia placita non sequantur curiam regis, sed teneantur in aliquo loco certo." This certain place was established in Westminster Hall, the place where the Aula Regis originally sat when the King resided in that City. And the Court of Common Pleas thus became fixed, and had Cognizance of all Pleas of land, and injuries merely civil. The Aula Regia being thus stripped of so considerable a branch of its Jurisdiction, began and continued to decline; and under Edward 1, who new modelled the whole frame of our judicial polity, the other Offices of the Chief Justiciary were subdivided into distinct Courts of Judicature; namely, a Court of Chivalry; a Court to regulate the King's Household; the High Steward, with the Barons of Parliament, formed an August Tribunal for the trial of Delinquent Peers; and the Barons reserved to themselves in Parliament the right of reviewing the sentences of other Courts in the last resort.—3 Bl. Com. 39, 40.

The House of Lords is now, therefore, the highest Court of Judicature in the Kingdom, not as having original Jurisdiction, for no Suit can at this day originate there, but as a Court of Appeal for correcting the Errors of inferior Courts, and its decisions are final and conclusive. To this authority the Lords succeeded on the Dissolution of the Aula Regis, for as the Barons were Members of that Court, and the rest of its Jurisdiction was dealt out to other Tribunals, the right of superintending all other Jurisdictions continued in the residue of that noble assembly. They are consequently the dernier Resort;

* See Note 16.
all inferior Tribunals must submit to their Determinations, and all property finally depend on their Decisions.—Gilb. Hist. Chan. 190.—3 Bl. Com. 57.

Sir William Blackstone, with great force and elegance, recommends and urges the utility of a knowledge of our Laws to the nobility, "because they are not only by birth hereditary Counsellors of the Crown, and Judges upon their honour, of the Lives of their Brother Peers, but also Arbiters of the property of all their Fellow Subjects, and that in the last resort. In this, their judicial Capacity, they are bound to decide the nicest and most critical points of Law,—to examine and correct such Errors as have escaped the most experienced Sages of the profession, the Lord Keeper, and the Judges of the Courts at Westminster. Their Sentence is final, decisive, and irrevocable; no Appeal, no Correction, not even a review* can be had; and to their determination, whatever it be, the inferior Courts of Justice must conform, otherwise the Rule of Property would no longer be uniform and steady."—1 Bl. Com. 9, 10.

"Yet vast as this Trust is, it can no where be so properly reposed as in the noble hands where our excellent Constitution has placed it; and therefore placed it, because from the independence of their fortune, and the dignity of their station, they are presumed to employ that leisure which is the consequence of both, in attaining a more extensive knowledge of the Law than persons of inferior rank, and because the founders of our polity relied upon that delicacy of sentiment so peculiar to noble birth; which, as on the one hand it will prevent either interest or affection from interfering in questions of right, so on the other it will bind a Peer in honour, an obligation which the Law esteems equal to another's oath, to be master of those points upon which it is his birth-right to decide."—Ib. 10.

"It is obvious to the reason of all mankind, as Mr. Justice Blackstone observes, that when the Courts of Equity became principal Tribunals for deciding Causes of Property, a Revision of their Decrees, by way of Appeal, became equally neces-

* This, perhaps, should have been stated with some qualification. There certainly have been exceptions to the rule.
sary with a Writ of Error from a Judgment of a Court of Law."—3 Bl. Com. 454, 455.

In a recent Pamphlet, occasioned by the Chancery Report, and attributed to a noble Lord,* whose knowledge and learning in the History of the English Law and Constitution are most extensive and profound, the following opposite passages occur on this subject.

"It is of the utmost importance that there should be (as far as circumstances will conveniently permit), a Supreme Court of Appeal, by which the decisions of all inferior Courts may be reviewed and controlled."

"Without such a Court of Appeal, there might be conflicting decisions on subjects exactly similar, but discussed before different and independent Tribunals."

"The control arising from the Appellate Jurisdiction of the House of Lords, as far as it extends, thus operates most beneficially in the administration of Justice. The object of it is to retain all Jurisdictions, from which Appeal lies to its Judgment, in a constant uniformity of principle and decision, according to the nature and objects of the several Jurisdictions of those Courts respectively. Hasty and improvident decision in that Court, is an evil of the first magnitude in the administration of Justice. Being subject to no superior Court, its decisions, so far as its authority extends, become settled rules of Law, however at variance with the decisions of other Courts."

"It is highly important, therefore, to the due administration of Justice, to the quiet of men, and to the saving of expense in litigation, that powers amounting in any degree to such species of legislative power, should not be vested in any Court beyond absolute necessity.—Pa. 15 to 18.

"From the Norman Conquest to the reign of Edward the 1st, much obscurity rests on the whole frame of English Government. Whatever was the Constitution of the Superior Courts of Justice during the reigns of the three first Norman Princes, that Constitution seems to have suffered a rude shock in the disturbed reign of Stephen, during great part of which

* Lord Redesdale.
the functions of that Court, which seems to have been in the three preceding reigns the Supreme Court, assuming the most extensive Jurisdiction, were suspended, and the whole administration of Justice appears to have been thrown into confusion, by the consequences of a long and bloody Civil War."

"It has been generally supposed, that under the Norman Princes, there existed a superior Court of the King before alluded to, which exercised a very general original as well as appellate Jurisdiction, and that this Court following the person of the Sovereign, great inconvenience arose to Suitors."

After noticing the establishment of the Common Pleas* in a certain place, by the Charter of John, the Division of the great Court of the Chief Justiciar, and the appointment of the other superior Courts, with distinct and independent Jurisdiction, which, according to the general opinion, took place towards the close of the reign of Edward 1, the Author observes,—

"The Chancery, originally a part of the King’s Great Court, remained a distinct Office for the purposes of State, and for the issuing of Writs, as well for the administration of Justice, as for various other purposes; and when the King summoned a legislative assembly, which had then obtained the common appellation of his Parliament (consisting, certainly, during a great part of the Reign of Edward 1, of spiritual and temporal Lords, summoned by the King’s Special Writs, and of Commons, elected by Counties, Cities, and Boroughs, in pursuance of the King’s Writs), the Chancery was an Office of the Crown for the purposes of that Assembly. In that Assembly the Lords, probably originally Members of the King’s Great Court of Justice, seem to have exercised the functions of that Court, both in Original and Appellate Jurisdiction, not only in the Reign of Edward 1, but in some degree in the two succeeding Reigns."—P. 28—32.

Mr. Reeves, in his excellent History of the English Law, gives nearly the same account of the Curia Regis or Aula Regis as that given above, adding, that the Barons seldom appeared there, as not valuing a privilege attended with labour,

* See Note 17.
and ill suited to their martial habits. In this high Court not only pleas, civil and criminal, were cognizable, but other legal matters of business were there transacted, such as Feoffments, Conords, &c.—Vol. 1, p. 48.

Although the hereditary Lords absented themselves from the Curia Regis, they still retained (says Mr. Reeves), an inherent Right of Judicature, as constituent members of the Council of the King and Kingdom.—Ib. p. 61.

When the Curia Regis was divided, and the departments of ordinary Judicature branched out, the peculiar character of the Council, now separated, became more distinguishable. Mr. Reeves here describes the Council, which was of two capacities; in one it was the National Assembly, Magnum Consilium, or Commune Consilium Regni; in the other it was simply the Council. They were both styled alike, viz. Coram Rege in Consilio, or Coram ipso Rege in Consilio, till the reign of Edward 1, when the term Parliament was first applied, and then the former was styled Coram Rege in Parliamento.—Ib.

The judicial authority of the Barons, which still continued with them, was this.—They were the Court of last resort in Cases of Error; they explained doubtful points of Law; and interpreted their own Acts; for which purposes, the Justices referred to them in matters of great difficulty depending in the Courts below; and they tried criminal accusations against their own members.—Ib. p. 62.

Mr. Reeves's description of the Magnum Consilium and the other ancient Council, it will be observed, is almost the same with that of Lord Hale, though the latter's Treatise had not been published when Mr. Reeves wrote his history. But notwithstanding their agreement in general, there is one particular in which they appear to differ, namely, the participation by the Commons in Parliamentary Judicature. Lord Hale considers them as having always been entitled to a share in it; but Mr. Reeves holds a contrary opinion. He tells us, that the Commons, who had been called to Parliament in the reign of Edward 1, merely to consent to taxes, after discharging that office, were not further thought of, nor looked upon as a
necessary part of the Legislature. But from the annual sitting of Parliament during the long reign of Edward 3, the Commons began to regard themselves as part of the Legislature, and their assent is sometimes mentioned to general laws. Still, matters purely judicial were considered as within the exclusive province of the King and Lords, who, by their original Constitution, were the supreme Court of the nation. Yet, in consequence of the Commons being allowed to assent to laws, this usage settled into a right; and in the reign of Henry 4, they claimed a participation in the judicial capacity. But upon a Petition by the Commons in that reign, calculated to assert that right, the King answered, "that all Judgments belonged to the King and Lords, unless in Statutes and the like," in which the Commons acquiesced.—Vol. 3, p. 225, &c.*

Some Remarks on Lord Hale's Treatise.

It may probably be deemed presumption in so humble an Individual as the Writer of this, to obtrude any opinion of his own on this important subject; but he hopes to be excused for venturing to offer a few remarks on Lord Hale's objections to the Appellate Jurisdiction of the House of Lords over Decrees in Equity.

Lord Hale complains of it as inferring a claim to an inherent right in their Lordships, of judging independently of the Crown, from whom all judicial power emanates. But as the Jurisdictions of all Courts are either immediately or mediately derived from the King, and are executed by his Officers; and as his Majesty, in contemplation of Law, is supposed to be present in all Courts of Justice,† it surely may be presumed that he is present with the Lords, when sitting and acting judicially, in like manner as he is presumed to be in other Courts; that he sanctions their proceedings, and virtually authorizes their Judgments, as fully in Appeals as in Writs of Error.

It is true that Petitions of Appeal are not addressed to the

* See Note 18.
† 1 Bl. Com. 263. 3 Bl. Com. 24.
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King,* or to the King and Lords in Parliament, the direction being, “To the Lords Spiritual and Temporal in Parliament assembled.” The reason of the omission, if it were not at first accidental, we are unable to assign. Perhaps it was to avoid circuity, and save time, as if the address were to his Majesty, it would probably have to pass through a Government Office, and come to the Lords by a reference, which would cause delay; and possibly also it might, in former times, have been neglected, whereas an Appeal is now sure to receive immediate attention. We know that in Suits in Equity, both in Chancery and the Exchequer, the Bill, which is a Petition, is directed to the Judges of those Courts; and in the Common Law Courts, actions are in many cases commenced by Bill, addressed to the Judges, without the King’s Writ; and if it be replied that their authority flows from the Crown, we apprehend it may with equal truth be asserted, that the judicial authority of the Lords is derived from the same source.

After all that has been said on this point, does it not appear at last to be a contention about a phantom? Supposing the Lords to be possessed of the inherent Jurisdiction so much dreaded by Lord Hale, can it be believed that their decisions would be less just than if the King’s Commission were lying before them? If such a Jurisdiction could possibly render that great assembly more independent, would that be an evil? One of the most popular Acts of the late King’s reign, was that of making the Judges wholly independent, as all Judges should be.—But to return to Lord Hale’s objections.

He also objects to the Judicature of the Lords in Equity Causes, on the ground of the difficulty of the Questions brought before them, and their great number, as consisting of an hundred or more Judges; many of whom may be wanting in experience and legal knowledge.

This would hold equally against their Lordships’ deciding on Writs of Error. But surely these are strange objections, when coming from one who contends for the right of Appeal to the whole Parliament, for they would much more strongly apply to

* Colonial Appeals are addressed “To the King’s most excellent Majesty in Council.”
an assembly containing seven or eight hundred members,*. than to one not then consisting of a fourth of that number. Neither his Lordship nor Mr. Hargrave has suggested how the opinions of the Lords and Commons, meeting in separate Houses, were to be taken, in case of an Appeal to them.

The few instances given by Lord Hale, of Cases brought before the whole Parliament (supposing his idea correct), took place in very early times, before the Constitution had attained maturity, and that regularity in its Proceedings which is now established; most of them, too, appear to have been rather of a legislative than judicial nature, and possibly some of them were when the Lords and Commons sat together. It is true Lord Hale says that “both Houses are made, as it were, Judices Ordinarii, and if both Houses consent not, nothing can be done;” which certainly must have been said in reference to a period when the Houses were distinct, and implies that a Cause must travel through each House like a Bill. This alone; however, is sufficient to shew how visionary would be the idea of making the whole Parliament the dernier resort; to say nothing of the expense of prosecuting Appeals and Writs of Error through both Houses of Parliament.

In truth, every objection raised by Lord Hale to the Lords’ Judicature would hold ten fold against that of the entire Parliament. It seems wonderful that Mr. Hargrave should, when he wrote, countenance the idea.

Indeed a well-founded objection lay against the Jurisdiction of the House of Lords, on the ground of delay, when the Parliament did not meet annually, or sometimes for many years together; but that reason has long ceased; and if it had not, would equally apply to the whole Parliament. If it should be said that Lord Hale did not mean that the first, but only the final Appeal should be to the King, Lords, and Commons, which he probably thought would rarely happen, it may be replied, that persons desirous of delay would always be found ready to resort to it.

* The number is now considerably more, being about one thousand.
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Some persons have found fault with their Lordships' Jurisdiction on the ground of paucity, rather than of an excess of numbers, alleging that the Judges, instead of being too many, are generally too few; for that when Causes are heard, there are sometimes not more than three Lords present (that number being sufficient to make a House), and that in most Cases the Lord Chancellor alone interferes; so that upon an Appeal from a Chancery Decree, a party is in effect appealing from the Lord Chancellor on the Bench in Westminster Hall, to the Lord Chancellor on the Woolsack in the House of Peers,—thus sitting in Judgment on his own decisions. Now whatever apparent weight there is in this remark, it may be answered, that there are at present, and have been for a great length of time, several Peers who were bred to the Profession of the Law, and that those noble persons are in the habit of attending the House in all Cases of real difficulty and importance, particularly that venerable Nobleman,* to whose unwearied application, experience, and great legal information, the Suitors are so highly indebted. As to Appeals and Writs of Error brought merely for delay, of which there have been many, they require very little consideration, except as to the measure of Costs to be awarded to the party aggrieved; but such as call for more attention are sure to receive it. With respect to Appeals from the English Courts, the Writer of this has witnessed Hearings on Appeals where Lord Chancellor Bathurst has readily acquiesced in the Reversal of his Decrees, on the motions of Lord Mansfield and Lord Camden; besides, in nice and doubtful legal questions, the twelve Judges are constantly called in to the assistance of the House, which seldom fails to be governed by their opinion,† or that of the majority when they happen to differ. So that the Decisions of that high Tribunal, at least during the last century, have given general satisfaction.

The wisest and best men are liable to be prejudiced, and Lord Hale, good and amiable as his general character certainly was, seems to have imbibed an unfavourable opinion of the

* It is hardly requisite to name Lord Redesdale.
† See Note 11.
Aristocracy in their judicial capacity, though he was a staunch supporter of the Constitution.

This appears in several parts of his Treatise. For instance, in chap. 15, he observes, that the wisdom of our Laws are remarkable, among other things, in this, that the Judges are constituted by the King, and chosen out of learned men, who are not Nobles, or such as would be too great to be called in question for corruption, or to have their Judgments examined. This peevish sarcasm was unworthy of his Lordship, and is to be regretted.

Perhaps this prejudice arose from some irregular and improper occurrences in his days, which must have excited distrust in the mind of that virtuous man. We are not, therefore, to wonder if he entertained some dread of the repetition of such practices, when we are told that a Monarch descended so low as to go about, while a Cause was at hearing, and solicit particular Lords for an Appellant or Respondent.* It also appears from a Speech of Lord Shaftesbury (who was not himself remarkable for moral or political purity), in 1675, quoted by Lord Mountmorres in his History of the Irish Parliament, vol. 2, p. 201, that other attempts were made upon the Honour of the Peerage. That speech contains this passage:—"I have heard of twenty foolish modes and expedients to secure the Justice of the Nation, and to take this Right† from your Lordships—I must deal freely with your Lordships.—These thoughts never could have arisen in men's minds, but that there has been some kind of provocation that has given rise to it. Pray, my Lords, forgive me on this occasion, if I put you in mind of Committee Dinners and the scandal of them, and those droves of Ladies that attended all Causes; it was come to that pass, that men even hired or borrowed their handsome wives or daughters to deliver their Petitions."

To the credit of modern times such Practices have not for a long while prevailed in this country, and it is confidently hoped never will again. As little is it to be presumed that party or

† Viz. the Right of hearing Appeals.
political considerations will ever be permitted to bias their Lordships' Decisions.

Indeed, in a Case* which happened a little more than twenty years ago, respecting the Guardianship of a young Lady, where the Question arose out of the Religion of one of the parties, it was rumoured that great pains were taken to obtain a full attendance of the Lords; and it is certain that Lord Eldon's Order was in part reversed, Lord Erskine being then Chancellor; but to believe or imagine, that this was the effect of any improper influence, would be highly unwarrantable and injurious.

On this subject we will just remark, that Lord Hale's apprehensions would not be removed by an Appeal to the whole Parliament; and that all the objections to the Lords' hearing Appeals would apply equally to their Jurisdiction over Writs of Error.

As to the mode of deciding Appeals and Writs of Error proposed by Lord Hale, viz. by a select number of Lords, assisted by the Judges, to be appointed by a Commission under the Great Seal, it is certainly unobjectionable in itself, though it does not seem to be meant by Lord Hale as the dernier resort. But it surely possesses no advantage over the present Judicature, unless indeed it be that the Commissioners might sit during the recess of Parliament; and yet, considering the long duration of the Sessions in modern times, and the number of days devoted by the House of Lords of late years to the hearing of Appeals, it is conceived that Causes would be very little, if at all, expedited by the adoption of Lord Hale's suggestion.

It is plain, too, that requiring the presence of the Judges in all Cases, would render an increase of their number indispensable, as it cannot be denied that the present Judges have abundant employment in the discharge of their ordinary official duties, such as they now are.

Perhaps the chief inconvenience of the present system, is the great consumption of their Lordships' time in attending to

* Seymour v. the Earl of Euston, 14 June, 1806.
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judicial Proceedings, and the heavy expense which the parties incur in the prosecution and defence of Appeal Causes. The original amount of the Recognizance for Costs was £100.; it is now £400., and this sum often falls far short of the Agent's Charges.

Should the wisdom of Parliament ever deem it requisite to construct a new Judicature for exercising the Appellate Jurisdiction, it is to be hoped that not only English but Scotch Judges will form part of the Tribunal. When Sir Matthew Hale* wrote, or for thirty years after, the union with Scotland had not taken place, though it had been in contemplation. That event has rendered it highly expedient that those who pronounce Judgment on Appeals from that country should be fully acquainted with its Laws.

But supposing the question as to the competency of the House of Lords, to entertain Jurisdiction over Appeals, had not been long since set at rest, this has been completely done by the Act of Union of Great Britain and Ireland, viz. the 39 and 40 Geo. 3, c. 67, by which it is enacted (article 8), "That all Writs of Error and Appeals then depending, or thereafter to be brought, which might be finally decided by the House of Lords of either Kingdom, shall thenceforth be finally decided by the House of Lords of the United Kingdom, except Appeals from the Instance Court of Admiralty in Ireland, which shall be to a Court of Delegates appointed by the Irish Court of Chancery." And to no existing authority, all things considered, could the Appeal so properly be made as to the House of Lords. Of this the House of Commons at length became convinced, and have so continued, as appears from their acquiescence in it.

What has hitherto been stated relates to the Appellate Jurisdiction as it respects the Courts of England.

* He died in Dec. 1676.
OF THE APPELLATE JURISDICTION AS IT RESPECTS SCOTLAND.

In Scotland, as in England, it appears that in early times the Parliament of the former Kingdom exercised original jurisdiction in Civil Causes, though it is doubtful whether an Appeal lay to it from other Courts; but in the Reign of James the 1st of Scotland, 1424, it was enacted by the legislature that suits should not be determined by the Parliament.

Soon afterwards the Court, called The Session, was established, consisting of Members selected from the three Estates, for deciding Causes. In a few years after this, Regulations were made with regard to falsing of dooms, a proceeding in the Nature of an Appeal.

In 1457, a Law was enacted that the Decisions of the Session should be final, without Appeal to the King or the Parliament, so that as to their Judgments there could be no falsing of Doom.

In 1475 the Jurisdiction of The Session was abolished, and Parties were to seek Justice before the Judges Ordinary, and a further remedy in nature of an Appeal to the King and his Council was given.

In 1503, a new Court, termed the Daily Council, was erected, with similar powers to those of The Session, and continued till the present College of Justice was established.

Though it has been contended that there was no Appeal from the Lords of Session, yet there is the following passage in Balfour's Practice, c. 9, "It is leasum to appeal fra the Lordis of Sessioun to the Parliament: Gif any Man thinkis him heavilie hurt by the Lordis of Sessioun in pronouncing of ane Decreet against him, he may protest for Remeid of Law, and appel
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18th January, 1532-3, Cunynghame contra the Vicar of N.

In 1674, a great contention arose between the Court and the Advocates respecting the competency of an Appeal to Parliament, from a Decree of the Lords of the Council, which was strongly opposed by the latter, as being without any Precedent. They complained to the King (Charles 2), who warmly disapproved of such Appeals; and the Advocates at length, after a hard struggle, yielded. It is remarkable enough, that at the same period, there was a warm contest between the two Houses of Parliament in England, on the right of an Appeal to the Lords.

The expediency of an Appeal in Scotland was, however, generally admitted; and at the Revolution, the Convention of Estates declared it to be "The right of every subject to protest for Remeid of Law to the King and Parliament, against sentences pronounced by the Lords of the Session, providing the same do not stop the execution of those sentences."—Act of Convention, 1689, c. 13. This, though not in name an Appeal, was evidently equivalent to one.

In consequence of this, Appeals were resumed as well as Protestations. And it appears, that in July, 1690, a Cause was reheard in Parliament, from the Court of Session, and the Decree was altered: and between that time and the union, there were several other similar Appeals or Protestations, for Remeid of Law, to the Parliament of Scotland; but it is said, that the Judgments of the latter were not considered of much weight.

The distinction between Appeals and Protestations is not very obvious. By Scotch Law writers it is stated to be, that in Appeals the Judges sometimes desisted, if the Case was dubious; Protestations did not stay execution of Process in any Case.

It appears, that pending the union a good deal of discussion took place on the subject of Appeals from Scotland, and much anxiety was felt for the preservation of the Laws of that country, lest the allowing of Appeals to the Parliament of
Great Britain might introduce an inundation of English Law.—See Reports of Cases on Appeals from Scotland, by Mr. Robertson, Pref. 1 to 15, and Sir G. Mackenzie's account of the proposed union in 1670.—Smith's Proced. 2 to 9.

It appears strange, that no provision is made, or power given, by the Act of Union with Scotland (5 Anne, c. 8), enabling the House of Lords of England to receive Appeals from the Courts of Scotland, or any notice whatever taken of the Appellate Jurisdiction, although by the 19th Article of that Act, It is declared, that no Causes in Scotland shall be cognizable by the Courts of Chancery, King's Bench, Common Pleas, or any other Court in Westminster Hall, and that the said Courts; or any other of the like nature, shall have no power to review or alter sentences of the Judicatures within Scotland, or stay the execution of the same.” And if it should be asked, by what authority the Lords take cognizance of Scotch Causes, it does not seem easy to answer that question, as the foundation of their Jurisdiction is rather obscure. It is not from any British Statute passed subsequently to the union, because though Writs of Error from the Court of Exchequer in Scotland are authorised by 6 Anne, c. 26, s. 12, neither that nor any other Act of the British Parliament has given a similar sanction to Appeals from the Supreme Court of Civil Judicature in Scotland, the Court of Session.

One reason for the silence observed on this subject in the Act of Union, is supposed to have arisen from the then recent dispute between the two Houses of Parliament, in 1704-5, respecting Writs of Error, in which the privileges of the Commons were involved; on which occasion the Commons referred to their resolutions of 1675—“that no Appeal lay to the Judicature of the Lords from Courts of Equity.” It was probably judged prudent to abstain from whatever might tend to revive the discussion.

In De Foe's History of the Union he observes, “that difficulties occurred about Appeals from Scotland to the House of Lords of Great Britain; and that to remedy the evils anticipated by the Scots from the distance of the Seat of Parliament,
a scheme was handed about, by which it was proposed to erect a Court in Scotland, delegated from the Peers of Britain in Parliament, to be named annually or triennially, &c. The principle, that as the Scots had then an Appeal from the Lords of Session, the right must not die, was thus clearly laid down; but (says the historian), there were reasons why the proposal was not further entered upon, though both sides approved of it."

The Appellate Jurisdiction must, therefore, be sought for in the memorable national Act of the Convention already noticed (similar to the English Bill of Rights), declaring that it is the right of the subject to protest for Remedy of Law to the King and Parliament against sentences of Session.

The Scots Parliament having by the Act of Union been merged, as it were, in that of Great Britain, it followed as a consequence, that Appeals should, after that Act, lie to the English House of Lords.

In a short time afterwards, viz. in February 1707-8, an Appeal was entered in the House of Lords by the Earl of Roseberry against Sir John Inglis, from a Decree of the Court of Session made before the union. In this Case an Order was made by the House, that the Respondent should have a copy of the Appeal, and should put in his Answer in four weeks; and soon afterwards another Order was made, that the Keeper of the Records should deliver to the Appellant's Agent extracts of Depositions, &c. in the Court below, and the extracts signed by the Lord Clerk-Register, or his Deputy, were declared to be good evidence at the hearing. In this Case, the Respondent, not having put in his Answer on the day appointed, a motion was made (24th March) for a peremptory day to answer, when a Committee was appointed to consider of the motion, &c., who in three days after reported, "that the Respondents in that and all other Appeals from Scotland, should put in their Answers, as in Cases of Appeals from Courts in England, within the time appointed by the House, and that the Clerk-Register and his Deputies should give authentic copies of proofs and extracts of proceedings to either party, at his proper charge, to be used at the Bar of the House;" and an
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Order was made to that effect. It has been supposed, that what took place in this case was merely for the purpose of regulating future proceedings in Appeals. Accordingly the House acted on the last mentioned Order in December 1708, in the Case of Gray v. the Duke of Hamilton, the next Scotch Appeal.

The third Appeal to the Lords was that of Sir Alexander Brand, from a Decree of the Lords of Treasury and Exchequer in Scotland, in February 1708-9. In this Case, it appears, that with respect to the non-suspension of the execution of sentences, provided by the Scotch Act, the House of Lords viewed the effect of an Appeal in a quite different light, as appears by the following entry on their Journals, made within less than two years after the union.

19th April, 1709.

"The House having this day heard Council upon the Petition of Mr. George Mackenzie, grantee from her Majesty, in a Decree of Exchequer of North Britain, pronounced against Sir Alexander Brand, relating to this Appeal in this House, as also Counsel on the Petition of Sir Alexander Brand, the following Order was made, viz.:

"It is ordered, that after an Appeal shall be received by this House from any sentence or Decree given or pronounced in any Court in Scotland, and an Order made by this House for the Respondent to answer the said Appeal, and notice of such Order duly served on the Respondent, the Sentence or Decree so appealed against, from such time ought not to be carried into execution by any process whatsoever."—Lords' Journ. vol. 18, p. 713.

The Consequence of the Resolution of 1709, arising from the Service of an Order to answer a Scotch Appeal, continued for nearly 100 years to be, to stay Execution upon the Judgment or Sentence appealed from. Now as the Expense of obtaining such an Order was trifling, and the difficulty nothing, it was natural that an unsuccessful Litigant should adopt that sort of expedient for evading the payment of Money, or the
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performance of an Act which he must know would ultimately be decreed in favour of his Adversary. Accordingly, Appeals almost innumerable, came from Decrees of the Court of Session. Indeed the mischief greatly exceeded this, for down to 1808, it was competent for a party to appeal from any preliminary Orders in the Course of the Proceedings, even from those of a single Judge (called Interlocutors), long before a Cause was ripe to receive the Decision of the whole Court. If therefore a party was ordered to pay into Court a Sum confessed to be due; if he was directed to lodge a state of his Accounts; if directions were issued for taking Evidence; in fine, if any order, however trifling, was made, in any, no matter what, stage of a Suit, it might be suspended by Appeal, with the certainty of protracting Judgment for many years.

In the year 1808, to remedy these Abuses, the important Stat. of 48 Geo. 3, c. 151 was passed, the Object of which was, first, to expedite Business in the Scotch Court, by dividing it into two Courts, and secondly, to prevent a future Multiplicity of Causes in the House of Lords. For this purpose,

By Section 15 of that Act, It is enacted "That no Appeal shall be allowed from Interlocutory Judgments, but only from Judgments or Decrees on the whole Merits, except with the leave of the Division of the Judges pronouncing such Interlocutory Judgments; or except in Cases where there is a difference of opinion among those Judges; nor shall any Appeal be allowed from Interlocutors or Decrees of Lords Ordinary, which have not been reviewed by the Judges sitting in the Division to which such Lords Ordinary belong—Provided that when a Judgment is appealed from, it shall be competent to either party to appeal from the Interlocutors that may have been pronounced in the Cause, so that the whole may be brought under the Review of the House of Lords."

By Sect. 16, "If the reclaiming Days against an Interlocutor of a Lord Ordinary shall, from inadvertency, have expired, it shall be competent, with his leave, to submit such Interlocutor by Petition to the Review of the Division to which he belongs, but the Petitioners shall be subjected in the payment of the
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Expenses previously incurred in the Process by the other Party."

The 17th Sect. enacts, "That when any Appeal is lodged in the House of Lords, a Copy of it shall be laid by the Respondent before the Judges of the Division to which the Cause belongs, and they, or any four of them, shall have power to regulate all matters relative to interim possession or execution, and payment of Costs already incurred, according to their sound discretion, having a just regard to the interests of the Parties, as they may be affected by the Affirmance or Reversal of the Judgments."

By the 18th Sect. It is enacted, "That it shall not be competent by Appeal to the House of Lords touching the regulations made as to such interim possession, &c. to stop the execution of such regulations, provided that when the Appeal touching the Judgment appealed from shall be heard, it shall be competent for the House to make such Order respecting all matters which shall have taken place in consequence of such regulations, as the Justice of the case shall appear to require."

By Sect. 19th, "Upon hearing the Appeal, the House may decree the payment of interest, simple or compound, by any of the Parties in a Cause, as the House shall think meet."

By the 20th Sect., "If any Appeal thereafter presented against an Interlocutor or Decree of the said Court, or either of the Divisions of it, shall be dismissed for want of prosecution, any of the Respondents may apply by Petition to the Division to which the Cause belongs; and the Judges may Decree payment of interest, simple or compound, by the Appellant to such Respondent, as the Division shall think meet, together with the expenses incurred by the Appeal."

Still a capital defect remained, viz. that these regulations only applied to Appeals lodged after the year 1808, at which period there was an immense arrear of Causes to be determined. The House, therefore, on the 5th March, 1811, appointed a select Committee to enquire and report what provisions it might be expedient to adopt for the more expeditious decisions of Causes brought into the House by Appeals and Writs of Error.
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Upon the Report of this Committee the House resolved to begin with hearing Causes at ten o'clock in the morning, having previously not commenced before two o'clock; and afterwards they increased the number of Cause days from three to five. This had the effect of producing a very considerable reduction of the number of Appeals in the Cause List, which at one time amounted to near three hundred.

Of Judgments of the Court of Session in Scotland from which Appeals are allowed.

Anterior to the Act of 48 Geo. 3, c. 151, before in part recited, it seldom happened that the competence of appealing from Judgments of the Court of Session was called in question on account of the particular nature of them, although instances have occurred of their having been dismissed because premature; as where the Appellant had reclaimed against part of the interlocutor complained of, and the Respondent had answered the reclaiming Petition;* or where there were reclaiming Petitions on both sides;† Appeals were also presented from Interlocutors of the Lord Ordinary not reviewed by the Court.—Smith's Procedure 16.

The Act referred to, declares and limits from what Judgments Appeals should in future be allowed, the 16th Sect. directing, "that Appeals shall not be allowed from interlocutory Judgments, but only from Judgments on the whole merits, except with leave of the Judges pronouncing such interlocutory Judgments, or except where the Judges of that Division differ in opinion; nor shall Appeals be allowed from Interlocutors of Lords Ordinary which have not been reviewed by the Judges sitting in the Division to which he belongs; provided that when a Judgment is appealed from, either Party may Appeal from all or any Interlocutors pronounced in the Cause, so that the whole, if necessary, may be brought under review of the Lords."

* 25th April, 1759, Lords' Journ.
† 23d May, 1751, ib.
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The Judgments here referred to are, 1. Final Judgments of the Court of Session; 2. Interlocutory Judgments; and 3. Judgments of the Lord Ordinary.

1. As to final Judgments, or those pronounced on the entire merits by either Division of the Court, there is no question about the competency of appealing; but in cases of Judgments upon points of difference which arise after a final Judgment, Appeals are prohibited by the 18th Sect. of the Act above mentioned, which, after enabling the Court to make regulations respecting interim possession, &c. while an Appeal is pending, enacts, that it shall not be competent by Appeal touching such regulations as to interim execution and payment of Costs, to stop execution of those regulations. Appeals are likewise disallowed by the Acts of 53 Geo. 3, c. 42, s. 4 and 6, and 59 Geo. 3, c. 3, s. 15, 16, and 17, from Judgments on points of difference upon the course of proceeding, such as Judgments granting or refusing trial by Jury, or a new trial.

2. As to interlocutory Judgments, the standing Order of the House of Lords of the 9th April, 1812, directs, that when Petitions of Appeal shall be presented from interlocutory Judgments, Counsel shall certify either that leave was given by the Division of the Judges pronouncing the Judgment, to present such Petition, or that there was a difference of opinion among the Judges.

Since making this Order, instances have occurred, in which Counsel have not been able to agree as to what amounted to a difference of opinion among the Judges. In a Case of this sort the House will desire the Court of Session to certify the state of the fact.—The Earl of Cassillis v. Maxwell, February, 1819.

3. With respect to Judgments of the Lord Ordinary, the letter of the Statute seems to have been departed from. The 15th Sect. says, "Nor shall any Appeal be allowed from Interlocutors or Decrees of the Lords Ordinary which have not been reviewed by the Judges sitting in the Division to which such Lords Ordinary belong." But since the Act, Interlocutors of Lords Ordinary decreeing for expenses, &c. not reviewed by the Court, are constantly appealed from. This takes place
in Cases where, after a final Sentence on the merits has been pronounced by either Division of the Court, the Cause has been returned to the Lords Ordinary, in order to settle expenses, &c. Hence it may be inferred, that such Appeals, though against the letter, are not contrary to the spirit and meaning of the Act. It has, however, been observed, that the competency of such Appeal has not been brought directly in question before the House, on the point of expenses. And that, in one Case where a Respondent applied on the ground of the Appeals being from such an Interlocutor, on the points of "rendering an account of Rents, delivering Titles, and ceding possession," the House dismissed the Appeal.—Ogilvy v. Ogilvy, 20th February, 1809.—Lords' Journ. Smith's Procedure, 25 to 27.

By 4 Geo. 4, c. 85, Commissioners are directed to be appointed for enquiring into the Forms of Process in the Court of Session, and the course of Appeal to the House of Lords, with several other particulars, and suggested regulations, which, if they should be adopted, will occasion material alterations in Scotch Proceedings and Appeals.

It has been much controverted whether an Appeal lay from the Court of Justiciary in Scotland. Lord Kames in his Law Tracts (298) maintains, that though Appeals from this Court are rare, an Appeal is competent from it, as well as from the Session. Professor Forbes held the same opinion.—Vol. 2, p. 224. Erskine in his Institutes inclines to the competency of such Appeals.—Instit. B. 1, Tit. 3, s. 24. But except in one case of an ambiguous nature, Lords' Journ., 3d July, 1713, it does not appear that any such Appeal has ever been allowed by the House of Lords; and on the other hand it has been disallowed in many instances. 1. In the Case of Lieut. Ogilvie, in 1765. 2. In that of Mungo Campbell, in February, 1770. 3. In the Case of Murdiason and another, in 1773. 4. In the Case of Bywater, in May, 1780. And lastly, in that of Robertson and Berry, 8th May, 1793.—See Lords' Journ. of those dates.

In consequence of the Decision of the Lords in the Case of
Robertson and Berry, Mr. Adam, now the Lord Chief Commissioner of the new Jury Court in Scotland, on the 4th of February, 1794, made a motion in the House of Commons for leave to bring in a Bill "to give an Appeal to the Lords in Parliament from Judgments and Sentences of the Court of Justiciary and Circuit Courts in Scotland, in matters of Law;" but the application was unsuccessful. The following are some extracts from Mr. Adam's very able speech on that occasion, taken from what was said at the time to be the best report of it.

He stated, that a question had been agitated in the other House whether an Appeal lay to it, not only from the Supreme Court of Justiciary in Scotland, but also from the Circuit Courts, which were not like the Circuits in England, but were Supreme Courts. That in consequence of a Judgment given by the Court of Justiciary in the then last Session, in the Case of Robertson and Berry, who had been committed for a misdemeanor, an Appeal was presented to the House of Lords from that Judgment.

At first the House considered that the subject had been decided; but a Noble Lord thought there was a distinction between that Case, which was a misdemeanor, and those Cases that had been determined, which were capital crimes; and Lord Thurlow was of opinion that Counsel should be heard on the Petition to Appeal. Mr. Adam was heard accordingly, with great attention before Lord Thurlow and the then Lord Chancellor, with the Lord Chief Justice of the King's Bench; and after hearing the argument on both sides, they delivered seriatim their opinions against the application; as after considering all the Cases they thought it was impossible to decide that an Appeal lay from the Court of Justiciary to the Lords in the Case of a misdemeanor. That was a term unknown to the Law of Scotland, but he used it as being known to the English Law, rather than the term Delict. Lord Thurlow signified that though he was bound to decide according to the strict Law, expediency required that there should be a Parliamentary regulation on the subject.

Mr. Adam said he had, therefore, brought forward the con-
sideration of the subject for an enacting Bill for regulating it. He thought he was clearly supported by the 18th Article of the Union, and he proceeded to state several instances in which the criminal Laws of Scotland had been altered by Acts of Parliament, and rendered conformable to the Law of England, which Acts were passed on the footing of the 18th Article of Union. He conceived, therefore, he had shewn in point of Precedent, the propriety of entertaining the question, if he could make out the justice and policy of passing such a Bill.

He observed there was a distinction between civil and criminal Cases, with regard to Writs of Error from the Courts of Westminster Hall to the dernier resort. In all civil matters a Writ of Error was of course, but in criminal Cases it was otherwise. In misdemeanors an application was made to the Attorney General for the Writ of Error, and it was granted ex debito justiciae. In capital Offences an application was made to the Crown by Petition, and there it was matter of favour. Whether this was right or not, he did not enquire. His idea was, in order to have an Appeal from the Court of Justiciary, to introduce a provision in the Case of misdemeanors, authorising the Lord Advocate of Scotland, like the Attorney General of England, to grant the Defendant an Appeal. And in capital Crimes, an application might be made to the Crown to grant it according to discretion. He observed, that an Appeal, and not a Writ of Error, should be granted, because the word Appeal was generally understood in Scotland.

It remained to say something with regard to the Justice of the proposed measure. He meant to rest it on general principles. If there was a clear, distinct, intelligible, and he might say, universal principle of judicial Jurisprudence, it was this, that no Court in which any Case originated ought to be the Court finally and alone to determine that Case.

It was a principle that pervaded the whole system of judicial polity, both in England and Scotland, with this single exception. The Court of Justiciary was the only Court in which the Decision was final where the Cause originated.

From a Judgment of an inferior Court, as the Sheriff's Court
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in Scotland, there was an Appeal (by a Bill of Abjudication), to the high Court of Justiciary.—So far, the policy in Scotland was the same as in England. Was it possible to suggest the shadow of a reason why this single exception should continue?

There was a strong analogy between the criminal Law of England and Scotland, and also in the mode of proceeding; the Trial by Jury was the same; every thing was the same but the right in the House of Lords to review sentences of the Court of Justiciary and the Circuit Courts. The proposition could not possibly reflect any dishonour upon any Court of Justice. If it did, the Judges of England were disgraced every day.

Mr. Anstruther opposed the motion, considering the measure as inexpedient. He denied the universality of what Mr. Adam stated to be a fundamental principle in the Law of both Countries, namely, that the decisions of a Court in which a Cause began should be subject to Revision, and observed that it was not the Case in the trial of a Peer, or of a Commoner before the Peers. Mr. Fox and Mr. Serjeant Adair strenuously supported the motion, which was lost on a Division, there being 31 for it, and 126 against it.

OF THE APPELLATE JURISDICTION AS IT RESPECTS IRELAND.

Before the 6th of Geo. 1, A. D. 1719, Writs of Error and Appeals might be brought from the Courts in Ireland to the House of Lords of that Kingdom, though there are instances of such Writs of Error having been formerly brought to the King's Bench and House of Lords of England.—1 Bl. Com. 104., Hale's Jurisd. of the Lords' House, 124. This indeed, at one period, was unavoidable, as there were very long intervals, during which the Irish Parliament did not meet. But by the Act of 6th Geo. 1, c. 5, it was declared, "that the Parliament of Great Britain had power to make Laws to bind Ireland; and it was also declared, that the Peers of Ireland had no
Jurisdiction to affirm or reverse any Judgments or Decrees whatever.” The consequence was, that Appeals from the Irish Courts of Equity were afterwards made to the British House of Lords; and Writs of Error from the Irish Court of King’s Bench were made returnable in the King’s Bench in England, whence they might go to the House of Lords.

This Statute produced much discontent in the Sister Island, and a warm controversy took place on the assumed right of Great Britain to legislate for Ireland. Mr. Molyneux, an Irish gentleman of great talents and learning, and who had been an intimate friend of the immortal Locke, published a tract in defence of the Independence of his Country, intitled, “The Case of Ireland’s being bound by Acts of Parliament made in England stated, by William Molyneux, Esq. 1720.” In this the author very ably maintained his position, founding his arguments on Law, History, and the principles of the Constitution. There were many Answers to it; but the most forcible and conclusive of any, was the Act of Parliament of 6 Geo. 1. That Act, as has been signified, was the cause of great and constant annoyance and discontent to the Irish Parliament and nation, chiefly on account of its rendering them dependent on Great Britain in matters of legislation; for as to Judicature, the Writer of this well remembers to have heard the late Mr. Grattan, fifty years ago (about 1778), at the table of a relation, make use of the following words: “Only let us have an independent Legislature, and the Appeals may remain with you; indeed it is better they should, as there is now no danger of partiality or influence.” There is little doubt that this was then the general feeling in Ireland; but Mr. Grattan afterwards told the same gentleman that the Irish Parliament thought their Independence would not be complete without having the final Judicature, though he was far from considering it an improvement.

In the year 1792, so general and determined were the sentiments of the Parliament and People of Ireland in favour of national Independence, that, seconded as their wishes were, by fifty thousand Volunteers in Arms, the British Ministry judged
it expedient to give way, and yield to the desire of the Sister Kingdom; and accordingly in that year an Act was passed by the Parliament of Great Britain (22d Geo. 3, c. 53), for repealing the 6th of Geo. 1; and this being only a simple Repeal, it was by the 23d Geo. 3, c. 28, expressly declared, "that Ireland should only be bound by Laws enacted by the Parliament of that Kingdom, and that no Appeal or Writ of Error should in future be brought into any of the Courts in England." Of course the Jurisdiction of the Irish Lords was revived, and regularly exercised; yet in less than twenty years afterwards, that great Statesman, Mr. Pitt, found means to induce the Irish Parliament to think, or act differently from their predecessors. And by the Act of Union of Great Britain and Ireland (39 and 40 Geo. 3, c. 67, article 8), "It is provided and declared, that all Writs of Error then depending, or thereafter to be brought, and which might be finally decided by the House of Lords of either Kingdom, shall thenceforth be finally decided by the House of Lords of the United Kingdom, except Appeals from the Instance Court of Admiralty in Ireland, which are to be decided by Delegates appointed by the Irish Court of Chancery."

Here we have the Appellate Jurisdiction of the House of Lords legislatively acknowledged by the Act of Union of Great Britain and Ireland, of which nothing was mentioned in the Act of Union with Scotland.

OF THE REHEARING OF APPEALS AND AMENDING JUDGMENTS.

As this article runs to some length, it is thought better to insert it here than to introduce it in the practical part of the Work.

From the standing Order of the 14th February, 1694, which directs, "that no Petition which relates to the Rehearing of any Cause or part of a Cause formerly heard in this House, shall be read the same day that it is offered, but shall lie on the Table, and a further day appointed for reading it," it might
be inferred that Causes were sometimes reheard by their Lordships; and it does appear that in fact this was heretofore the case. But it seems to be now settled, that after an Appeal is fully heard, and a decision pronounced, the Judgment is final and irrevocable; and that the Lords, from a regard to their own dignity and consistency, will not permit a question once decided, to be heard or debated again before them.—1 Brown Ch. Ca. 286.

And yet, as that august Tribunal has the power to review its Judgments, may we not hope it would be exercised upon a fit occasion, and when Justice manifestly requires a revision?

It appears from Lord Hale's Jurisdiction of the House of Lords, that after Judgment of affirmance or reversal in that House on Writs of Error, a fresh Writ of Error might be brought in another, or possibly in the same Session; of which he gives many instances.—Pa. 123, et seq.; and by a parity of reason an Appeal might be reheard.

In a work published in 1685, intitled "The Case stated concerning the Judicature of the House of Peers in point of Appeals," ascribed by Mr. Hargrave* to Lord Holles, it is justly said, "All men are fallible, and Parliaments may err, and do err many times, and therefore, as commonly second notions and second thoughts are better, and consequently second Judgments, so there is even an Appeal from the first Judgment in Parliament, but it must be still to the Parliament.

It may be proper to premise, that in ancient times Appeals were heard by a Committee of the House, and that Counsel have been heard a second time on certain points about which the House happened to entertain a doubt; but this, in some instances, seems to have been rather the spontaneous Act of the House than done at the instance of the parties.†

The following are Cases on this Point.

Whitaker against Rawlins and al.—Calendar, p. 556, 22d December, 1691. Petition of the Respondent relating to an

* Pref. to Hale's Juris. 170.
† Chute v. Lord Dacre, November, 1680.
explanation of the Judgment was read, and Counsel ordered to be heard 30th November; Counsel heard 22d December, 1692.

Ashton against Ashton.—Calendar, 569.—Judgment of Affirmance. Upon a Petition of the Appellant liberty given to try his title at Law. Another Petition of the Appellant, praying explanation of the Judgment of this House, was read, and referred to a Committee—Committee reported.

In an Appeal against a Decree of Lord Nottingham, after the Appeal had been dismissed, the Appellant, Mr. Williams, a Barrister, already noticed, in a subsequent Session petitioned for a rehearing. The prayer of the Petition was granted; the Appeal was referred on the 4th January, 1693-4; and the Judgment was affirmed with Costs.*

Castrill against Stevens.—Calendar, 574, 20th February, 1692-3.—The Appeal revived 20th March, 1693; Judgment of Affirmance 5th January following. Upon a Petition of the Respondent, a recital in the Judgment of the Decree complained of, was rectified 1st January, 1695.

In Cases where the Judgment has not been efficient, through the want of directions necessary upon reversing a decree or a Judgment, the Order simply directing a reversal, there, as a matter of necessity, the Order has been reconsidered, and the requisite directions given. This, we learn, occasionally happened before Lord Somers became Chancellor, at a time when the Seals were in Commission. An instance of this defect took place in the Case of Phillips v. Berry,† where a Judgment of the King's Bench had been merely reversed; and it being found impracticable to proceed upon this in the Court below, the House on the application of the parties, pronounced a further Judgment to give effect to the former.

In the Case of Horner v. Popham,‡ in January, 1697, a Petition was presented by the Plaintiffs, praying that the House would direct the Court of Chancery to proceed on a Bill of Review to reverse a Report of an equivalent in this

† Lords' Journ. 1694.
‡ Lords' Journ., Vol. 10, p. 197.
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Cause. The Defendant in his Answer insisted, that the equivalent had been in Judgment before, and decided on by the House. Upon which, their Lordships ordered, that the Petition should be dismissed, the matters which it complained of having been already determined.

Yet it was again attempted, in 1699, to obtain a rehearing in *Woodman v. Barton,* in which the Defendants had Appealed from a Decree of the Court of Chancery, and the Lords, in January, 1691, merely reversed the Decree. Several years afterwards Woodman presented a Petition, praying for a rehearing, or that the Lords would explain their Order of reversal and grant him some relief, or give directions to the Court of Chancery how to proceed in the Case. Upon the hearing of this Petition the Lords, on the 19th April, 1699, ordered that it should be dismissed.

*Ashby against White and al.—Calendar, 628, 8th December.* Judgments reversed and Dissent 14th January. Upon the Plaintiff in Error's Petition the Judgment was altered 28th February, 1703.

*Cheever against Geoghegan.—Calendar, 645.* The Cause heard and the Decrees of the Exchequer in Ireland reversed with directions 7th March, 1720; one Counsel on a side to be heard on the Appellant's Petition to vary the Judgment, 16th March. Upon the Respondent's Petition to alter the Judgment, one Counsel of a side to be heard, and the Judgment amended.

*Lord Lanesborough against Ellwood.—Calendar, 615, 12th April, 1720.* Upon a Petition of the Appellant to amend the Judgment, one Counsel of a side ordered to be heard 26th May. Heard accordingly, and the Judgment amended, by requiring possession to be restored, and the Respondents to account with the Appellant for the profits received, 28th June, 1721.

*Sir T. Prendergast against O'Shaughnessy.* Upon a Petition to rehear the Cause, the Cause reheard, and the former Judgment set aside, 1733.

* Lords' Journ., Vol. 16, p. 442.*
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Several orders concerning Writs of Error, and various other Precedents on the Journals.—See Calendar 558, 562.

Where a Judgment of the House appeared to have been obtained by misrepresentation, a party has been heard against it, as in the Case of Luttrell v. Lord Ilam,* in which the Respondent, on the Appeal's coming on to be heard, produced an alleged agreement for putting an end to litigation; in consequence of which the Lords dismissed the Appeal, 10th March, 1778. The Appellant presented a Petition, 29th April, stating that this was a misrepresentation, and prayed that the Order might be discharged. The Respondent petitioned that it might not. 4th May Counsel heard on both Petitions, and on the merits of the Appeal. The Order of Dismission was discharged, the Order complained of was affirmed, and the Appeal dismissed.

Page against Hamilton.—A Petition of the Respondents, praying their Lordships to review the printed Cases and the Order made upon hearing on 4th August, 1807, and that their Lordships would extend it so as to take in the Receipts in the Petition mentioned, or otherwise vary the said Order, as to the House shall seem meet, was read, and referred to a Committee to examine Precedents, 13th March, 1809: Report was made from the Committee, of Cases where Judgments have been explained or amended. And the Report being read, was agreed to, and an Order was made to hear one Counsel on each side 27th April. Counsel heard, and the further consideration put off to Tuesday, 5th May. Further consideration had, and the Order of 4th August, 1807, was varied; and the Decree with the variations was affirmed 30th May, 1809.

So in Cases of mere clerical errors, or points not affecting the merits of the Case, the House has permitted alterations. Thus in a Case of Judgment being affirmed with Costs out of pocket, not exceeding £200, as there is no officer of the House empowered to tax Costs, and as no person was nominated by the House for that purpose, their Lordships, upon Petition, made the Order for payment of £200 Costs, without any condition.

* Lords' Journ., Vol. 35., Cal. 707.
And in another Case where the word "Master" had been used in the Lords' Order, instead of the words "Chief Remembrancer or his Deputy" (it being a Decree of the Court of Exchequer), the requisite variation was made in the Judgment.

It has happened, that owing to the course which a Cause has taken in the House, or in the Court below, a material question has been passed over. This occurred in Bernal v. the Marquess of Donegall, in which the Appeal was heard in March, 1814, and the Judgment pronounced in the following July. In the next year the Respondent presented a Petition, stating, that there were some errors in the Judgment, and the parties were allowed to be heard by one Counsel on each side. In this Case Lord Chancellor Eldon observed, that it was not meant to rehear the Appeal, but merely to correct mistakes which had been made in drawing up the Judgment; and, therefore, upon the Respondent's Counsel on that occasion expressing a wish to argue the Case on the whole merits, which he stated was omitted to be done on the original hearing, because the Appellant had rested his Case on a point of form, the House would not permit it,—the Lord Chancellor and Lord Redesdale saying, that the merits had been fully stated in the Respondent's printed Case, which being signed by Counsel, was equally a judicial representation with the speeches of Counsel; and that a Judgment was not to be reviewed, because Counsel had not argued a point. Hence all that the House did in this Case, was to correct the Judgment, which was done by Order of 7th July, 1815.

A mistaken idea may have been entertained of rehearings, by confounding them with hearings on further directions. On some occasions formerly, the House has directed Issues to try Questions where doubts arose on certain facts, instead of remitting the Cause to the Court below, and retained the Appeal until after the trial, when the House has affirmed or reversed the Decree as the Justice of the Case required.*

In cases of this kind, the Order directing the Trial being only interlocutory, the second hearing was a continuation of

* Scudamore v. Morgan, Lords' Journ., March 1677.
the former, until after the event of the Issue was known. Now the practice of the House is, to send the Cause to the inferior Court, leaving it to that Court to order the issues, and to give the directions consequent upon the result.

If an Appeal were heard in the absence of an interested party, the House assuredly would grant a rehearing,* which in fact, as to that party, would be an original hearing; but the omission of Counsel to urge particular points or arguments is no sufficient reason for rehearing an Appeal.

Yet in the Case of Vans Agnew v. Stewart,† which was an Appeal from the Court of Session, although the Lords refused to rehear the Cause on the merits, they altered their judgment on a certain point which had not been before discussed, and struck out of their Order that part of it which related to that point, leaving the parties to proceed upon it in the inferior Court. In this Case the alteration in the Judgment was permitted on grounds peculiar to the Case, and such as probably will not occur again.

An Affirmance of a Decree on Appeal will not be conclusive where matter has been subsequently discovered, which, if previously known, would have induced a different decision. Thus, where a Bill has been dismissed, and the Decree of Dismissal affirmed on Appeal, it was afterwards found that a Deed alleged to have been burnt was in existence, and a Bill of Review was filed for compelling a Discovery of the Deed, which it was said made out the Plaintiff’s title, in order to lay a ground for applying again to the Lords for Relief. To this Bill the Defendant demurred; but the Demurrer was overruled.—Lord Redesdale on Chan. Pl. 79, 1 Vern. 416.

The House of Lords will vary a Decree in favour of the Respondent in any matter consequent to the relief they give the Appellant.—2 Ves. 598.

The question as to Rehearings, appears to have been agitated in the House of Lords of Ireland, a few years before the Union.

† Lords’ Journ. March, 1823.
of that Kingdom with Great Britain; for in a Speech published
by Lord Mountmorres in his History of the Irish Parliament,
vol. 2, p. 206 (a work containing much curious and important
information*), the following passages occur.

Speaking of the 60th standing Order of the Irish House,
copied from the English Order of 14th February, 1694, touching
Rehearings, his Lordship says, "Two principles I apply to the
construction of the Order; the first, that Causes were not origi-
nally heard by the House of Lords of England, but by select
Committees of that House; the second, that all judicial matters
remain in the same state from one Session to another, and if
interrupted by Prorogation or Dissolution, are taken up at the
point where they were discontinued. The first tends to shew,
that rehearing Causes might have anciently prevailed, though it
can no longer be justified; the second proves, that the Order
relates to a different proceeding."

His Lordship then notices the Act of 14th Edward 3, by
which five Lords were to be appointed to try Causes,† with the
assistance of the Judges; and comparing this with the names
of the Triers of Petitions which have appeared in the Journals,
and the quorum of five appointed, with the names of the Judges,
his Lordship expresses it as his opinion, "that Causes were
tried by this delegated power in early times."

His Lordship next observes, that in June, 1621, he finds
Committees first named for trying Causes, and he proceeds to
take notice of the Introdution of Appeals from the Court of
Chancery in the reign of King James 1.

Further on, his Lordship says, "That it was the practice to
refer Causes to Committees after the Restoration, appears from
a Speech of the Earl of Shaftesbury in 1675, from which his
Lordship gives the extract before quoted (p. xli.), which also
shews, that there were then morning and evening Sittings."

The application that his Lordship makes of the first principle
is, that in early times the practice might have obtained of
rehearing what was decided by a Delegation or Committee;

* 1 Bl. Com. 103, Note 12.
† Those Causes were Writs of Error, not Appeals from Courts of Equity.
"but that the doctrine can no longer operate when the House hears Causes in its own capacity, and as the High Court of Parliament."

The other principle, his Lordship thinks, explains the true meaning of the Order. All legislative matters die upon a Prorogation or Dissolution; but it is the reverse as to judicial proceedings, which are transmitted from one Session to another, and taken up where they left off; so that if the House had heard two Counsel this day, and the Parliament was dissolved, they would proceed to hear the rest at the precise stage where the Cause was interrupted. And this, his Lordship thinks, is proved by a reference to the Lords' Report of the 29th March, 1673, by which it is declared, Appeals and Writs of Error remained in Status quo.

[His Lordship is here a little inaccurate. The Report of the Lords' Committees of 29th March, 1673, only says that Businesses depending in one Parliament or Session have been continued to the next Session, and the Proceedings thereupon have remained in the same state in which they were left. The Report of the 19th March, 1673, states, that in Cases of Writs of Error and Appeals, they continue and are to be proceeded in, in Status quo, &c.]

His Lordship then adverts to the Order of 14th February, 1694, "which speaks of Petitions for rehearing Causes that have been heard in the whole or in part. Had it said Causes which have been decided, the construction contended for (which his Lordship opposed), would have been manifest; but a proceeding in a Cause which was handed over from one Session to another, and was then depending, clearly shows it had a reference to beginning the Cause and hearing the Counsel again, for which Petitions had probably been presented."

With due respect for Lord Montmorency's opinion, it is apprehended his Lordship's reasoning, however ingenious, is not convincing. Had the Order of February, 1694, spoken of rehearing Causes which had been heard in the whole or in part, his argument would have been more plausible; but the words of it are "the rehearing of a Cause, or part of a Cause,"
"formely heard." Even as quoted by his Lordship, the words do not bear him out in his construction. The latter part of his speech seems to be inconsistent with itself.—He first says, "judicial Proceedings are transmitted from one Session to another, and taken up where they left off; so that if the House heard two Counsel to day, and the Parliament was dissolved, they would proceed next Session to hear the rest where the Cause was interrupted." And yet a few lines further on, he says, "the words had reference to beginning the Cause again." If his Lordship's first position were correct, viz. that a Cause part heard was taken up where it stopped, the term *rehearing* would be improper, as it would be a *continuation of the hearing*. If the whole were begun again, it would be repugnant to his first assertion; and whichever mode of proceeding was the practice of the House, it would be followed as a matter of course, without any Petition, nor would they be likely to depart from it upon a Petition. Perhaps, however, it may be said, that his Lordship's meaning was that the Petitions contemplated by the Order of 1694, were presented to obtain a rehearing of Causes fully heard, but not decided, or Causes only heard in part; but this would be begging the question, as it is termed, and assuming what the purport of the Petitions was, without evidence. It does not appear, that it was usual in former times to let Causes that had been heard, stand over for Judgment, or to leave the hearing unfinished, and continue it from the stage at which it ceased; nor has his Lordship produced a single instance of either. We believe the fact to be, and will so appear by the Journals, that the few Causes then brought before the House were fully heard, and received a Decision; consequently there could be no rehearing in his Lordship's sense of the word. The obvious meaning of rehearing a Cause, as the word plainly imports, is hearing it again after a *Decision*, which rehearing would only be applied for by a party dissatisfied with the *first Judgment*; and by rehearing *part* of a Cause, was, no doubt, meant a fresh hearing as to a particular point, instead of the whole merits. This opinion has been confirmed upon inquiry at the Parliament Office.
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With respect to the Lords' Report of March 1678, declaring, that Petitions of Appeal and Writs of Error remained in Status quo, which Lord Mountmorris thinks supports his opinion, it is evident that his Lordship mistook the meaning of it, the plain sense of the Report being merely what it expresses, namely, that it was not requisite to renew a Writ or Petition after a dissolution:—it had no reference whatever to continuing a hearing. Besides, how unlikely is it, that if a Cause had been only part heard, it would have been taken up by the House just where it left off, possibly in the middle of a Counsel's speech, and that perhaps at the distance of several years (for the Parliament did not then meet every year), and before a new Chancellor, and newly-created Peers and Judges! Surely a Cause would be heard again throughout, and not in that broken and piece-meal manner. What memory could retain the first argument for such a period? The House would hardly require to be petitioned to grant such a new or full hearing. In short, it seems clear that Lord Mountmorres misunderstood and misconstrued both the Order and the Report. In confirmation of the construction here contended for, it may be added, that there are several instances of decided Causes having been reheard, as has been above shewn.

The writer has heard it asked, on what ground the House of Lords limited the Time for presenting Appeals to five years, and required a Recognizance to be given for securing Costs? Is the Review of Orders in Equity a Matter of Right, as a Writ of Error is? If it be, why is the Right thus restrained by the Authority of the House of Lords alone, when, to confine the Time for bringing Writs of Error to twenty years, and also to compel security for Costs, Acts of Parliament were necessary? To this it may be answered, that the Jurisdiction of the Lords over Decisions of Courts of Equity is founded on those principles of Justice whence arose the equitable Jurisdiction of those Courts. The Right of Appeal may be considered a moral, rather than a strictly legal Right. The application to the Chancellor was to his Conscience; his interposition was in a
degree discretionary, and like that of the Lords, at first occasioned many complaints. What was "dictated by common justice and common sense, however productive of jealousy in its infancy, was at length matured into a most elegant system of rational Jurisprudence." 4 Bla. Com. 430. The power of the Court became fully established; and the exercise of its judicial authority was no longer optional, but became an imperative duty. When Suitors originally resorted to it for assistance, it was fit that this should only be granted on such terms and conditions as were just; that applications for relief should be made in a reasonable time, and without unnecessary delay; that in seeking for Equity they should be subject to Equity; that if they brought parties improperly before the Court, and wantonly put them to expense, they should be liable to the payment of it. These conditions were so perfectly fair, that not to have imposed them, would have been injustice to Defendants. On the same grounds and reasons which governed the inferior Courts, it was surely competent to the House of Lords to regulate the time for bringing Appeals (and five years are certainly ample), and to call upon parties who often reside out of England, to give security for Costs. This is done even by the Courts of common Law. At the same time, the claims of the poor and distressed have not been forgotten,—inasmuch as indigent persons may, in forma pauperis, sue free of expense.

It is certainly true that by the old Common Law Costs were not recoverable by a Defendant; but then it should be remembered, when a Plaintiff failed in a Suit he was amerced to the King pro falso clamore. This was one among many other defects in our ancient Laws, which a variety of statutes have been made to remedy, and yet the doctrine on the subject of Costs is still unsettled.

It remains to say something of the Jurisdiction of the House of Lords as a Court of Justice, and of the exercise of it in vindication of their privileges; for though their Lordships no longer take original Cognizance of Causes civil or criminal, between Party and Party, or between the Crown and the Sub-
ject, yet they exercise a species of original Jurisdiction which is incident to Courts in general. They can compel the attendance of persons, can administer an oath, enforce obedience to their orders, and punish contempts for not obeying them. They can, moreover, inflict punishment for Breaches of Privilege, such as presuming to arrest the person of a Peer or Peeress on civil process, which is a high contempt, and for which the Plaintiff, his attorney, the Sheriff, his officers, and all parties concerned, may be fined and imprisoned; though fines are seldom inflicted in cases of this latter description, as the offence generally proceeds from ignorance. Libelling, or otherwise insulting, or indecently reflecting on the Lords, either individually or collectively, is also a serious Breach of Privilege, for which the House can punish the offending party by fine and imprisonment. Of this there have been instances in modern times, viz. one in the case of Mr. Lambert and Mr. Perry, the printer and publisher of the Morning Chronicle, who, in March, 1798, were fined £50 each, and committed to Newgate for three months for a Libel.—Lord's Journ. March, 1798. Hargrave's Juridical Arg. Vol. 2, pa. 183.

Another instance was that of Benjamin Flower, who, in May, 1799, was voted guilty of a Breach of Privilege, in publishing a Libel on a Member, and sentenced to pay a fine of £100, and to be imprisoned six months. In this case the Defendant sued out a Habeas Corpus, returnable in the King's Bench, which Court refused to discharge him.—8 Term Rep. 314. St. Tri. Vol. 27, pa. 986.

The late Mr. Hargrave having been consulted by Mr. Perry on the legality of the punishment inflicted on him by the House, Mr. Hargrave gave a very long opinion, which he soon afterwards published among his Juridical Arguments, to which we have above referred. In this opinion Mr. Hargrave observes, that the proceedings of both Houses of Parliament, in such cases, is contrariant to the ordinary rules of administering justice; that the offended parties are judges; that the Court is not an open one; that the accused party has not the opportunity of cross-examining the witnesses against him; that he is debared
of Trial by Jury; and when a Commoner, is not tried by persons of his own rank; and that where the offence is an alleged Libel, he has not an opportunity of controverting whether in fact it is one. He states that the imprisonment by the Lords beyond the session, as well as fining, was much complained of in the case of Fitton and Carr, in 1677, and that the subject was taken up by the House of Commons, though dropped without their coming to any resolution.

With respect to the practice of imprisoning by the Lords beyond the session, and imposing fines for Contempt and Breach of Privilege, Mr. Hargrave says it appears to have begun in the latter end of the reign of James 1, when John Blunt, in 1621, was adjudged to the Pillory, and to Imprisonment and Labour for Life, for counterfeiting a Lord's protection; and in 1623, one Morley was sentenced to pay a fine of £1000, and to be pilloried, for a Libel on the Lord Keeper. But the Commons, as far back as the 8th of Elizbeth, fined the Mayor of Westbury for Bribery; and in the 18th of Elizabeth they sentenced the servant of a Member to a month's imprisonment and to pay a fine; and a few years afterwards expelled the Member himself, and fined him 500 Marks to the Queen.

Soon after the Restoration, the Commons ceased to punish Breach of Privilege by fine, or by imprisonment for a time certain. But this example was not followed by the Lords, who continued to fine for Breach of Privilege, and to imprison beyond the session, though between the Restoration and the Revolution, Mr. Hargrave finds only the cases of Fitton and Carr, and two others, where the offenders were fined and imprisoned; and these were complained of as being illegal.

After the Revolution, viz. in March, 1689, William Downing was fined and imprisoned for a Libel on Lord Grey; and in 1716 a solicitor was fined £100 for putting Counsel's names to an Appeal; since which time, and before the case of Mr. Perry, there occurred ten or eleven more precedents, the greater number of which were in the last reign.

Whether the power thus exercised was maintainable in point of Law and Constitution, Mr. Hargrave considers a question of
great difficulty; and he declares he cannot safely say that the exercise of it is against either, though he expresses his doubts of the vastness of a power to impose a pecuniary fine to any extent, to award perpetual imprisonment, perpetual hard labour, and the stigma of the pillory. And after a number of arguments and judicial authorities for and against the exercise of the power in question, the preponderance of his opinion is against its being legal.

He then considers the different modes by which the legality of Mr. Perry's sentence might be controverted. 1. By a Writ of Habeas Corpus. 2. By Action of false Imprisonment. 3. Petitioning the House of Commons. 4. Petitioning the House of Lords. And he concludes by recommending the latter; but it does not appear that any steps were taken to impugn the sentence.

Having extended this Introduction to a greater length than was foreseen, we shall now proceed to the practical part of the Work.
PRACTICE OF APPEALS, &c.

The House of Lords being the dernier resort for the revision and correction of the Judgments and Decrees of the Courts of Law and Equity of the United Kingdom, any person who may think himself aggrieved by Decisions of those Courts is entitled, as a matter of right, to appeal to that high Tribunal, and to remove thither, for review and consideration, the Judgment or Decree which he thinks erroneous or unjust.

The mode of obtaining the interposition of this supreme Court is by Writ of Error from a Court of Common Law, and by Petition in, the nature of an Appeal, from a Court of Equity. There are these differences between an Appeal and a Writ of Error:—1st. The former may be brought from an interlocutory Order, as well as from a final Decree or Sentence; the latter only upon a definitive Judgment: 2dly. On Writs of Error the Lords pronounce the Judgment; on Appeals they give directions to the Court below to rectify its own decision.—3 Bl. Com. 56, 57, 454.

There is this reason for allowing Appeals from intermediate Orders in Equity, that they often decide the merits of a case; and the permitting of an Appeal in an early stage of the Proceedings frequently saves the Expense of prosecuting a suit further, which is often very considerable. But in Actions at Law no such Orders intervene; consequently, a Writ of Error cannot be brought before final Judgment.

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Owing to various Causes, but chiefly to the Unions with Scotland and Ireland, the number of Appeals to the House of Lords has greatly increased, so as to exceed by far the Writs of Error; and the number of the latter has much decreased, on account of the recent Act of Parliament requiring Bail to be put in on bringing those Writs. Hence their Lordships are now principally occupied in their judicial capacity in hearing Appeals, which are therefore become the more important Subject. And for this reason, though Writs of Error are much more ancient, it is judged proper to treat first of Appeals.

FROM WHAT COURTS APPEALS LIE TO THE HOUSE OF LORDS.

Appeals to the House of Lords lie from Decrees and Orders of the High Court of Chancery and the Court of Exchequer at Westminster, as Courts of Equity, and from all other Courts of Equity in England and Wales. From Sentences and Interlocutors of the Court of Session, Decrees and Orders of the Court of Exchequer, on the Equity side, and Decisions of the Court or Commission of Teinds, in Scotland. And from Decrees and Orders of the Courts of Chancery and Exchequer as Courts of Equity in Ireland.—Standing Orders of the House. 1 Bl. Com. 104. 3. Bl. Com. 454. Smith's Procedure in the House of Lords, 1. 109.

FROM WHAT COURTS, AND IN WHAT CASES, APPEALS DO NOT LIE TO THE HOUSE OF LORDS.


Neither does an Appeal lie from an Order of the Lord Chancellor in Matters of Bankruptcy to any Court. A Party who conceives himself aggrieved by Proceedings in cases of that
sort must either file a Bill, or bring an Action, in order to raise the question and obtain such a Decision at Law or in Equity as will enable him to go ultimately to the House of Lords by Appeal or Writ of Error.

No Appeal lies to the Lords from the Courts of the Isle of Man, nor the Islands of Jersey, Guernsey, Sark, and Alderney; nor from the Courts in the East or West Indies, or other Colonies or Plantations belonging to this Country; but in those Cases the Appeal is to the King in Council; nor does an Appeal lie to the Lords from Decisions in Maritime or Prize Causes, the Appeal being also to the King in Council.—2. P. Wms. 262, 329. 1. Bl. Com. 109. 3. Bl. Com. 69.

From Sentences of the Ecclesiastical Courts Appeals lie to Delegates appointed by the King under the Great Seal. From their Judgment there is no Appeal as a Matter of right; but a Commission of Review may be applied for to the Lord Chancellor, which is very rarely granted.—2. Ves. 118. 3. Bl. Com. 66. Burn. Eccl. Law, Tit. Appeal.

There is no Appeal from Sentences of Courts Martial to the Lords, nor to the Privy Council. The Application can only be to the King in person.—3. Bl. Com. 68. Ersk. Inst. 54. But it seems that Members of Naval Courts Martial are liable to an Action for an unjust Sentence, for in the Year 1743, Lieut. Frye, of the Marines, having been sentenced by a Court Martial to fifteen years' Imprisonment, brought his Action against Sir Chaloner Ogle, the President, and recovered £1000 Damages.—Jac. Law Dict. Tit. Navy.

By the Articles of War, Art. 2, Sect. 12, an Appeal is allowed from a Regimental to a General Court Martial.—Tytler on Courts Mart. 341.

From Sentences of the Chancellor's Court of Oxford an Appeal lies to Delegates appointed by the Congregation; thence to the Delegates of the House of Convocation; and if they all three concur, the Sentence is said to be final; but in case of a Difference in any of the three Sentences, an Appeal lies to Judges Delegates appointed by the Crown under the Great Seal.—3 Bl. Com. 85. The Case is understood to be the same at Cambridge.
An Appeal does not lie from the Exchequer in Scotland, as a Court of Revenue.—Lords Journ. Vol. 39, pa. 394. Nor does an Appeal lie from the Court of Justiciary in Scotland.—Lords Journ. May, 1793.

It may be laid down as a general Rule that an Appeal will only lie from a Decree or Order made in a Cause or Suit regularly instituted.

And yet there is an Instance reported, in which it was held that a person conceiving himself aggrieved by an Order of the Court of Exchequer, not made in any Cause, for the filing of an ancient Record that had been mislaid, might Appeal to the Lords, and the Party at whose instance the Order was made, was not permitted to decline their Jurisdiction.—Lord Wharton and Squire. Colles's Cases in Parl. 270.

This determination, however, met with great Opposition, as being an Assumption of original Jurisdiction; for there was not only a strong protest, signed by eleven Lords, but the Matter was taken up by the House of Commons, and a Resolution was passed by that House, censuring the interference of the Lords, as without Precedent and unwarrantable, illegal and arbitrary.—Colles’s Cases in Parl. 279, 8. St. Trials, 175.

The Opposition in the foregoing Case, it is apprehended, was hasty and ill-founded. The House of Lords did not on that Occasion assume or exercise Original Jurisdiction. It was an Appeal from an Order of the Court of Exchequer to file a Commission which had been given in Evidence, and afterwards lost, but found again in the possession of a private person. The Order, it was contended, ought not to have been made; and as it is a maxim that there is no wrong without a remedy, and as the party who thought himself aggrieved seems to have had no other effectual mode of seeking Relief than by Appeal, it was perfectly reasonable that an Appeal should be allowed. The House therefore entertained it; and the Order which they resolved on, was the most proper that could be made, as they directed an Issue to try the disputed Fact. Moreover, the Case was anomalous, and such as in all probability would not occur again; consequently it was not likely to become a Precedent.
IN THE HOUSE OF LORDS.

In a Case where a Decree was made by the Court of Exchequer, under the authority of an Act of Parliament, to determine the right to a fund in Court, produced from Estates seized under an Extent, from which Decree there was an Appeal to the Lords; it was determined that an Appeal would not lie; for if the Case were considered as founded on the Extent, it was a proceeding at Law, and could not be brought per Saltum before the House; and considered as arising on the Statute, no authority was given by the Act to hear an Appeal against the Decision. It was, therefore, dismissed after very full consideration.—Wall v. the Att. Gen., Lords Journ. 1822.

It has likewise been held, that in causes where a Decree has been made by consent of Counsel, an Appeal or Rehearing will not lie, though the party did not really give his Consent; his only remedy being against his Counsel.—Bro. Ca. in Parl. 573. But there have been conflicting Decisions on this Question. In a Case which appears to have been fully debated and considered, two Chancellors, Lord King and Lord Talbot, concurred in allowing a rehearing, where a Decree had been made by consent, there appearing to have been a palpable mistake.—See Eq. Ca. Abr. 165. Amb. Rep. 229. Colles's Ca. in Parl. 292. 2. Ves. 488. 3. Dow. Ca. in Parl. 146. And surely a Party is placed in a very awkward Situation, when he has no other Mode of Redress than that of an Action against his Counsel, of which an Instance seldom or never occurs.

Where a party to a Suit sells and conveys all his right and interest under a Decree to another, it has been argued that such Sale is an absolute bar to any Appeal from that Decree.—3. P. Wms. 242. But it is conceived that this can only be where the Decree has been long acquiesced in by the parties.

It has been a good deal controverted whether an Appeal will lie for Costs only. In the Case of Owen v. Griffith, 1. Ves. 250. Amb. 520. it was held in the affirmative. But in the Case of Wirdman v. Kent, 1. Brown Rep. in Chan. 140. the contrary was determined. See Gould v. Granger, Mos. 395. Duval v. Berry, Show. Ca. in Parl. 16., and Brettland v. Cope, Colles's Cases in Parl. 97. See also 1. Br. Ca. in Parl. 550.
and 1 Dow. Ca. Par. 270. in which Lord Eldon said, that though an Appeal would not be received merely on the subject of Costs, it did not follow that they might not be considered when the Appeal respected other Matters.

OF THE PARTIES TO AN APPEAL.

Generally speaking, an Appeal to the Lords can only be brought by a Party in the Original Cause, and therefore a person who is not a party, though interested, will not be permitted to interplead by petition of Appeal. But if it appear that such person ought to have been made a party, the Lords will send the Cause back for that purpose.—Colles's Cases in Parl. 127. It seems also that there are some Exceptions to the Rule. The following Case occurred a few years ago.

*Oliver v. Conway,* May 1817. The first Respondent, Adam Nixon, having died, Hamilton, one of the Appellants, procured Letters of Administration of Nixon's Effects to be granted to Richard Conway, as his, Hamilton's, Nominee, and Conway became Respondent in the revived Appeal, though he had no Interest in the Estate of Nixon. So that in Effect, Hamilton was both Appellant and Respondent; and it appearing that James Swanzy was the Executor and residuary Legatee of J. P. Nixon, deceased, the only Child of Adam Nixon, and as such entitled to Administration of his Effects, in consequence of whose absence in the East Indies Hamilton had obtained the Administration to be granted to Conway as his Nominee; and that Swanzy had been admitted a Defendant to the Appeal, and had put in an Answer to it, pursuant to an Order made by the House for that purpose, and had also delivered a Case in support of the Decree; although such proceedings appeared to the House to have been irregular, yet on consideration of the Circumstances, and as the Appeal could not be fairly discussed without allowing Swanzy to be heard in support of the Decree, the same having been abandoned by Conway, the House on the Report of the Appeal Committee, which stated the foregoing Facts, ordered that Swanzy should be at liberty to attend
the hearing by Counsel, in support of the Decree on behalf of
the Estate of Nixon. The Appeal was soon afterwards heard
and the Decree affirmed.

It has been determined that a Purchaser under a Decree,
though no Party to the Suit, may Appeal from an Order setting
aside a Bidding and ordering a new Sale before the Master.—
A Creditor who comes in under a Decree, and whose Claim
has been disallowed by the Master, and afterwards by the
Court on Exceptions to the Report, may also, on the same
Principle, Appeal to the House of Lords, though such Creditor
was not a party in the Cause.

PRACTICAL REMARKS.

The Lords, in judging of the decisions of inferior Courts,
consider themselves bound by the Rules of the Court from
which the Appeal comes.—1 Ves. 207.

An Appeal cannot regularly be brought from an Order of a
Court of Equity to shew Cause, until the Order is made abso-
lute, 4 Brown's Ca. in Parl. 368; and such a Defect in a
Decree as the Court will rectify on motion, is not a sufficient
Ground for an Appeal.—2 Brown's Ca. in Parl. 367.

Nor can an Appeal be regularly brought against a Decree
in Chancery, until signed by the Lord Chancellor, 4 Brown's
Ca. in Parl. 198; and though a Cause be heard before the
Master of the Rolls, or the Vice Chancellor, or any Judges
sitting for the Chancellor, the Decree is considered as the Lord
Chancellor's, and must be signed by him.—3 Bl. Com. 453.

From Decrees of the Master of the Rolls or Vice Chancellor
there may be an Appeal either to the House of Lords or the
Lord Chancellor, but it is not usual to appeal to the Lords in
the first Instance, but there is generally an Appeal from such
Decrees to the Lord Chancellor, unless the Decree of the
Master of the Rolls or Vice Chancellor has been signed and
inrolled, in which Case the Appeal lies directly to the Lords,
as the Cause cannot then be reheard before the Chancellor; for
after a Decree is signed and enrolled, it can only be rectified but by Bill of Review, or by Appeal to the Lords.—3 Bl. Com. 454.

It has been doubted whether after a Rehearing before the Master of the Rolls, there ought to be an Appeal to the Lord Chancellor, or whether it should not be directly to the Lords; but Lord Eldon allowed the Appeal to himself, observing that the practice, if wrong, should be corrected by a new Rule of Court.—8 Ves. 566.

OF NEW EVIDENCE ON APPEALS.

Upon an Appeal, it is a Rule that no new Evidence is to be admitted; that is, no Evidence which was not read, or insisted on, in the Court below, (3 Bl. Com. 455, 1 Brown's Ca. in Parl. 70, 1 Dow's Rep. 324); for this is a distinct jurisdiction, Gilb. Rep. 155, 156. Prec. in Chan. 295., therefore this Rule is different from that which prevails in those instances where the same jurisdiction revises its own acts, as in Rehearings and Bills of Review; for the Courts at Westminster, in revising the Judgment or Sentence of an inferior Court, do not allow of examining the Justice of its decision by evidence that was not produced below, though in the spiritual Courts the practice is otherwise.—3 Bl. Com. 455. In Scotch Appeals it seems to be a Rule with the House of Lords not to hear Arguments upon Grounds not noticed in the Court below.—1 Dow. Rep. 324, 2 Dow. 72.

But if Evidence has been offered to the Court below, and rejected, the Appellant may make that a part of his Complaint by his Appeal; in which case the Lords will receive it, if they think it admissible.

In another Appeal reported in Brown's Par. Cases, it appears that Deeds of Lease and Release declaring the Uses of a Recovery, and other Evidence not read on the Hearing below, though strongly objected to, were permitted by the Lords to be read.—Rockfort v. Nugent, 15 May, 1717.—1 Br. C. P. 590.
IN THE HOUSE OF LORDS.

Affidavits in support of Evidence on the Trial of an Issue directed by the Court of Chancery, may be read upon the hearing of an Appeal from that Court.—3 Br. C. P. 214.

It has been held, too, that, in Appeals from the Rolls, upon a Petition the Appellant may be let into new Evidence, provided he will give up his deposit, 2 Alk. 408, and it appears that there have been some other Exceptions to the Rule.—1 Brown's Ca. in Parl. 580.

OF THE EFFECT OF AN APPEAL AS TO STAYING PROCEEDINGS IN THE COURT BELOW.

It was formerly considered that when an Appeal to the Lords was lodged, all Proceedings in the Cause in the Court below were suspended. This was certainly the Case in Scotch Causes, and so continued for a Century, in consequence of their Lordships' Order of 19th April, 1709, in the Appeal of Mackenzie v. Brand, Lords Journ. Vol. 18, pa. 713. But the Practice in this respect was altered by the remedial Act of 48 Geo. 3, c. 151.

In English and Irish Appeals, however, the practice was rather unsettled. In general, the lodging of an Appeal had the effect of staying all Proceedings below; but in the year 1772, in a Case where a Party appealed from an Interlocutory Order of the Court of Chancery, and afterwards moved that a Receiver of the Estates in question might be appointed, though it was urged on the other side that the Lord Chancellor's Jurisdiction was totally suspended pending the Appeal; yet his Lordship said that the Court's Jurisdiction was suspended only as to the matter appealed from, but not so as to prevent the doing of any thing in another part of the Cause not appealed from.—Lord Pomfret v. Smith, before Lord Apsley in June, 1772. 1 Har. Chan. Prac. 7. Ed. 681. In this Case it is to be observed that the application to appoint a Receiver was made by the Appellant.

And it appears that formerly, when the Parliament was protracted pending an Appeal, the party might proceed in Chancery on the account decreed, notwithstanding the Appeal.
But this question was settled in the Case of Burke and other against Browne, which was an Appeal from Ireland, Session 1807. The Appellants petitioned the House that all proceedings under the Decree might be stayed. The Petition was referred to a Committee, who on the 12th of August, 1807, reported as follows:—

That they had considered the Petition and heard Counsel on both sides, and that according to very ancient Practice Appeals were considered by the House as staying Proceedings in Courts of Equity, and that such practice in very remote times might obtain, without much inconvenience in the administration of Justice: That, however, for a very long course of years, Courts of Equity have not forborne to proceed, notwithstanding Appeals against their Decrees, except where their discretion has induced them, upon the application of parties, to stay or modify such proceedings, on account of such Appeals; and that such habitual practice of the Courts of Equity hath frequently fallen within the knowledge of the House. The Committee therefore conceive that, according to the present practice, Appeals do not stay proceedings in such Courts, in the Causes in which Appeals are made, unless such Courts should make order to the contrary on application for that purpose; or unless this House should interpose by special Order: and the Committee, attending to the nature of Proceedings in Courts of Equity, and the numerous Appeals, which in each Cause may be lodged against the Orders of the Court, and the effect which the suspension of their proceedings must have, are of opinion that the practice, as now understood, cannot be departed from without consequences the most oppressive to the Suitors, and the utmost inconvenience in the administration of Justice. This Report was agreed to by the House.

It being thus established, that lodging an Appeal does not operate as a stay of the proceedings in the inferior Court, if the Appellant conceives that such proceedings would be highly prejudicial to him, his only remedy is an application to the Lords, or the Court below, to suspend or modify the proceedings, which will doubtless be ordered, if the Justice of the Case
shall appear to require it. The application is made to the House by Petition, and as their Lordships possess this advantage over an Order of the Court below, that no Appeal lies from it, it should seem an application to the House, if sitting, would be most advisable.

OF THE MODE OF PROCEEDING ON APPEALS.

The Proceedings on Appeals commence by a Notice to the opposite party of the intended Appeal; then follows the Petition of Appeal. The party who prosecutes is termed the Appellant, and the adverse party the Respondent. Every Appeal is to be signed by two Counsel, with a Certificate that there is Cause of Appeal. When an Appeal is presented it is moved by a Lord, and read by the Clerk; an Order is made that the Respondent shall put in his Answer within a limited time. A Recognizance is next entered into by the Appellant to secure Costs. After the Answer is put in, the Appeal is set down for Hearing; Cases on both sides are prepared, signed by two Counsel and printed, and a sufficient number lodged in the House for their Lordships' perusal. The Counsel, not more than two on each side, and one of them in reply, are heard; and the Lords give Judgment, affirming, reversing, or varying, the Decree or Order complained of as being erroneous.

This is a summary view of the progress of an Appeal, which will be stated at large under the respective heads.

The Lords in their proceedings are not confined to any particular technical forms, but for the carrying on of Appeals, Orders and Rules have been made at different times, from which the House will not depart except in very particular Cases.

Those Orders are termed, "The standing Orders of the House relating to Writs of Error and Appeals," to distinguish them from the Orders made in particular Causes pro rebus natis; and are printed and affixed, by order, on the doors of the House, at the beginning of every Session of Parliament.

The several Orders, as well as the different steps and forms of proceedings, will be set forth in their proper places.
TIME LIMITED FOR PRESENTING APPEALS GENERALLY.

This is regulated by the following standing Order:
March 24, 1725.

"It is Ordered that no Petition of Appeal from any Decree or Sentence, of any Court of Equity in England or Ireland, or of any Court in Scotland, shall be received after five years from the signing and enrolling, or extracting, of such Decree or Sentence, and the end of fourteen days from and after the first day of the Session, or meeting of Parliament next ensuing the said five years, unless the person entitled to such Appeal be within the age of one-and-twenty years, or covert, non compos mentis, imprisoned, or out of Great Britain or Ireland; in which Case such person shall be at liberty to bring his Appeal within five years next after such Disability shall cease, and fourteen days from and after the first day of the Session next ensuing the said five years, but not afterwards."

It will be observed, that by the foregoing Order the five years are to be computed from the time of inrolling or extracting the Decree or Sentence. Hence it behoves those who obtain a Decree to get it inrolled, otherwise there seems to be no limitation of the time for Appealing. Yet if there has been manifest delay, and a long Acquiescence on the part of the Appellant, the Appeal will not be entertained. In Hicks v. Cooke, 4. Dow. 29., the Lords affirmed the Decree wholly because of the Acquiescence.

TIME ALLOWED FOR PRESENTING APPEALS IN EACH SESSION.

By the standing Order of the 13th July, 1678—"It is Ordered, that all persons who shall be desirous to exhibit to this House any Petition of Appeal from any Court of Equity, do present their Petitions within fourteen days, to be accounted from the first day of every Session or Meeting of Parliament after a Recess, after which time the Lords do declare they will, during every such sitting, receive no Petition of Appeal, unless
upon a Decree made whilst the Parliament is actually sitting; in which Case the party who shall find himself aggrieved may bring his Petition of Appeal, provided he presents it to this House within fourteen days after such Decree is made and entered, in any Court of Equity in England or Wales, twenty days in any of the Courts in Scotland, and forty days in any of the Courts of Equity in Ireland."

The last part of this Order relating to Scotland and Ireland (and which must have been added after the Union with Scotland), does not appear to contemplate the Case of Scotch or Irish Decrees made during a Recess. So that if such Decrees are pronounced but one day before the Meeting of Parliament, they must be presented on, or before, the 15th day of the Session, though twenty days for presenting Scotch, and forty days for Irish Appeals, are allowed, when made during the Session. This, it is humbly conceived, requires amendment.

OF RETAINING COUNSEL, AND THE NUMBER ALLOWED.

When a party expects a decision against him, and is determined to Appeal, or if he apprehends that his Adversary will Appeal, it is expedient that he should retain two Counsel, which is done by writing Instructions for a Retainer as follows:

In the Court of

A. B. .......... Plaintiff.
C. B. ............ Defendant.

Mr. Attorney General (or Mr. ———) is retained for the said A. B., in Case of an Appeal in this Cause from the Court of by either party.
Retaining Fee £2. 2s. Clerk 5s.
A similar Retainer and Fee to the second Counsel.

Take this to the Counsel; and see a Memorandum of it entered in his Book; but first examine and be certain that no Retainer has been previously left by the adverse party.
Should the Appeal have been presented before the Respondent has retained Counsel, then instead of A. B. Plaintiff, &c., write A. B. Appellant, and C. D. Respondent; and say Retainer for the Respondent.

It may be proper to observe, that in Appeals it is an invariable Rule to retain Counsel, and they expect it, unless they were employed in the Cause in the Court below.

Besides Retainers in particular Causes, it is not unusual to give general Retainers to Counsel thus:

"Mr. Attorney General (or Mr. ) is retained for A. B. in all Appeals which shall be brought by or against him, or in which he shall be Appellant or Respondent."

Fee, Five Guineas (Add the date). A. B. Agent.

After a Counsel has been so retained, he will not take a Fee in any Cause on the other side without sending Notice to the party retaining him, so as to afford an opportunity of giving him a Brief in that particular Cause; but should the party neglect to do this, then the Counsel will be at liberty to take a Retainer from the Opponent. But Counsel do not return the first Retainer.

By the standing Order of 2d. March, 1727, only two Counsel on each side can argue; but in Cases of great importance and complication, it is not uncommon to call in a Junior or third Counsel for Consultation and Assistance. On this subject the author recollects a remarkable Circumstance. The celebrated Mr. Dunning (afterwards Lord Ashburton) was retained with the then Attorney and Solicitor General (Thurlow and Wedderburne) for the Appellant, which in fact was done chiefly to prevent his pleading on the other side. The Respondent's Agent applied to Mr. Dunning, who desired to be attended by the two Agents. They accordingly waited on him, when, addressing the Appellant's Agent, he said, "I find, Sir, you have retained the Attorney and Solicitor General; of Course it is not meant that I should argue." The Agent answered that he was sorry the Rules of the House would not permit it, but that Mr. D. would have a Brief and the same Fee as the Attorney and Solicitor General. "No,
Sir," replied Mr. Dunning, "if I am not to argue I will not be a Mute." He returned the first Retainer, and became Counsel for the Respondent.

With respect to Counsel, there is an Old Order of the House, (13th June, 1685) "that the Attorney General, nor any Assistant, shall be of Counsel at the Bar of the House, after having taken his seat on the Woolsack as such, for any private person."

As the Attorney General has, without any restriction, for the last Century, been in the constant habit of attending as Counsel on Appeals, &c., some persons have been at a loss to reconcile this circumstance with the foregoing Order; but it is very easily explained, by observing that the Attorney General has not, for a great number of years, taken his seat on the Woolsack, probably that he might not be disabled from being of Counsel for private persons at their Lordship's Bar. And it may be observed, that the Order above mentioned is not in the List of standing Orders printed by the direction of the House.

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OF GIVING NOTICE OF APPEALING.

The next requisite to be observed before presenting an Appeal is, giving notice, or as it is termed in Scotland, Intimation, to the other side, of the intention to present it, pursuant to the following standing Order.

9th April, 1812.

"To prevent Delay on the part of Respondents to Appeals in delivering their printed Cases, It is Ordered that, previous to any Petition of Appeal being presented to the House, a Notice shall be given to the Agents of the parties Respondents, of the time when such Petition is intended to be presented; and the day of giving such Notice shall be endorsed by the Petitioner's Agent on the back of Appeal."

The Form of the Notice may be as follows:
PRACTICE OF APPEALS

In the Court of

Between A. B. .......... Plaintiff,
and
C. D. ............... Defendant.

Take Notice, that on the Meeting of Parliament (if Notice given when Parliament is not sitting, if during the sitting, on the day of ) or as soon afterwards as may be, a Petition of Appeal will be presented to the House of Lords, on behalf of the Plaintiff (or Defendant) in this Cause, against the Decree (or Order, or Interlocutor) pronounced in this Cause on the day of . Dated this day of 18 .

E. F., Solicitor for the Plaintiff (or Defendant).

To Mr. G., Solicitor or Agent for the Defendant (or Plaintiff).

OF SIGNING APPEALS BY COUNSEL, AND THEIR CERTIFYING CAUSE.

3 March, 1697.

"By an Order of this date, reciting that by the Rules of the House for preventing frivolous Appeals, all Appeals are to be signed by two Counsel, It is Ordered that no Person do presume as Counsel to sign any Appeal, unless such Person has been of Counsel in the Cause below, or shall attend as Counsel at the Bar of the House when the Appeal is to be heard; and unless he shall certify that in his Judgment there is reasonable Cause of Appeal."

OF THE PETITION OF APPEAL.

The Petition of Appeal should state shortly the Case and Proceedings in the Court below; it should be exact in setting forth Facts and Dates, and especially in reciting the Decree or Order sought to be set aside or varied.
IN THE HOUSE OF LORDS.

Form of an Appeal from the Courts of Chancery and Exchequer, in England and Ireland.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble Petition and Appeal of A. B., of, &c.

Sheweth,

That E. F. of, &c. (here set forth the Case.)

That your petitioner some time in exhibited his Bill in his Majesty's Court of against C. D., of, &c., Esq., stating the several matters aforesaid, and praying, (here set forth the Prayer of the Bill.)

That the said C. D. appeared and put in his Answer to the said Bill, and thereby insisted that, (here state the material parts of the Answer.)

That your Petitioner having replied to the said Answer, and the said C. D. having rejoined, the said Cause was at Issue, and divers Witnesses having been examined on both sides, (if such is the fact), the Cause came on to be heard before the Lord High Chancellor of Great Britain (or Ireland, or before the Barons of his Majesty's Court of Exchequer in Ireland, as the case is) on the day of 1824, when his Lordship (or the said Court) was pleased to order and decree, that, (here set forth the Decree), and if there were any subsequent Orders or Proceedings before the Master, set forth the same briefly.

That your Petitioner conceives, and is advised, that the said Decree (or Decree and subsequent Orders) is (or are) erroneous, and not agreeable to Equity or Justice; and humbly appeals therefrom to your Lordships.

Your Petitioner, therefore, humbly prays that your Lordships will be pleased to grant your Lordships' Order of Summons to the said C. D. to put in his Answer to this your Petitioner's Appeal; and that service thereof upon the said C. D.'s Solicitor, or Clerk in Court in the said Cause, shall be deemed good service. And that your Lordships, upon
PRACTICE OF APPEALS

Hearing the merits of the said Cause, will be pleased to reverse (or vary) the said Decree (and subsequent Order or Orders), or to grant unto your Petitioner such other Relief in the Premises, as to your Lordships, in your great wisdom and justice, shall seem meet.

And your Petitioner will ever pray, &c.

Ant. Hart,
J. Bell.

We humbly certify, that in our judgment there is reasonable Cause of Appeal in this case.

Ant. Hart,
J. Bell.

The Certificate of Service to be indorsed may be as follows:

E. F. of, &c., Gentleman, Agent for the within-named Appellant, doth certify, that on the day of instant, he served a Notice on Mr. G., the Solicitor of the within-named Respondent, D. E., that on the next meeting of Parliament, (or as the fact is) a Petition of Appeal would be presented to the Right Honourable the House of Lords on behalf of the said Appellant, against the Decree (or Order) within complained of. Dated, &c.

A B.

Certificate in Scotch Appeals.

In Scotch Causes, in addition to the Certificate of Cause of Appeal required by the Order of 1697, It is, by the Standing Order of the 9th of April, 1812, Ordered, “That when any Appeal shall be presented from any Interlocutory Judgment of either Division of the Lords of Session in Scotland, the Counsel who shall sign the Petition, or two of the Counsel for the party or parties in the Court below, shall sign a Certificate or Declaration, stating either that leave was given by the Division pronouncing such Judgment, to the Appellant or Appellants to present such Appeal, or that there was a difference of opinion among the Judges of the said Division pronouncing such Interlocutory Judgment.”

Observation on Scotch Appeals.

In Scotch Appeals the Petition ought to contain a brief statement of the Cause of Action or Suit, and the Procedure down.
IN THE HOUSE OF LORDS.

to the Interlocutor Appealed from. When it happens, as it often does, that some of the Interlocutors in a Cause have been favourable to an Appellant, and that only parts of Interlocutors are unfavourable to him, the framer of the Petition should be careful to state that parts only are appealed against; and at the conclusion, those particular parts or findings, should be specified, and relief prayed accordingly. Of this the London Agent can know little or nothing; and it must therefore rest with the Appellant's professional advisers in Scotland to prepare the proper Petition.

The following is the form of a Petition of Appeal from the Court of Session, which will convey to an English Agent some idea of the Law Terms and Proceedings in a Scotch Suit.

To the Right Honourable the Lords, &c. (as before.)

The humble Petition and Appeal of A. B., of

Sheweth,

That G. H., deceased, prior to the year had contracted Debts to a larger amount than the value of his Property, and thereby having become insolvent, his Creditors proceeded to Judgment and Execution against him. That some of them took possession of his real estate, and others sued out Execution against his person; particularly the said G. H. was, in the year , twice arrested upon a Caption or Capias, at the suit of one of his Creditors.

That in this situation the said G. H. did grant unto C. D., one of his Creditors, who was Uncle to him the said G. H., an heritable Bond, (in the nature of a Mortgage) over the whole of his real Estate, for a capital sum of £1000 sterling, bearing date the day of ; whereupon the said C. D. took out a Charter, under the Great Seal of Scotland, and was thereupon infeoffed the day of

That E. F., the Son of the said C. D., having, after his Father's death, established a title in his person to the aforesaid heritable Bond, as Heir to his Father, did bring an action at his suit in the Court of Session, in Scotland, against the legal Representatives and Creditors of the said G. H., in order to have his
lands or real estate, sold by authority of the Court, and to have the Creditors ranked and classed upon the price or purchase according to their several Interests.

That your Petitioner, as being one of the deceased's lawful Creditors, appeared to the said Action, and finding that the whole of the Estate of the said G. H. would be exhausted by the said heritable Bond, so as to leave nothing to your Petitioner, or any of his Creditors other than the said C. D., your Petitioner did object against the said E. F., that the said heritable Bond had been granted by the said G. H. to the said C. D., his near Relation, after he, the said G. H. had become insolvent and a Bankrupt, to the prejudice and defrauding of his Creditors; and that, agreeably to the Statutes in that behalf, and also to the Common Law of Scotland, the said heritable Bond ought to be reduced and declared void, so as to afford no preference to persons claiming under the same, to the prejudice of the Bankrupt Grantor's other legal Creditors.

That the Court of Session allowed parties to bring proofs in regard to the Bankruptcy of the said G. H., and his circumstances, at the date of the said Bond; and a proof having accordingly been brought, the Court did, upon the day of pronounce the following Interlocutor: "Repel the objections made to the heritable Bond aforesaid, and prefer the said E. F. to the Creditors of the deceased."

That against this Interlocutor your Petitioner put in a reclaiming Petition, upon advising whereof with answers, the Lords of Session did by Interlocutor of the day of adhere to their former Interlocutor, and did refuse the desire of the Petitioner.

That your Petitioner being advised that the Interlocutor above recited is contrary to Law and Justice, and conceiving himself greatly aggrieved thereby, humbly appeals therefrom to your Lordships.

Your Petitioner, therefore, humbly prays, that your Lordships will be pleased to reverse or vary the Interlocutors appealed from, and to order the said E. F. to put in his Answer to this, your Petitioner's Appeal. And that
service of your Lordships' Order for that purpose, upon any of the Counsel or known Agents of the said E. F. in the Court of Session in Scotland, may be deemed good service; or that your Lordships will grant unto your Petitioner such other relief in the Premises, as to your Lordships, in your great wisdom, shall seem meet.

And your Petitioner will ever pray, &c.

I. K.
L. M.

In case parts only of Interlocutors are complained of, the following may be the conclusion of a Petition.

"Your Petitioner is advised and humbly conceives that the foresaid Interlocutor of the Lord Ordinary of the day of excepting in so far as it finds the Respondent bound to pay your Petitioner the sum of £ (here state the part not objected to) the said Interlocutor of the Lord Ordinary, of the day of and the said Interlocutor of the day of so far as the latter allows the examination of L. M., the Interlocutors of the Lords of the second Division of the day of and the Interlocutors of the Lord Ordinary of the day of and day of and the said Interlocutors of the Lords of the second Division of the day of and the day of are erroneous and contrary to Law and Equity; and your Petitioner being thereby aggrieved, humbly appeals therefrom to your Lordships.

Your Petitioner therefore humbly prays, that your Lordships will be pleased to reverse or vary the said Interlocutors so far as the same are complained of, and to grant, &c. (the rest as before.)

OF THE CERTIFICATE IN SCOTCH APPEALS.

The Certificate to be signed by Counsel pursuant to the Order before mentioned, may be as follows:—

"We, the undersigned, who were of Counsel for the Petitioner in the Court of Session in this Cause, do hereby certify that in our judgment there is reasonable cause of Appeal from the Interlocutors complained of." If from an Interlocutory
Judgment, add, "And that leave was given to Appeal by the Judges pronouncing the same;" or, "that there was a difference of opinion among the Judges, pronouncing the same" (as the case is.)

A. B. Counsellors' names.

C. D. 

If the Appeal is signed by English Counsel, they are, of course, only to sign the Certificate of Cause thus: "We, who are retained to be of Counsel for the Petitioner at the Bar of the House of Lords when this Appeal shall be heard, do hereby certify," &c.

And the second Certificate will be separate and as follows: "We, who were of Counsel for the Petitioner in the Court of Session in this Cause, do hereby certify," &c.

The Certificate of Notice to be endorsed, will be in this form:—

"I, D. M., writer to the signet, agent to the Petitioner within named, do hereby certify that I did, on the day of give notice to N. O., the known Agent in the Court of Session of P. R. within named, that a Petition of Appeal against the Interlocutory within complained of, was intended to be presented to the House of Lords on the day of or so soon after as conveniently might be. Dated, &c.

"D. M."

OF GETTING APPEALS SIGNED BY COUNSEL.
The Petition of Appeal is generally drawn by the Solicitor, but it is sometimes prepared by one of the Counsel in the Cause. When drawn, it should be fairly copied in wide lines, and laid before the Appellant's junior Counsel (if not prepared by him) with a suitable fee, not less than 5l. 5s., and after he has settled and signed the draft, if much altered and interlined, it should be recopied with his name. The fair Draft or Copy is then to be laid before the senior Counsel, with a like fee, who generally signs it, as a matter of course, in consequence of its having undergone the inspection of the junior.
OF APPEALS FROM SCOTLAND IN PARTICULAR.

With respect to Scotch Petitions of Appeal, Mr. Urquhart observes, "that they are generally prepared in Scotland, and transmitted written on paper, and signed by two Scotch Counsel concerned in the Cause in the Court below; but they are sometimes sent here unsigned, or signed only by one Counsel, in which case the Appeal must, before it is presented, be signed in London by two Counsel in the former case, and in the latter by one Counsel, by whom the Cause is to be argued on the hearing before the Lords."

OF APPEALS FROM IRELAND IN PARTICULAR.

Petitions of Appeal from Irish Decrees are sometimes prepared in Ireland, and signed by two Counsel who were engaged in the Cause there, and sent over ready ingrossed to the English Agent; but they are often incorrect, and, therefore, the Agent here should always be furnished with a Copy of the Decree and Pleadings, in order that any mistake may be rectified, in which case the Appeal must be re-ingrossed.

OF INGROSSING AND LODGING APPEALS.

When the Petition of Appeal has been settled and signed by Counsel, with a Certificate of reasonable cause, it must be fairly ingrossed, that is, transcribed in a strong round hand on parchment (the words to be written at length), with the names of the Counsel, as well to the Appeal as to the Certificate, copied to it, and the Certificate of Notice is to be indorsed.

If the Appeal is brought upon the Opinion of Counsel taken here, and the Petition prepared in London, and certified by English Counsel, the Agent here directs the Solicitor or Agent below to give Notice of Appeal, and to send over a Certificate of having done so, which the English Agent indorses on the Ingrossment. If Parliament is then sitting, or when it meets, the Ingrossment is taken to the Parliament Office, in order to its being presented.
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No Stamps are requisite in this or any other Proceedings in the House of Lords.

OF MOVING APPEALS IN THE HOUSE.

Petitions of Appeal, like all other Petitions to the Lords, are presented by a Member, who mentions it to the House in the words of the Title, and moves that the Petition may be read; the Clerk reads the Prayer, and the proper Order is made as a matter of course.

The usual mode is for the Agent to put the Appeal into the hands of the Clerk Assistant at the House, or to leave it with the Clerk of the Journals at the Parliament Office, either of whom gets a Noble Lord to move it; but should it happen that those Gentlemen are too much engaged, the Agent must apply to some Lord to move the Appeal, in which there will be no difficulty.

OF THE ORDER FOR THE RESPONDENT TO ANSWER.

This Order, which is called the Order of Summons, is usually in the following form:

Die Januarii, 1825.

"Upon reading the Petition and Appeal of A. B., complaining of a Decree (Order, or Interlocutor, as the Case is) of the day of , and praying, &c., It is ordered by the Lords spiritual and temporal, in Parliament assembled, that the said (the Respondent) may have a Copy of the said Appeal, and do put in his Answer thereto in writing on or before the day of next, and service of this Order upon any of his Counsel, his Solicitor, Clerk in Court, or known Agent in the Court below, shall be deemed good Service.

"G. H. R. Cler. Parliamentorum."

Upon English Appeals the time limited for answering is a fortnight, in Scotch Appeals four weeks, and in Irish Appeals five weeks from the date of the Order.
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OF SERVICE OF THE ORDER TO ANSWER, &c.

The Order may be served on the Respondent, if in London, or his Solicitor or Clerk in Court, in an English Cause. If the Appeal be from Scotland or Ireland, the Order should be sent off without delay, to be served there; but care must be taken by the Appellant’s Solicitor to enter into a Recognizance as after mentioned, otherwise the Appeal will fall to the ground.

The mode of serving the Order is by delivering a true Copy of it, and at the same time shewing the original Order.

When the Order is served there should be an Affidavit of the Service indorsed on it, in the following form:—

J. L. of, &c., gentleman, maketh oath that he did, on the day of , serve the within Order of Appeal upon E. F. (or upon N. O., Solicitor or Clerk in Court, or known Agent, as the Case is, for E. F.) the Respondent within named, by delivering to the said E. F. (or N. O.) a true Copy of the said Order, and at the same time shewing him the original Order.

Sworn, &c. J. L.

If the Appeal be from the Court of Chancery or Exchequer in England, the Affidavit may, in the first case, either be sworn before a Master in Chancery in London, or a Master extraordinary in the Country; and in the latter, before a Baron of the Exchequer in London, or a Commissioner for taking Affidavits in that Court in the Country; and in Irish Appeals Affidavits are made before an Irish Master, &c. in like manner.

On a Scotch Appeal the Affidavit may be made before a Justice of the Peace, which is most usual, or before an ordinary Lord of Session, or any other Person having authority to administer Oaths.

If the Order, in either case, should be served by a person coming to London, the Affidavit can be sworn here, and it is always prudent to get it made immediately after the service, though, unless the Respondent neglects to answer, there will be no occasion to make use of it.
OF THE RECOGNIZANCE TO ANSWER COSTS.

After an Appeal has been lodged, the Appellant is within eight days to enter into Recognizance to answer Costs, pursuant to the following Standing Order:

January 26th, 1710.

"It is this day ordered, that in all cases of Appeals to be brought into this House from any Court in Westminster Hall, from any Court of Equity in England or Wales, from any Court in Scotland, or from any Court of Equity in Ireland, the Parties Appellant shall, within eight days after such Appeal received, give security to the Clerk of the Parliaments, by Recognizance to be entered in to his Majesty, of the penalty of £400, conditioned to pay such Costs to the Defendants as this Court shall appoint, in case the Decree appealed from shall be affirmed; and if the Appellant or Appellants shall neglect to give such security within the time aforesaid, the Clerk of the Parliaments shall inform the House thereof, and the Appeal from thenceforth to be dismissed."

If the Appellant should not be in London to enter into the Recognizance, his Solicitor, or some other person for him, may enter into it, for which the leave of the House must be obtained. This is done upon a Motion to be made by a Lord, for which purpose the Agent makes out instructions thus:

A. B. .......... Appellant,
C. D. ............ Respondent.

May it please your Lordship to move

That E. F. may have leave to enter into a Recognizance to answer Costs on behalf of the Appellant, who lives in Scotland (or Ireland, as the case is).

Upon this Motion the House makes an Order accordingly, and the Recognizance is then prepared at the Parliament Office. The usual mode is to request the Clerk of the Journals to get this motion made.

The Recognizance is in the following form:
"Memorandum quod die Jovis 4o martii Millesimo Oettingensesimo Vigesimo Annoq Regni Supremi Domini nostri Georgii quarti Dei gratia Britanniarum Regis, Fidei Defensoris, C. D. de in domo procerum recognovit debere eidem Domino Regi quadrivalentas libras bonae et legales monete magno Britanniae, levari de bonis, catallis, terris et tenementis suis, ad usum dicti Regis, sub conditione infra scripto, Videlecit."

"The Condition of this Recognizance is, That whereas A. B., of, &c., has brought his Appeal before the Right Honourable the Lords Spiritual and Temporal in Parliament assembled, to be relieved against a Decree (or Order, as the Case is) of the Court of of the day of

If, therefore, the said Appellant, his Heirs, Executors, or Administrators, shall well and truly pay, or cause to be paid, unto C. D., Respondent to the said Appeal, his Heirs, Executors, or Administrators, all such Costs as the said Lords in Parliament shall appoint, in Case the said Decree (or Order, as the Case is), shall not be reversed;* then this Recognizance to be void and of none effect, or else to remain in full force and Virtue.

C. D."

This, which is written on unstamped Parchment, is signed by the Appellant, or his Surety, and witnessed by the Clerk of the Parliaments.

If the London Agent enters into the Recognizance, he should take care to be indemnified.

In a Case where the Appellant was confined in the King's Bench Prison, and it not being Term time, when what is called a Day Rule could be obtained, and Lord Loughborough, then Chancellor, having been asked if an Order of the House could be obtained for the Appellant's attendance at the Parliament Office, which his Lordship negatived, the Appellant wrote to the late Mr. Rose, then Clerk of the Parliaments, requesting the favour of him to take the Recognizance in the Prison, and Mr. Rose obligingly attended there for that purpose.—Bowes v. Lady Strathmores, Session 1800.

* The words of the Order are, "shall be affirmed."
Although the words of the Order for entering into Recognizances are general, yet in practice there is an exception, viz.: In Appeals brought by the Attorney General for England, or the Advocate General (usually called the Lord Advocate) for Scotland, on behalf of the Crown, no Recognizance for Costs is entered into, because Costs are never awarded against the King.

It has long been a Subject of remark, that there is no Regulation for ascertaining the Responsibility of Persons entering into Recognizances on behalf of Appellants, to answer Costs. We may be sure that a respectable Agent would not knowingly propose an insolvent or unfit person, as such Surety; but it is certain, that Instances have occurred of late, where the Recognizors have been quite worthless in every sense of the Word. Might it not, therefore, be proper to Order, that when an Appellant does not intend to enter into the Recognizance in person, he should, at the same time he gives Notice of presenting his Appeal, also give the Name and Place of Abode of his proposed Surety; so as to afford the Respondent an opportunity of inquiring into the Party's Character and Circumstances?

OF A PEREMPTORY ORDER FOR THE RESPONDENT TO ANSWER AN APPEAL.

If an Answer be not put in within the time limited for that purpose, the Appellant's Agent may obtain a peremptory Order upon the Respondent to answer, pursuant to the following Order:

January 19th, 1719.

"Ordered that when upon an Appeal to this House an Order is made for the Respondent to Answer thereto, and no Answer is put in by the time limited, upon proof made of due Service of such Order, a peremptory day shall be appointed for putting in the Answer, without further Notice to the Respondent."

To obtain a peremptory Order, the Appellant's Agent leaves at the Parliament Office the first Order with the Affidavit of
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Service; and upon the Clerks reading the Affidavit in the House, the peremptory Order is made as a Matter of Course; but in point of regularity, this Order ought to proceed upon the Motion of a Member, for which the following will serve as instructions:

A. B. .......... Appellant,

The Order made for the Respondent's putting in his Answer to this Appeal having been served upon him, as by Affidavit of the Service now lodged in the hands of the Clerk of Parliaments appears, and the time limited for answering being past, and no Answer yet put in,

May it please your Lordship to move, that a peremptory Order may be made upon the Respondent to put in his Answer in a Week, without further Notice to be given to him.

A Week is always the time limited by a peremptory Order, and, upon the expiration of the Week, if no Answer has been put in, the Appellant's Agent may apply to the House by Motion, to have the Cause appointed for hearing ex parte. He makes out instructions thus:

A. B. .......... Appellant,

The Respondent not having yet put in his Answer to the Appeal, notwithstanding a peremptory Order was made for that purpose and duly served, as by Affidavit appears,

May it please your Lordship to move, that this Cause may be appointed for hearing ex parte, on the day of , or immediately after those already appointed.

On this Motion the House will make an Order accordingly; but if the Respondent will apply in time by Petition, for leave, he will be let in to defend, and get the hearing postponed, on shewing Cause for his Laches.
OF DISPENSING WITH STANDING ORDERS.

Although the Lords expect that parties should conform to their standing Orders, yet when circumstances manifestly require it, they will dispense with them; as where by reason of sickness, or other inevitable Accident, the Agent has been prevented from presenting an Appeal, or the Respondent from filing his Answer within the limited period. And so in all Cases where there has been no wilful neglect, provided it can be made appear that no inconvenience is likely to accrue from refusing the indulgence. But in these Cases an Order must be obtained to dispense with the standing Order, upon a Petition for that purpose.

Petition for leave to present an Appeal after the expiration of the limited time.

To the Right Honourable, &c.

The humble Petition of A. B.

Sheweth,

That your Petitioner did, in due time, transmit to London his Petition and Appeal against C. D., from an Interlocutor of the Court of Session, in Scotland, bearing date the day of , in order to be presented to your Lordships; but your Petitioner's Agent in London was prevented from presenting the same to your Lordships, within the time limited by your Lordships' standing Order for the presenting of Appeals, occasioned by your Petitioner's said Agent having been indisposed, and unable to do business for some days past;

Your Petitioner therefore humbly prays, that your Lordships will be pleased to receive the said Petition and Appeal, and dispense with your Lordships' standing order in this case.

And your Petitioner will ever pray, &c.

I. G., Agent for the Petitioner.

This Petition is to be moved by a Member, upon which occasion the Agent must attend the House, for in these cases
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He is called to the Bar, and examined by the House as to the Allegations of the Petition, and sometimes he is sworn to the truth of them; for which reason, parties should take care to state nothing but what is strictly correct, on pain of being severely censured.

Petitions of this description are now generally referred to the Lords Committees of Appeals, which it were to be wished could be avoided, as being often attended with considerable Expense. This Proceeding, which was scarcely known till of late, and we believe is not once mentioned in Mr. Urquhart's Treatise on the Practice of Appeals, has prevailed, no doubt, in consequence of the great increase in the number of Appeals within the last twenty years.

Of the Meetings of the Appeal Committee, the Gentlemen of the Parliament Office give the Agents of Parties due Notice, in order that they may attend.

OF ANSWERING APPEALS.

On being served with the Order to answer, the Respondent should instruct an Agent to apply at the Parliament Office and bespeak an Office Copy of the Appeal, for which he pays at the rate of one Shilling for every folio of seventy-two words, and £1. extra. And if the Respondent wishes to expedite the Hearing, he may, on having Notice that an Appeal is intended, and without waiting till the Order of Summons is served, or the time for answering expired, put in his Answer.

Answers are of two kinds, one General, the other Special.

A General Answer is in the following form:—

The Answer of C. D. Respondent to the Petition and Appeal of A. B. Appellant.

The Respondent, not confessing or acknowledging all or any of the matters and things in the said Petition and Appeal mentioned to be true, as the same are therein set forth, and reserving to himself all benefit and advantage of Exception to the Errors, Defects and Imperfections in the said Appeal contained, for answer thereto, saith he admits that the Court of Chancery (or
the Court of Exchequer, or the Court of Chancery or Court of Exchequer in Ireland), did make such Decree or Order, (or the Court of Session in Scotland did make and pronounce such Interlocutors, as the case is) as in the said Petition and Appeal is (or are) mentioned and complained of; but as to the date and contents of such Decree (Order or Interlocutors, as the case is) the Respondent for greater certainty, refers to the said Decree (Order or Interlocutors) when the same shall be produced; but the Respondent, is advised and humbly apprehends, that the Decree (Order or Interlocutor) complained of is, (or are) agreeable to equity and justice, and therefore humbly hopes the same will be affirmed, and the Appeal dismissed with Costs.

E. F. Agent for the Respondent.

It sometimes happens that the Respondent determines to bring a Cross Appeal, in which case the Answer be should qualified thus; "that the said Decree, so far as the same is complained of by the said Petition and Appeal, is agreeable to Equity," &c.

An Answer is Special when particular facts are stated, or some specific matter is alleged, either upon the merits of the cause, or upon any defect in form in the Appeal; such as that there are not proper Parties; or that the Decree or Order appealed from did not become final, but remain under Review or Rehearing; or that the date or purport of the Decree, Order or Interlocutor is erroneously stated in the Appeal; but special Answers have not, for a long time, been deemed necessary, nor used in practice. In fact, the matters here noticed, are more properly grounds of an Application to the House to dismiss the Appeal for irregularity, of which we shall speak hereafter. It is therefore of little use to the Respondent to point out objections; and the more general the Answer is, the better, especially as any Errors or Defects pointed out by a Special Answer, could be amended on application to the House; so that in truth they would only be productive of expense and delay.

Answers are ingrossed on parchment, and then lodged in the Parliament Office, when the Clerk marks on it the day it is brought in, according to the following Standing Order:
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5th April, 1720.

"Ordered, that when any Answer to an Appeal shall be put in for the future, the Clerk to whom it shall be delivered do immediately indorse thereon the day on which such Answer is brought in, and that the names of the parties answering, and to whose Appeals such Answers are put in, be the same day entered in the Journals of the House."

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OF CROSS APPEALS.

In some cases both parties are dissatisfied with the determination of the Court below, and the Respondent, as well as the Appellant, is advised to prefer a Cross Appeal. This is so called to distinguish it from the original Appeal, and the Cause is then called a double Cause. As the Appellant in the original Appeal seeks a reversal or variation of a Decree or Order, upon the Ground of its having taken from him too much, or given him too little, so the original Respondent, by the Cross Appeal aims at a reversal or variation of such Decree or Order, on the ground of its having given the Appellant too much, or too little to the Respondent; and Cases are not wanting where the Original Appeal has been dismissed, and relief granted under the Cross Appeal; and sometimes both the Appellant and Respondent have in part succeeded in their respective Appeals.

The time allowed for bringing Cross Appeals is fixed by the following Standing Order:—

March 8th, 1763.

"Ordered, that for the future, if the Respondents to any Appeal shall be desirous to exhibit a Cross Appeal, they shall present the same within One Week after their Answer put in to the Original Appeal, otherwise the same shall not be received."

Form of Cross Appeals.

A Cross Petition of Appeal is in form the same as an Original Appeal, except that it must be entitled "The Petition
and Cross Appeal, &c., and should specify the particular part of the Decree or Order of which the Petitioner complains. It is presented and moved, and an Order made upon it, in the same manner as upon an original Appeal.

The Order of the 27th Jan. 1710, is silent as to Recognizances for Costs in Cross Appeals. It is said that formerly they were sometimes entered into, but they are not now required. Cross Appeals must, however, be signed by Counsel, although that is not expressly directed by the Order of the 3d March, 1697.

The Order to answer a Cross Appeal may be served in the same manner as the Order in an original Appeal; but the Respondent in the Cross Appeal, being Appellant in the Original Appeal, et e contra, by which both parties are in Court, Service of the Order upon the Agent of the Respondent in the Cross Appeal is sufficient.

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ANSWER TO A CROSS APPEAL.

The Answer to a Cross Appeal is in the same form with that to an original Appeal, except that the Title is "The Answer of A. B. to the Petition and Cross Appeal of C. D." and that towards the End, instead of saying that the Decree, &c. is just, &c., it should be "That the Decree, &c. in so far as the same is complained of by the said C. D. is just and agreeable to Equity, &c.

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OF PETITION FOR LEAVE TO PRESENT A CROSS APPEAL, NUNC PRO TUNC.

If the time limited by the last recited Order for presenting a Cross Appeal be elapsed, the House, on Petition, will grant leave to present it nunc pro tunc, if good Cause can be shewn for the Omission. The Petition should be to the following effect, viz.
IN THE HOUSE OF LORDS.

House of Lords,

Between A. B. .......... Appellant,

and

C. D. .............. Respondent.

To the Right Honourable, &c.

The humble Petition of the above named Respondent Sheweth

That the above named Appellant on the day of presented his Petition of Appeal to your Lordships, complaining of a Decree, (or Order.) [Here set forth the Date and purport of it.] To which Appeal your Petitioner put in his Answer on the day of

That your Petitioner conceives himself aggrieved by the said Decree, (or Order) and has been advised by his Counsel to prefer a Cross Appeal against the same.

That your Petitioner has not been able to procure the Draft of the said Cross Appeal from his Counsel, until after the Expiration of the time limited by your Lordships' standing Order for presenting Cross Appeals.

Your Petitioner therefore humbly prays that your Lordships will be pleased to order that your Petitioner may now be at liberty to present a Cross Appeal against the said Decree (or Order.)

And your Petitioner will ever pray, &c.

E. F. Agent to the Petitioner.

OF ANSWERING APPEALS IN A NEW SESSION.

In Case the Session ends before the time limited for answering an Appeal expires, this Circumstance is provided for by the following standing Order:

28th March, 1735.

"It is Ordered that when upon an Appeal to this House, an Order shall be made for the Respondent to answer by a time limited, if the Session of Parliament wherein such Order shall be made, shall determine before the time so limited for answering shall be expired, and no Answer shall be put in during the same Session, Service of such Order upon the Res-
PRACTICE OF APPEALS

Respondent five Weeks before the first day of the then next Session shall be deemed good Service, and the Appellant may apply for a peremptory day, in Case the Respondent shall not put in his Answer within three days from the first day of the next Session of Parliament.

OF PROCEEDINGS AFTER PROROGATION AND DISSOLUTION OF PARLIAMENT.

Formerly some doubts and questions arose as to the Effect of Prorogations and dissolutions of Parliament, and whether the judicial, as well as legislative Proceedings of the Lords, were not thereby determined; in consequence of which,

11th March, 1672,

"It was referred by the House to the Lords Committees for privileges to consider "Whether an Appeal (either by Writ of Error, or by Petition,) being depending, and not determined in one Session of Parliament, continued in Statu quo, unto the next Session of Parliament, without renewing the Writ or Petition?"

29th March, 1673,

"The Lords' Committees produce several Precedents from the time of Edward 1st. and Report it as their Opinion, That Businesses depending in one Parliament or Session of Parliament have been continued to the next Session of the same Parliament, and the Proceedings thereupon have remained in the same State in which they were left when the same were in Agitation."

"The House taking this Report into Consideration approve thereof, and Order it accordingly."

This, it will be observed, only related to the consequences of a Prorogation.

On the 11th and 17th March, 1678, It is referred to the Committee to consider "Whether Petitions of Appeal which were presented to this House in the last Parliament, be still in force to be proceeded on, as also to consider of the State of the Impeachments brought up from the House of Commons last Parliament?"
IN THE HOUSE OF LORDS.

19th March, 1678, The Lords Committees report "that in all cases of Appeals and Writs of Error, they continue and are to be proceeded on in Statu quo, as they stood at the Dissolution of last Parliament, without beginning de novo, and that the dissolution of the last Parliament doth not alter the state of the Impeachments brought up by the Commons in that Parliament."

This Report was on the same day agreed to by the House. This last Order of the House was not acquiesced in, so far as respected Impeachments, for,

On the 22d May, 1685, on a Question being proposed, "Whether the Order of the 19th March, 1678, should be reversed and annulled as to Impeachments? it was resolved in the Affirmative."

Upwards of 30 years ago the Controversy respecting the Effect of a Dissolution of Parliament on judicial Proceedings, was revived on the memorable Impeachment against Warren Hastings, Esq., which was protracted to an unexampled length of time. The late learned Professor of Common Law in the University of Cambridge, Mr. Christian, in his publication on Impeachments has the following passages.

"Before the Lords made this Order in 1678, every Writer, Lawyer, Judge, Commoner and Peer, concurred, without a single dissenting Voice, that a Writ of Error was determined by a Dissolution of Parliament."

"This Practice with respect to Appeals and Writs of Error may be very useful and convenient, but it ought to have been introduced by an Act of the Legislature, and not by the Arbitrary Fiat of the Lords themselves.—It would be highly consistent with the dignity of the House of Commons, and conducive to the general interests of the Kingdom, that they should examine Witnesses upon Oath. But it is to be hoped that no Oath will ever be administered there, without the Sanction of an Act of Parliament. That single instance might be wholesome and salutary, but if they could do one lawless Act for our benefit, they might do ten thousand for our Destruction" Mr. Christian's Examination of Precedents, &c. p. 113-114.
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PRACTICE OF APPEALS

The late Mr. Hardinge, the Welsh Judge, maintained a similar doctrine in a pamphlet which he published.

Their Lordships are assuredly the proper Judges of their own Proceedings, and the Order in Question was made on great consideration. This controversy, however, was, soon after the appearance of Mr. Christian's pamphlet, set at rest; for in the Impeachment against Mr. Hastings, it was resolved by each House of Parliament, tho' contrary to the Opinions of nearly all the legal Characters in both Houses, that an Impeachment was not abated by a Dissolution of Parliament. 4 Bl. Com. 400. Note.

APPEALS LIABLE TO BE DISMISSED FOR WANT OF PROSECUTION BY EITHER PARTY.

This is regulated by the two following standing Orders of the same date, viz.

5th April, 1720,

"Ordered that all such Appeals as shall be presented in any Session, to which Answers shall be put in during the same Session, and for hearing whereof no day shall be appointed in such Session, if neither the Appellant or Respondent shall apply to this house within Eight days, to be accounted from the first day of the next meeting of Parliament, for a day of Hearing, such Appeals shall stand dismissed, but without prejudice to the Appellants presenting any new Appeals thereafter."

"Ordered that all such Appeals as shall be presented in any Session to which no Answer shall be put in during the same Session, if neither the Appellant, within Eight days from the first day of the next Meeting of Parliament, shall apply to this House to appoint a peremptory day to Answer, nor the Respondent put in an Answer within the said Eight days, such Appeals shall stand dismissed, but without prejudice to the Appellants presenting any new Appeals thereafter."
IN THE HOUSE OF LORDS.

OF AMENDING APPEALS.

Mr. Urquhart in his "Experienced Solicitor," has observed of Appeals from Scotland, that most of them are prepared there, and are generally presented to the House as transmitted from Edinburgh, without Alteration, except perhaps in point of Form; the Agent in London not being furnished with the Proceedings in time to enable him to correct any material Errors which they may contain. "Hence, says Mr. Urquhart, it happens that there are sometimes defects in those Appeals, unknown to the Appellant's Agent, and not discovered until they are objected to on the part of the Respondent." The most common defects which he points out, are the Want of proper parties to the Appeal, wrong dates of the Interlocutors, and erroneous statements of some Interlocutors, and the Omission of others."

Some of these Remarks are applicable to Appeals from Ireland, as well as those from Scotland; and if the English Agent has not an opportunity to examine the Petition with the Proceedings before lodging it, and afterwards finds any material Error, he should lose no time in obtaining an Order to amend, before the Cases are prepared, or at any Rate before the day of hearing approaches; otherwise leave to amend will not be granted but on payment of Costs.

To obtain an Order for leave to amend, there must be a Petition, of which two days notice in writing is to be given to the opposite Agent, and it should be accompanied by a Copy of the Petition.

Form of Notice of Petition.

House of Lords.

A. B. .......... Appellant,

and

C. D. .......... Respondent,

Take Notice that on the day of June next, or as soon after as conveniently may be, a Petition will be presented to this Right Honourable House, on behalf
of the Appellant, for leave to amend his Appeal. Dated, &c.

To Mr. H. Agent for E. F. Agent for the
the Respondent Appellant

Or the Notice may be endorsed on a Copy of the
Petition as follows:

This is a Copy of a Petition intended to be presented to the
Right Honourable the House of Lords, on the
day of next, or as soon after as may be. Dated &c.

Form of the Petition to amend Appeals.

House of Lords. A. B. .............. Appellant,

and

C. D. .............. Respondent.

To the Right Honourable &c.
The humble Petition of the Appellant,

Sheweth,

That your Petitioner hath lately discovered certain Errors
and Defects in his Appeal in this Cause. That E. F. and
G. H. were parties to the cause below, as well as the said
C. D. Respondent, but are omitted to be made parties to the
Appeal.

That the Interlocutor of the Court below, is set forth in the
said Appeal in these words &c., and the date thereof is stated
to be the day of But the same is defective in the
words, in so far as after the words, “Prescription positive and,”
the word “negative” ought to have been added; and the same
is also erroneous in the date, for the true date thereof is the
day of

Your Petitioner therefore humbly prays your Lordships
to order that he may have leave to amend his Appeal
in the particulars above set forth, your Petitioner
amending the Respondent’s copy,

And your Petitioner will ever pray, &c.

J. K. Agent for the Respondent.
IN THE HOUSE OF LORDS.

On the moving of this petition it will be proper for the Agents on both sides to attend the House, in order to answer any question which may be asked by their Lordships. Lest however the adverse Agent should not attend, the Petitioner's Agent should be prepared to prove at the Bar of the House the service of the Notice and Petition.

These Petitions, as before observed, are usually referred to the Appeal Committee, and the Clerk of the Journals sends Notice to the Agents on both sides, of the time when their attendance will be requisite.

Applications to amend are not confined to the Appellant, but may also be made by the Respondent, who is interested in seeing that all the proceedings are correct. The same form of Petition which has been given for the Appellant, will also serve for the Respondent, mutatis mutandis; except that the prayer of the Respondent's Petition must be "That the Appellant may be ordered to amend his Appeal in the particulars set forth, and to amend the Respondent's copy."

OF NEW ANSWERS.

If an Appeal be amended after the Respondent has put in an Answer, it is understood that a new Answer should be put in to the amended Appeal; but may it not be doubted whether a new Answer is necessary, especially if the Appellant were to conclude the Prayer of his Petition with words to this Effect: "And your Petitioner hereby consenting not to require any further or other Answer from the Respondent than that already put in." However, supposing that a new Answer is requisite, this cannot be put in without an Order for leave to withdraw the former Answer, and put in a new one, and in that Case the Respondent is entitled to Costs.

To obtain such an Order a petition must be presented in this form.

House of Lords.

A. B. .......... Appellant,

and

To the Right Honourable &c.
The humble Petition of the Respondent,
Sheweth,
That the Appellant having amended his Appeal in this Cause, after your Petitioner had put in his Answer thereto, it is necessary for your Petitioner to withdraw that Answer, and to put in another to the amended Appeal.

Your Petitioner therefore humbly prays that your Lordships will be pleased to order that leave be given to your Petitioner to withdraw his former Answer, and to put in his Answer to the amended Appeal, and that the Appellant may be ordered to pay your Petitioner his Costs thereby occasioned.

And your Petitioner will ever pray, &c.

E. F. Agent for the Respondent.

If, the Respondent do not voluntarily apply for such an Order, and put in his Answer, the Appellant may proceed against him by a new peremptory Order, and may get the Cause set down ex parte, as already mentioned.

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OF WITHDRAWING AND DISMISSING APPEALS.

If, as frequently happens, the Appellant finds it expedient to withdraw his Appeal, he cannot do so without the leave of the House. To obtain such leave he must present a petition to this Effect.

House of Lords.

A. B. .......... Appellant,

and


To the Right Honourable, &c.

The humble Petition of the Appellant
Sheweth,

That your Petitioner has been advised by his Counsel to withdraw his Appeal:

He therefore humbly prays, that your Lordships will be pleased to order that your Petitioner
may be at liberty to withdraw his Appeal in this Cause.

And your Petitioner will ever pray, &c.

E. F. Agent for the Appellant.

Two days notice of this Petition must be given to the Respondent's Agent, as in other cases, and a Copy of the Petition also served; but the House will not grant the prayer of it without ordering the Appellant to pay the Respondent his Costs, nor in some instances without the Consent of the Respondent's Agent; for there may be cases in which it would be unjust to permit the Appellant to withdraw his Appeal, and thereby leave him at liberty at a considerable distance of time afterwards to bring a new Appeal, which he might do notwithstanding the withdrawing of his former Appeal.

It sometimes happens that the Parties come to a compromise before the hearing. In such case, application is made to the House to have the Appeal dismissed, by a Petition in the following form:

House of Lords. A. B. .............. Appellant,

and

C. D. .............. Respondent.

To the Right Honourable the Lords, &c.

The humble Petition of the Appellant

Sheweth,

That on the day of last, your Petitioner presented his Appeal to your Lordships, complaining of a certain Decree (or Order) of the Court of (or of a certain Interlocutor pronounced by the Court of Session, in Scotland).

That your Petitioner and the Respondent having come to an agreement concerning the Matters in question in the said Appeal,

Your Petitioner, therefore, humbly prays that your Lordships will be pleased to order that the said Petition and Appeal be dismissed, the Agent for the Respondent consenting thereto.

And your Petitioner will ever pray, &c.

E. F. Agent for the Petitioner.
On presenting this Petition, the Solicitors on both sides must attend the House; or the Respondent's Solicitor must sign his Consent to the prayer of it.

**OF APPLYING TO DISMISS APPEALS IMPROPERLY BROUGHT.**

In case an Appeal should be presented which the Respondent has reason to think is irregular, or contrary to the Act of 1808, Cap. 151, which can only happen in Appeals from Scotland, the London Agent should be informed of all the circumstances attending it, and furnished with such papers and materials as may be necessary to enable him to judge of the propriety of applying to the House to have the Appeal dismissed, and to prepare a Petition for that purpose, if deemed advisable. Should a Petition be determined on, the Respondent's Agent must give two days' Notice to the Appellant's Agent of his intention, and should, at the same time, serve him with a Copy of the Petition, and both Agents attend on presenting it; on which occasion, (unless there shall manifestly appear to be some palpable breach of the Standing Orders of the House, or of the legislative enactments respecting Appeals, in which case the Appeal will be dismissed at once), the Petition will be referred to the Appeal Committee, before which the Agents, and Counsel if desired, will be heard.

If the Incompetency of the Appeal should be urged on the ground that the time limited for appealing has expired, the Agent should be provided with, and produce a Certificate, signed by one of the principal Clerks of Session, of the exact date of the Interlocutor appealed from, or of the time of extracting the Decree. Should the alleged Incompetency arise upon an interlocutory judgment, he should have a Certificate of Counsel that the Judges were unanimous; in short, whatever be the ground of objection, the Agent should be prepared to support it, as well by Precedent, if any can be found, as by Argument, and endeavour to shew that the Appeal is inadmissible or inexpedient. The Appellant will, of course, be allowed to answer and rebut, by counter evidence.
and argument, the objections; and after hearing both sides, and considering the case, the Committee will make their Report to the House, who always adopt their opinion.

If the Respondent succeeds in getting the Appeal dismissed, the Interlocutor or Decree appealed from is revived, and in as full force as if there had been no Appeal from it. And the Respondent's Agent may have a Certificate of the Dismissal from the Clerk of the Journals.

The 20th Section of the Act, of the 48th, Geo. 3, Chap. 151, provides that, "Where an Appeal is dismissed for want of prosecution, it shall be lawful for any Respondent in such Appeal, to apply by Petition to that division of the Court to which the Cause shall belong; and it shall be competent to the Judges of the said Division to decree payment of Interest, simple or compound, by the Appellant to the Respondent, as the said Division in its sound discretion shall think meet, together with the Costs or Expences incurred in consequence of such Appeal."

Whether the Court of Session would feel themselves justified in extending the power thus given to them, to the Case of Appeals dismissed as incompetent, is perhaps doubtful; but where the expense of opposing such an Appeal has been great, there can be no question that the House of Lords, upon the Respondent's Application to be allowed these Costs, will make such Order as shall meet the justice of the Case.

OF SETTING DOWN CAUSES FOR HEARING.

After the Answer is put in, either the Appellant or Respondent may apply to the House to have the Cause appointed to be heard; for which purpose, Instructions for a Motion should be made out as follows:

A. B. Appellant,
C. D. Respondent.

The Respondent in this Cause having put in his Answer to the Appeal, the Appellant (or Respondent) prays your Lordship will be pleased to move,
That this Cause may be set down to be heard after those already appointed.

By applying to any of the Clerks attending the House they will get the Motion made.

Upon making this Motion an Order will be made appointing the Cause to be set down for hearing.

It sometimes happens that there are two Appeals which relate to the same subject, or where the questions in both are similar, and that one of them has been set down, so as to stand several Causes before the other. In such a case, the House upon a Petition, will order the second to stand next to the first.

OF DELIVERING IN PAPERS AND PROCEEDINGS IN IRISH APPEALS.

In Irish Appeals, as soon as they are set down to be heard, examined copies of the Pleadings and Proofs on both sides, and of all Reports and Orders likely to be referred to, and especially of the Decree or Order appealed from, and also of the Registrar's Notes, or Minutes of the Hearing, should all be delivered in at the Bar of the House, by the person who has examined them (not any of the parties), and who will be sworn that he did compare them with the originals, that they were true copies, and are in the same state as when he examined them. A Schedule or List should be made of them, one copy of which is to accompany the papers, and the other kept by the Agent.

These copies are lodged in the Parliament Office until the Hearing, when they are laid on their Lordships' Table.

Exhibits, such as Original Deeds, Agreements, Letters, &c. remain in the possession of the parties, or their Agents, to be produced when wanted.

In this part of the business, viz. the transmission of papers, a considerable expense may be saved, where the Proceedings are voluminous, by an Agreement between the Solicitors in Ireland, to employ the same Messenger to examine and take
IN THE HOUSE OF LORDS.

over the papers, and each party's furnishing his Office Copies; for instance, the Defendant below possesses an Office Copy of the Bill, the Plaintiff an Office Copy of the Answer, and where there are duplicate Copies, as there generally are, of Depositions, Reports, Orders and Decree, &c. one of each would be sufficient. The Copies of both parties being brought together make a complete set, and being delivered to the Messenger to be examined, would render it unnecessary to have double Copies, and save the expense of two Messengers, and two Examinations, instead of one.

Another mode, to save the Expense of Examinations, is sometimes adopted, as was done in the case of Nesbitt a Knox Session 1120, in which an agreement was entered into by the Solicitors in Ireland for admitting copies of the Proceedings contained in a list, such copies and list having been signed by both.—A Petition was presented to the House, praying to that effect, which, after reference to the Appeal Committee, was ordered. Care should be taken that the Copies are correct.

In English Appeals there is no Examination or Delivery of Papers requisite, as above stated in the case of Irish Appeals.

OF CERTIFIED COPIES OF PROCEEDINGS IN SCOTCH APPEALS.

With respect to the production and authentication of Proceedings of the Court of Session on Appeals to the Lords, it was by the Order of 27th March, 1708, made in the Appeal of Lord Roseberrie v. Sir John Inglis, declared, "that in all Cases of Appeal from Scotland, the Clerk Register and his Deputies, the principal Clerks of Session, should give authentic copies of the Proofs and Extracts of the Proceedings to either party that should require them, at his proper charge, to be made use of at the Bar of the House;" and this Order has been acted on from that time to the present.

By the Act of 50 Geo. 3. c. 112. s. 11. it is enacted, "that when an Appeal shall be taken to the House of Lords, a full copy of the printed papers given in to the Court of Session, certified by one of the principal Clerks of Session, together with
certified copies of such Interlocutors and Minutes of the Court as shall have been pronounced or framed subsequent to the last of these printed papers, shall be received in evidence in like manner as extracts of the whole proceedings are at present." These copies are obtained by the Appellant at his expense, and must be produced at the Hearing.

And by Stat. of 1 & 2 Geo. 4. c. 33. s. 24. it is enacted, "that the copies of printed papers, and Interlocutors and Minutes of Court, appointed by the Act of 50 Geo. 3. c. 112. to be received in evidence on Appeals, and the authenticated copies of proceedings in any Cause which the Assistants of the principal Clerks of Session are by the said Act required to furnish, shall be certified by the Signature either of one of the said Clerks, or of one of the said Assistants, for whom the said principal Clerks shall be responsible."

The foregoing Enactments, it will be observed, only respect Appeals from the Court of Session. In Appeals from the Court of Exchequer in Scotland, the copies of the proceedings to be produced on the Hearing, signed by the proper Officer of the Court below, must be delivered in upon Oath at the Bar of the House.—Smith 100.

OF HEARING APPEALS IN COURSE THE BEGINNING OF EACH SESSION.

This is regulated by the following standing Order:—

June 8, 1749.

"It is ordered that all such Appeals* as have been presented, for hearing whereof days shall be appointed in any Session, which shall not be determined in the same Session, shall be heard and determined in the beginning of the next Session, in the same Order as they stand to be heard at the end of this or any future Session, without any new application to appoint a Day for hearing the same; and that such of the said Appeals as shall stand first to be heard at the end of this or any future Session of Parliament, shall stand to be heard upon the Wednesday in the week next after that week in which any subse-

* Writs of Error are understood to be included.
quent Session shall begin; the second upon the Friday follow-
ing, and the third upon the Monday following; and from thence
the rest of the said Appeals in course upon every Wednesday,
Friday, and Monday, until they shall be all heard. And that
in case any such Appeal shall not be adjourned by Order of
this House, made before the day on which it is appointed to be
heard; and the parties on one side shall attend by their Counsel,
and the parties on the other side shall not attend by their
Counsel on that day, such Appeals shall be heard ex parte, and
in case neither of the parties shall attend by their Counsel on
the said day, then such Appeal shall stand dismissed; but
without prejudice in this last case to the Appellants' presenting
a new Appeal thereafter, in such manner as they might have
done if such former Appeal had not been presented."

A few years ago the House came to a Resolution to hear
Causes five days in the week, instead of three, and to sit at ten
o'clock in the Morning.

OF PREPARING FOR THE HEARING.

What has hitherto been said relates principally to the form
of proceeding. The material and substantial part of the Agent's
business is to follow.

When the Agent has obtained the Proceedings and Proofs
in the Court below, together with the several Deeds and In-
struments which have reference to the Cause, he should care-
fully consider them, and make himself complete master of the
subject. This Instruction, it will readily be perceived, applies
to the Case of Appeals from Scotland and Ireland, because in
English Appeals, which will of course be conducted by the
Solicitor in the Cause, he will necessarily be fully informed on
every point.

In Scotch Causes, therefore, the Agents of the Parties in
Scotland should, in due time, transmit to their Agents in
London an Extract of the Proceedings below, and the Deeds
and other Evidence exhibited on either side, together with six
or seven sets of the printed Pleadings in the Cause, it being the
practice in Scotland to print them. After the London Agent has read the Proceedings, and thoroughly comprehended the subject, he should make out from the Extract an Index of its material contents, which will enable him, in all subsequent stages of the business, to refer to any Exhibit, Proof, or particular Allegation, to which it may be requisite to turn. To this should be added a reference to such Authorities or Decisions as are applicable to the case.

In Appeals from Ireland, where the Courts and Proceedings are similar to those in England, the English Agent should also make himself fully master of the merits, and prepare a short Abstract, containing the material facts and dates, so as to be able to answer immediately any question that may be asked by the House, or Counsel. For want of being thus prepared, much interruption is often occasioned on the Hearing.

OF PREPARING THE CASE, WHETHER FOR THE APPELLANT OR RESPONDENT.

The Agent is next to prepare the Draft of the Case, to be printed for the use of the House, and the sooner he does this after lodging the Appeal, the more time of course there will be to get it settled by Counsel.

The Case should contain all the material facts, and should concisely narrate the Proceedings, and the Substance of the Pleadings and Evidence or Proofs, whether consisting of Documents or Depositions, and particularly those on behalf of the party whose Case it is.

OF STATING THE PROOFS IN THE PRINTED CASES.

On the subject of Proofs, the following Standing Order has been made:

24th February, 1813.

"Ordered, that the printed Cases delivered in Appeals and Writs of Error depending in the House, shall contain a Copy of such of the Proofs taken in the Courts below as the parties intend to rely on at the Hearing, together with References to the Documents where the same may be found."
IN THE HOUSE OF LORDS.

The Evidence, as also Copies of Deeds and other Instruments, are usually stated in an Appendix, separate from the case, which should be printed and indorsed in a similar manner (as after mentioned), and delivered at the same time.

Although the preceding Order directs that the Parties shall print the proofs they mean to rely on, it was said by Lord Eldon, in a Case reported in 4 Dow's Reports, 222, "that the Rule was made by the House for the purpose of guarding itself, but that it is competent to the House to hear Evidence not printed, if it thinks proper. The Parties are to print what they think material; but, in such a case as that, it was too much to suppose that any one could infallibly say what was, and what was not material."

The Title of a Case is as follows:

In the House of Lords.

Between A. B. and E. F. (the Title should be at length)..............Appellants,

and

C. D..............Respondent.

Upon an Appeal from the Court of

The Appellant's (or Respondent's) Case.

If there be a Cross Appeal, there is still but one Case on each side, which may be entitled thus—

In the House of Lords.

Between A. B..............Appellant,

and

C. D..............Respondent,

Et è contra.

The Case of the Appellant (or Respondent) in the Original, and Respondent (or Appellant) in the Cross Appeal.

The Conclusion of the Appellant's Case, where there is no Cross Appeal, is generally as follows:—The Appellant conceives and is advised that the said Decree is (or Interlocutors*).

* In Scotch Cases the words of the Appeal should be followed.
are erroneous and unjust, and humbly hopes that the same will be reversed, for the following, among other,

**Reasons:**

1st. Because, &c.
2d. For that, &c.

The Respondent's Case generally concludes thus:—The Respondent conceives and is advised that the said Decree (or Order, &c.) is just and equitable, and that the said Appeal is frivolous and vexatious; and he humbly hopes that the same will be affirmed with Costs, for the following, among other,

**Reasons:**

(Here the Reasons are to be stated as before.)

When there is a Cross Appeal, the conclusion on the part of the original Appellant will be to this effect:—The said A.B. (the original Appellant) is advised that the said Decree (or Order) so far as the same is complained of by the original Appeal, is erroneous and unjust, and humbly trusts it will in that respect be reversed; and that the said Decree, so far as it is complained of by the Cross Appeal, is just and equitable, and humbly hopes it will in that part be affirmed, for the following, among other,

**Reasons:**

As to the Original Appeal, because, &c.
As to the Cross Appeal, because, &c.

The Conclusion to the original Respondent's Case, where there is a cross Appeal, is to be varied in like manner.

Printed Cases in Appeals (which may easily be seen at the Parliament Office, or obtained from the experienced Agents) will on inspection give a better idea of the form and mode in which the Case is drawn up, than any thing that can here be said. Suffice it to observe, that brevity and perspicuity should be consulted, and prolixity avoided, though of the two, the latter is the least fault; nor is a neat and elegant Style, as Mr. Urquhart observes, by any means inconsistent with the nature of judicial Narratives. Indeed, as the same author remarks, "the preparing of a Case, in a perplexed and intricate Scotch
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Cause, is a task of much difficulty; but the main thing to be attended to, is to have the assistance of learned and able Counsel, and such as are conversant with the Law of Scotland, which differs much from that of England, where it is but little understood." For this reason, Gentlemen of the Scotch Bar are in the habit of coming to London, and arguing Appeals from Scotland, as both Scotch and Irish Counsel are competent to plead Causes from their respective Courts before the Lords; though they cannot do so in the Courts of Westminster Hall. But Counsel from Ireland scarcely ever attend.

OF GETTING THE CASE SETTLED AND SIGNED BY COUNSEL.

By the following standing Order,
19th April, 1698,

"For preventing scandalous and frivolous printed Cases being delivered to the Lords, It is ordered that no person whatever do presume to deliver any printed Cases to any Lord, unless such Case shall be signed by one or more of the Counsel who attended the Hearing in the Court below, or shall be of Counsel at the Hearing in this House."

This Order was probably made in consequence of Words reflecting on the Repondent, contained in the Appellant's Case in the Appeal of Hyndmarsh v. Everard.—Lords Journal, vol. 17. p. 197. Several years ago an Agent was taken into custody for putting a Counsel's name to a Case.—Lords Journal, 2 June, 1768.

It will be observed, that the name of one Counsel to the Case is by this Order sufficient, but the general Rule is to get it signed by two. As soon, therefore, as the Draft is prepared, and a wide Copy of it made, the Agent takes it, with the proper fee marked (not less than five Guineas), to the junior Counsel, to peruse, correct, and in general to draw the Reasons; and it should be accompanied with the requisite papers and Instructions. These, in English and Irish Causes, will be a Brief of the Pleadings and Proofs used on the Hearing below, Copies
of all Deeds and Exhibits in the Cause, and a Copy of the Appeal, together with such Notes of the Arguments of the Counsel, and the Opinion of the Court, as may have been taken.

In Scotch Causes, the proper Materials to be laid before Counsel with the Draft of the Case, are the pleadings or proceedings below (several Sets of which are generally sent to the London Agent in print), a Copy of the Appeal, and Notes of the Arguments. It cannot be supposed that Counsel of great practice have time to peruse minutely the whole proceedings, &c., of a long and intricate Cause. They will presume that the facts have been carefully selected, and accurately stated, and will do no more at best than correct the Language where necessary. For this reason it will be most prudent for the Agent (rather than to rely wholly on his own judgment) to lay the papers before a junior Barrister, who has leisure to give the Subject full consideration, and at the same time sufficient experience to do justice to it. Perhaps the better way will be to get the Case drawn entirely by him. He will, by doing so, be perfect master of the merits, and in a Cause of magnitude it will be proper that he should attend the consultation as an Assistant Counsel.

The Case is sometimes not only drawn up, but printed in Scotland, with the names of Scotch Counsel without having been seen by the London Agent, or Counsel who are to argue, which deprives the Parties of the Benefit of the Suggestions of English Counsel, when they are employed.—Smith, 48.

"Printed Cases," says Mr. Urquhart, speaking of Scotch Causes, "may be seen having the name of great and eminent English Counsel at the foot, with that of a Scotch Counsel, neither elegant in language, nor accurate in matter, which must have been occasioned by hurry, or by a superficial, careless, or unable manner of drawing or settling those Cases; for if English Counsel sign, without correcting or translating the language into English, no correction is to be expected in point of Matter, which requires more time," &c. Mr. Urquhart, therefore, in Cases of importance, recommends holding a consultation on the
Case before it is printed, for the purpose, as well of settling the form of it, as considering and framing the Reasons; but this would seldom be necessary after adopting the plan which has been first suggested.

Here it may be remarked, that Mr. Urquhart's Work was written above half a century ago. Had he lived now, he would have had no reason to censure Scotch Cases, which in general are very able Compositions.

After the Case has been settled by the junior arguing Counsel, the Agent lays the same, together with the necessary Materials, before the senior Counsel, indorsed, "to peruse, settle, and sign," with a fee of five Guineas.

OF PRINTING AND EXCHANGING CASES.

When the Case is signed by Counsel, a fair close copy of it, adding the Counsel's names, is made, and sent to the press. In printing it, the Agent should be careful that it do not contain any Typographical or other Errors, and therefore he ought to get a first, second, or more proof sheets, to examine and correct, until he is certain that no Error remains; and side Marginal Notes should be added for the purpose of pointing out the Matter, as, "18th June, 1812, Will of A. B."—"1st July, 1816, Marriage Settlement"—"Michs. Term, 1824, Bill filed"—"Hil. Term, 1825, Answer put in."

The printed Case is to be indorsed thus:—

House of Lords.

A. B. .......... Appellant,

If there are several parties, say A. B. and Others, &c. And if it be a cross Appeal, add after the Title, et à contra.

The Appellant's (or Respondent's) Case.

To be heard at the Bar of the House of Lords on the day of

At the bottom add the Agent's name.
There are commonly 500 Copies printed off, and usually a
dozen of them are printed on fine large paper for the use of the
Parties' own Counsel and Agent, and to exchange with the
adverse Agent for him and his Counsel. This large number is
necessary because it is customary to send 350 Copies to the
Parliament Office.

Immediately after printing the Case, the Appellant's Agent
exchanges forty or fifty of his Cases with the opposite Agent,
for an equal number of his Cases; and until this Change is
made, neither side should give away or expose one of his Cases
to any person, lest one party should see the other's, and alter
and amend his Case in consequence, which after an exchange
of Cases cannot be done.

With respect to printing Cases, it may here be proper to
observe, that the Pressmen, by an ancient custom from which
they will not deviate, charge by portions of 250 each, and will
not allow any sub-division of that number; so that in printing
any Work, however long, if one above 250, or 500, &c. is
printed, 250 more must be paid for, except the price of the
paper. And this, the Printers say, cannot be altered without
an increase of Wages to the Pressmen.

Sometimes the Agents on both sides agree on the form of the
Appendix, and join in the Expence of printing it. In that case
1000, instead of 500, Copies are printed, which saves the
Expence of setting the Press more than once.

The Appendix is not always delivered in with the printed
Case, as it may be left afterwards, but it should not contain any
Remarks, but merely Evidence.

The printed Cases and Evidence of the adverse Party should
be carefully examined, and any Observations that occur, made
in the Margin for Counsel; and if any Facts, or parts of the
Evidence or Documents are misrepresented, or suppressed,
Notice of it should be given to the other side, in order that the
opposite Counsel may be instructed, and prevented from mis-
leading the House.
OF DELIVERING THE PRINTED CASES TO THE LORDS.

Formerly, by the standing Order of the 12th January, 1724, the Appellants and Respondents were to deliver to the Clerk of the Parliaments, to be distributed to the Lords, the printed Cases, at least four days before the Hearing. But this is now regulated by the following Order:—

12th July, 1811.

"Ordered, that, when any Appeal shall be presented on or after the first day of a Session, the Appellant and Respondent shall severally lay the prints of their cases upon the Table of the House, or deliver the same to the Clerk of the Parliaments within a fortnight after the time appointed for the Respondent to put in his Answer: And in default of so doing by the Appellant, the said Appeal shall stand dismissed, but without prejudice to his presenting a new Appeal within the first fourteen days of the next Session of Parliament, or within the then remainder of the time limited by the standing Order, No. 18 (13th July, 1678), for presenting Appeals, and in case of default on the part of the Respondent, the Appellant shall be at liberty to set down his Cause ex parte."

The Agents, therefore, should be careful to comply with this Order, by sending three or four dozen of the printed Cases to the Parliament Office in due time. The remaining Number may be delivered at leisure. It has already been observed, that it is not absolutely requisite to deliver the Appendix with the Case.

OF APPLYING FOR TIME TO LAY THE PRINTED CASES ON THE TABLE OF THE HOUSE.

If, through any Casualty, either of the Parties' Agents should be prevented from getting his Case prepared in time to lay the Prints on the Table, pursuant to the standing Order, he must present a Petition for a further Day, setting forth the Cause of Delay, which may be as follows:—
Petition for Time to lodge Cases.

House of Lords,

Between A. B. .......... Appellant,

and

C. D. .......... Defendant.

To the Right Honourable, &c.

The Humble Petition of the above-named Appellant (or Respondent),

Sheweth,

That the time allowed by your Lordships' standing Order for laying prints of your Petitioner's Case on your Lordships' Table, will expire on the day of

That the Pleadings and Proceedings in the Court of Chancery in Ireland, and the Materials from which the Case was to be drawn, are of great length, and necessarily required much consideration, in so much that your Petitioner's Counsel have not been yet able fully to settle your Petitioner's Case.

Your Petitioner therefore humbly prays that your Lordships will be pleased to grant to your Petitioner a Month's further time to lay his printed Case on the Table of your Lordships' House.

And your Petitioner will ever pray, &c.]

E. F. Agent for the Appellant (or Respondent).

Two days' notice of this Petition must be served on the opposite Agent; and on its being presented, both Agents should attend the House, where it will probably be referred to the Appeal Committee, and unless a very good ground is shewn for the indulgence prayed, it will not be granted, and then only on payment of Costs, if any have been incurred by the opposite party.

OF APPLYING TO PUT OFF THE HEARING OF A CAUSE.

It sometimes happens that parties find it necessary to postpone the hearing of a cause. This is regulated by the following standing order:—

December 22d, 1703.

"Upon consideration of the great inconvenience arising by
petitions for putting off causes after days having been appointed for hearing thereof; It is ordered, that when a Day shall be appointed for hearing any Appeal or Writ of Error, the same shall not be altered but upon Petition; and that no such Petition shall be received, unless two days' notice thereof be given to the opposite Party; of which notice, Oath shall be made at the Bar of the House."

There may be many reasons for the postponement of a Hearing besides that of not being prepared with the Case, such as, that the Agent has not received Money to see Counsel; that Copies of the Proceedings in Irish Causes have not been received; or that some material Deed or Instrument exhibited in the Court below, has not been furnished; or that some essential Paper or Evidence is withheld by a Person interested, or that Papers are retained by a former Agent, who holds them for his Bill of Costs, so that they cannot be obtained without an Order from the House. In any of these cases, the House, upon Petition and Proof in support of it, will, if it thinks fit, make an Order to postpone the Hearing; and in the last-mentioned Case, will also make an Order upon the Person in possession of such Papers, to produce or deliver the same to the Appellant or Respondent, to be used on the Hearing, but to be afterwards returned; or else that such Documents should be deposited with the Clerk of the Parliament Office, which, indeed, seems to be the most proper course.

To this end, a Petition must be presented to the House, and Notice of it, with a copy of the Petition, served on the party, personally if possible, two Days at least before presenting it, and a longer notice, according to the distance of the Party's Residence.

For the Forms of Petitions to postpone the Hearing, and to compel the production of Papers by a former Agent who retained them for his costs, see Appendix.
OF MOVING THE HOUSE TO APPOINT AN EARLY DAY FOR HEARING.

Instead of postponing the Hearing of an Appeal, it is in some Cases an essential object to have the Hearing of a Cause expedit ed and brought on out of its turn, by getting what was called formerly (when the House sat on Causes only three days in the week) a By-day appointed for that purpose. It is now a very difficult Matter to prevail on the House to grant this Indulgence. The most usual grounds for an Application of this sort, are the Distress of a claimant or Creditor, whose support may chiefly depend upon the Receipt of a Sum of Money withheld, or which may be payable out of a Fund locked up by the pendency of the suit; or where one of the parties in the Cause is very old and infirm, and much delay and inconvenience would be likely to ensue by the death of such a Party. Upon a very strong case of this description, or under some other peculiar circumstances, more especially if the Appeal is evidently brought for delay, their Lordships will sometimes, though of late very rarely, take a cause out of its due course. This is done upon a Petition, of which Notice must be served, as in other instances. For the form of such a Petition, see Appendix.

There is also a particular class or description of Causes called Political Causes, which will be next noticed, in which early days are granted.

OF APPEALS IN CAUSES CALLED POLITICAL OR ELECTION CAUSES FROM NORTH BRITAIN.

These Appeals, says Mr. Urquhart, which have acquired the Appellation of Political Causes, are brought to have the Judgment of the House of Lords upon the Rights of Persons, who claim a title to vote as Freeholders of Counties, or as Burgesses or Magistrates of Boroughs, at the Election of Members of Parliament for Scotland; and it may be proper to explain something of the nature of those Causes, and of the Proceedings upon them usually had in the House.
Of the forty-five Members for Scotland, thirty of them are for Counties, and fifteen for Boroughs. The Electors of the Members for Counties are the Freeholders, and they are of two kinds:—one consists of Persons entitled to Lands held of the King as Superior Lord, entered in the Land Tax Book at £400 Scots*, and paying Land Tax at that Rate; the other, of Persons entitled to a forty-shilling Land, of old extent, holding of the King as Superior; which Land is nearly of as much value as the £400 Scots Land. The qualification of Burgesses is various, according to the Constitutions and Custom of different Boroughs. At Michaelmas yearly, the Freeholders of Counties meet, and make a List or Roll of the Freeholders entitled to Vote at Elections; and the Corporations of Boroughs also every Year elect their Magistrates, who are to vote at the Elections. When there are two Candidates for a county, or for a District of Boroughs, every Effort is of course made by each Candidate to obtain the majority of Votes. With this view, a considerable Time prior to the General Election, objections are made at the Michaelmas Meetings, and at the Elections of Magistrates for Boroughs; one Candidate will dispute the qualifications of those Freeholders or Burgesses whom he finds adverse, and the other Candidate states objections to those Freeholders who oppose him. The Meetings decide upon those Objections, ordering some to be struck off the Roll of Freeholders, and others to be put on it. The Candidate who is dissatisfied with the determinations, applies to the Lords of Session by a Process called a Summary Petition and Complaint. That Court gives Judgment, affirming or varying the Determination of the Michaelmas Meetings, and if the determinations of the Court of Session are not satisfactory, Appeals from them are presented to the House of Lords.

Those Appeals do not materially differ from Appeals in Common Causes, the chief peculiarity being, that for each Freeholder on whose behalf Complaint is made of a wrong Decision, there must be a separate Appeal by the Complainant. But where there are two or more Cases depending on the same Question, there the

* £1 Scots is 1s. 3d. sterling.
decision of one Appeal will govern and settle the others, and then a full case need not be prepared in each cause; but it will be sufficient to prepare one Case in the leading Cause, fully detailing all the Circumstances, and in the other Cases to state the names of the parties, and to refer to the principal one. Still, on each short Case, the standing Orders must be observed in the same manner, and the like Office Fees paid, as in any other Appeal, except the Bar Fees, which are only payable when the appeal is actually brought on to be heard. But Parties are not precluded from coming to an Understanding or Agreement, that the Determination in one Case shall be decisive of all others, where the Questions are the same.

From the eagerness of Parties it has sometimes happened in those political Causes, that Appeals are presented prematurely, before the Case was determined in the Court below, with a view to gain time, and to delay the final determination, till after the first Michaelmas Meeting of the Freeholders, or after the General Election; before which time, if the Appellant can put off the determination upon some governing Question, he might have a Majority of Votes. In such a Case it would be for the Respondent, as soon as possible, to apply to the House by a Petition, stating the Circumstances; and that the Appeal was contrived for the purpose of delaying the Course of Justice, and therefore praying that it might be dismissed, leaving the Appellant at liberty to bring a new Appeal, after the Matter was fully determined in the Court below. Upon such Petitions, Mr. Urquhart observes, there were Instances where the House dismissed premature Appeals; and in general where it appeared that an Appellant was making an undue use of the Jurisdiction of the House, and meant only to gain time, the Respondent might either obtain an Order of dismissal, or, if there were not circumstances sufficient for such a dismissal, he might have the Cause brought to a summary hearing upon the Merits at a short or By-day; and this summary manner of proceeding in these political Causes, took its rise from the Act of 16th Geo. 2. chap. 11., intitled, "an Act to Explain and Amend the Laws touching the Elections of Members to serve in Parliament for Scotland," &c.
OF THE BRIEF TO COUNSEL.

A Brief, or, more properly speaking, a full Statement of the Pleadings and proofs, with Copies of Deeds, Wills, and other Documents fairly written, should be prepared for Counsel, (unless they are stated at length in the Case,) so that there may be sufficient time to peruse it before the Consultation. Of the Mode of drawing a Brief in an English or Irish Cause it is needless to enlarge. "The usual way," says Mr. Urquhart, "of preparing Briefs in Scotch Causes, has been by making an Abridgement from the Extract of all the Proceedings in the Court below, not set forth in the printed Pleadings; for after abridging from the beginning of the Extract down to that part where the printed Proceedings begin, these latter are not copied in the Brief, but referred to thus:—A Petition (or Answer) was put in for (the Party), which is in print, and which please to peruse."

This Method is vehemently condemned by Mr. Urquhart, as tending to no other purpose than making a figure in the Solicitor's Bill. He says, that "the English Counsel, finding their Briefs unworthy of being read, have got into a custom of not reading them at all, contenting themselves with perusing the printed papers and Cases." Further, that English Counsel being habituated to written Briefs only, feel it awkward to have recourse to printed ones, and being unacquainted with Scotch Proceedings, and the language of the Scotch Courts, find it difficult to understand those printed papers.

These Observations Mr. Urquhart applies to the English Counsel only, the Scotch Counsel being accustomed to the printed Papers from below, which he says "are the proper and natural Materials for their Instruction."

"In order, therefore," says Mr. Urquhart, to prepare a proper brief for an English Counsel in a Scotch Cause, the Agent should begin with stating correctly the purport of the Libel or Declaration, and Plea or Pleadings in the Court below; then specify the Exhibits produced there on both sides; and when particular Clauses, &c. in Deeds are relied on, th
should be set forth at length. Also, if there be Parol Evidence or Depositions in the Cause, the substance, if not the very words of such parts as are material, ought to be stated. Then set forth the Statutes, Authorities, and Precedents which were urged by either Party in the Court below, in their proper Order, and in the exact Words, with correct References to the Pages, &c., which will save much trouble at the Hearing." According to these general Hints, Mr. Urquhart gives the following Form of a Brief in a Scotch Cause:—

House of Lords.

A. B. ............... Appellant,

and

C. D. ............... Respondent.

**Brief for the Appellant (or Respondent).**

The Action which has given occasion to the present Appeal was brought in the Court of Session in Scotland, in November 18 , by A. B., the present Appellant, against the said C. D. the Respondent.

The Libel or Declaration sets forth, that, &c., and concludes or prays, that, &c.

On the part of the Appellant, there were exhibited and read below, the following Deeds and Writings, viz.

(Date) 1. Charter under the Great Seal of Scotland, granting the Lands and Barony, &c.

(Date) 2. Another Charter, &c.

On the part of the Respondent were exhibited the following Deeds, Writings, &c. (Here state them).

On the day of the Cause came on to be argued before the Lord Ordinary.

For the Appellant it was insisted, that he ought to have a Decree in terms of the Conclusion or Prayer of his Libel.

On the part of the Respondent, it was pleaded, that, &c.

For the Appellant, it was replied, that, &c.

The Statutes, Precedents, and Authorities, urged on the Appellant's part, were as follows, viz.

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The part urged by the Appellant is in these words (Here state the words).

Act of Parliament 1 Sess. 6, Will. 3, Cap. 4, entitled, &c.
Case of against determined the day of 1750, reported by Horne. See his Decisions, page , which Case was thus, &c.
Case of against reported by Forbes, page and referred to in Horne's Dictionary, vol. 2, page , which was as follows, &c.

And the Statutes, Authorities, and Precedents, relied on by the Respondent, are as follows. (Here set them forth).

The several Interlocutors made in the Cause below, as recited in the printed Case, and the different Steps from the first debate in the cause before the Lord Ordinary, are also as recited in the printed Case.

Of the printed papers on the Appellant's (or Respondent's) part in the Court below, the Information for the Appellant, dated day of and the Petition for him dated the day of are the most material to be perused by the Appellant's (or Respondent's) Counsel.

Notwithstanding these particular Instructions respecting the Brief, it seems to be now generally considered a better mode to make the printed case sufficiently full, than to incumber Counsel with a voluminous and bulky Brief. It should also be considered that the Lords are not furnished with Briefs, and on that Account alone it is proper the Case should fully embrace all requisite Information. Still the Agent should be prepared with a correct Brief of Pleadings, &c.

OF DELIVERING BRIEFS AND INSTRUCTIONS TO COUNSEL.

Although the Gentlemen of the Parliament Office give prompt notice to the Agents when an Appeal is in the paper, the Agents should be watchful of the progress of the Causes; and about a week before the Appeal is likely to come on for hearing, the printed Cases on both sides, and other Materials of Instruction should be delivered to Counsel.
Should it happen that the Counsel who were retained, and signed the Case, have died, been taken ill, or promoted to the Bench, then it will be requisite to retain other Counsel, though they need not sign the case; but they should of course be instructed early enough to allow of their thoroughly understanding it.

In Scotch Causes, besides a Copy of the Appeal, a full set of the printed Papers in the Court below should be laid before the Counsel, and the Agent ought to write on the margin of them the corresponding pages of the Proceedings, which will enable him at the Hearing to refer to them immediately.

OF ADDITIONAL COUNSEL.

Though by the standing Order, only two Counsel on a side are to be heard, which is founded on a supposition that there are but two Parties or sets of Parties interested, yet where it appears that the Respondents have not identical, but separate, and, perhaps, conflicting Interests, the House will allow a third or additional Counsel to be heard in support of such Interests. To obtain leave to do so, it is usual to present a Petition for that purpose, stating the peculiar Circumstances. An instance of this occurred in the Appeal of "Gore and Stackpoole," in which their Lordships, on the 9th May, 1812, made an Order, that an Infant Respondent might have Counsel on his separate behalf. And see the Case of Magle v. Foot, in Howard on the Popery Laws.

OF FEES TO COUNSEL.

It is usual to give the leading Counsel fifteen guineas, which is called the Pleading Fee, and not less than ten guineas to the Junior; more, according to the length of the Pleadings, and the importance and difficulty of the Cause; and if the Hearing is not finished the first day, there must be a refreshing Fee of ten guineas paid to each Counsel for every subsequent Day during which the Hearing lasts; and this must be done, although there should be but one Counsel to speak in reply.

* The Author was concerned as Agent in this Case.
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OF THE CONSULTATION.

A Consultation of the Counsel is to be held preparatory to the hearing. This is optional with Parties in the inferior Courts, but in the House of Lords the Counsel expect it, and it is indispensable. It is commonly held the day before the Hearing, at the Chambers of the Senior Counsel, except when one of them is an English, the other a Scotch Counsel, in which Case the Consultation is held at the former's, without regard to seniority, as being more convenient for referring to the Law Books.

Upon the Consultation, the Counsel consider the several parts of the Case, its strong and its weak points, settle the best mode of conducting the Argument, and point out and arrange the Depositions, Deeds and Passages of the Pleadings to be read upon the Hearing; of which the Agent should, when the Proceedings are voluminous, immediately after the Consultation, make a Minute.

Fees on the Consultation to each Counsel, five Guineas.

On the day before the Hearing, the Parties should see that the requisite Papers are laid on the Table of the House, and especially the Decree or Order appealed from, which it is the Appellant's duty to get drawn up, should this not have been done by the other side; and if it be a Decree, care should have been previously taken that it stated what Depositions, Deeds, and other Documents were read on the Hearing, because no Evidence can be read before the Lords that was not produced in the Court below, unless the rejection of such Evidence is made a ground of Appeal.

The Registrar's Notes ought to shew what was read on the Hearing, and were formerly deemed sufficient as to this point. It behoves the Appellant to be correct in his Proceedings, and fully prepared in all respects; for if, owing to a defect in the Appeal, or any neglect, by which the Hearing is hindered from going on, he will be ordered to pay Costs. Of this an Instance will be found in the Appendix.
OF THE HEARING OF CAUSES.

The mode and order of proceeding at the Hearing is regulated by the following standing order.

2d March, 1727.

"It is ordered that at the Hearing of Causes, one of the Counsel for the Appellants shall open the Cause; then the evidence on their side shall be read; which done, the other Counsel for the Appellant may make Observations on the Evidence, then one of the Counsel for the Respondents shall be heard, and the Evidence on their side to be read; after which, the other Counsel for the Respondents shall be heard, and one Counsel only for the Appellants to reply."

It is the province of the Senior Counsel to open the Case, and to reply.

Few causes are finished in less than two days; some take up three or four days, in which case refreshing Fees must be given as before mentioned.

OF JUDGMENT IN CAUSES.

When the Arguments of the Counsel are finished, they withdraw from the Bar, and the House, if then prepared, give their Judgment, affirming the Decree or Order of the Court below, with or without Costs; or reversing or varying the same, according to the circumstances of the Case. If any Lord conceives that the Decree or Order is erroneous, he states his reasons, and moves that it be reversed or varied, and should the rest of the House be of that opinion, the motion is put and carried. But if it be opposed, then a Debate ensues, and the question is put to the Vote, on which occasion proxies are not allowed. And it being the rule of the House to put the question for reversing* the Decree or Order, unless upon a Division there is a Majority for the Reversal, it will be affirmed.

Formerly, if there were no opposition to the Decree, it was

* By a standing Order (14th Jan. 1694), upon giving judgment in Cases of Appeal, or Writs of Error, the question shall be put for reversing, and not affirming.
not usual to give any reasons for affirming it, but the Lord Chancellor or Speaker merely put the question; unless Costs were given, in which case his Lordship commonly made a few observations on the nature of the Cause, and the vexatious, or litigious motives of bringing the Appeal; but of late years the Lord Chancellor has been in the habit of assigning reasons for the affirmation, which is certainly desirable.

It has happened, though rarely, that a Protest is entered. This was the case in the famous Douglas Cause, 27th Feb. 1769, when one was signed by the Duke of Bedford and four other Peers.

In some Cases of nicety and importance, a short hand writer is employed to take Notes of the arguments and judgment, and this is generally done at the joint expense of the Appellant and Respondent. The short-hand writer's charge is two shillings per sheet of seventy-two words, for taking down the Arguments, and one shilling per sheet for the Copy.

It sometimes happens that the House finds it requisite to take time to consider of its judgment, and also that their Lordships deem it expedient to have a further hearing of one Counsel on each side, upon points of difficulty; and in some instances, where the question is complicated, and the interest of the Parties various, a Draft of the Judgment is prepared by the Clerk of the Parliaments, and by their Lordships' direction Copies of it are delivered to the Agents on both Parties for their consideration, and that of Counsel, if thought proper, in order that any observations which may occur to them may be submitted to the House.

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OF JUDGMENT IN APPEALS FROM THE COURT OF SESSION.

There are several instances in which, after a full Hearing, the House, seeing that the final decision will depend upon the construction of a particular deed or Act, or perhaps discovering an important fact in the course of the Hearing, remits the Case to the Court of Session to determine the point, and to review the
—Lords Journ.) And the House often gives a declaratory
Judgment on a particular fact, or question of Law, and without
further touching the Judgment, sends back the Cause with such
Declaration to the Session, directing it to proceed as shall
appear just upon the new view of the Case. There are
instances also of Judgments being given with the consent of
Parties, where a former decision has rendered such a Settle-
ment advisable; and there is one remarkable Case, as Mr.
Smith observes (p. 65) where a party appeared at the Bar, and
agreed to relinquish a part of his claim, upon condition that the
remainder should be adjudged to him by the House, which was
accordingly done. This happened in a Cause where the no-
rious Col. Francis Charters was a Party.—*Charters v. Earl of

The Draft of the Judgment, when finally settled, is the next
day, as soon as their Lordships sit, read, and being approved by
the House, is entered in the Journals, and Copies of it, signed
by the Clerk of the Parliaments, are delivered to the Agents,
in order that it may be acted upon in the Court below. Those
Copies and all others signed by him are authentic. The Agent
may have his Copy either upon paper or parchment, as he
thinks fit.

The Judgment or Order of Reversal is commonly in the fol-
following form:—

*Die Mercurii, 31 Januarii, 18*

"After hearing Counsel this day (if the Hearing has taken
two days or more, it will be as well yesterday as this day, or
as well on Friday or Monday last, as this day) upon the Peti-
tion and Appeal of A. H., complaining of a Decree (or Order)
of the Court of Chancery, bearing date the day of
(or of two Interlocutors of the Lords of Session in Scotland, of
the 24th day of June, and the 17th day of November, 18 )
and praying that the same might be reversed, or that the Appellant
might have such relief in the premises as to this House in their
Lordships’ great wisdom should seem meet; and also upon the
Answer of I. H., put in to the said Appeal, and due considera-
IN THE HOUSE OF LORDS.

tion had of what was offered on either side in this Cause, It is
ordered and adjudged by the Lords Spiritual and Temporal in
Parliament assembled, that the Decree (Order or Interlocutors)
complained of in the said Appeal be, and the same is (or are)
hereby reversed.

G. R. Cler. Parliamentorum."

When the Decree, &c., is **affirmed**, the Order runs thus:—
"It is ordered and adjudged by the Lords, &c. that the Decree
(Order or Interlocutors) complained of, be, and the same is
(are), hereby affirmed; and that the said Appeal be, and the
same is, hereby dismissed this House." And where costs are
awarded, the words will be, "and it is further ordered and
adjudged, that the Appellant do pay to the Respondent £
in respect of his costs in this Cause."

After the Appeal is fully and finally heard, the Agents should
lose no time in applying to the Clerks attending the House, or
at the Parliament Office, for the Papers and Documents, that
were laid on the Table, which are often of great importance to
the Parties, lest they should be lost, or mixed and mislaid,
among the Papers of other persons, which has sometimes been
the case, to the great inconvenience of those to whom they
belonged. When the Papers, &c. are redelivered to the Agent
or his Client, a Receipt is given for them on the List left upon
their delivery.

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**OF ENFORCING PAYMENT OF THE COSTS:**

In Actions at Law, Costs are given to the injured Party by
several Acts of Parliament, but the Author is not aware that
there is any statutory provision respecting Costs in Appeals to
the House of Lords, any more than Costs in Suits in Courts of
Equity; nor indeed does it seem necessary, for the Law which
gives one Party a right to resort to a Court of Justice for redress
of a wrong, real or supposed, and to subject another to expence
and inconvenience, must be presumed to give the other an equal
right to be indemnified, when the complaint proves to be ill
founded. Consequently that power which can afford Relief to
an Appellant who is aggrieved, can and ought to give a Respondent Costs, when they have been vexatiously or unnecessarily occasioned. And this is done by the Courts of Law in the case of Motions and Applications of various sorts without any express legislative sanction.

Upon Appeals, it has been before stated, Costs are provided for and secured, by a Recognizance; and when Costs are awarded to the Respondent on the affirmance of a Decree or Order appealed from, the Order of dismissal with Costs, should be served on the Appellant personally; and if the Recognizance was entered into by any other person, the Order should also in like manner be served on him, and the Costs demanded of each by the person to whom they are ordered to be paid, or some person by him deputed by power of Attorney to receive them. It will be proper to serve the Order also on the Agent. In case of non-payment of the Costs, the Respondent petitions the House as follows:

House of Lords.

Between A. B. ............... Appellant,

and

C. D. ............... Respondent.

To the Right Honourable, &c.

The humble Petition of the Respondent

Sheweth,

That on the day of last, the Appellant presented his Petition of Appeal to this Honourable House, complaining of a certain Decree (or order), of the Court of (or of a certain Interlocutor pronounced by the Court of Session, in Scotland), and upon presenting the said Appeal, the said A. B. (or E. F. on behalf of the said A. B.), entered into the usual Recognizance to Answer Costs.

That your Petitioner having put in his Answer to the said Appeal, the Cause came on to be heard before your Lordships on the day of last, on which day (or was further heard on the and days of the said month, on the last of which days) your Lordships were pleased to affirm the said Decree, (Order, or Interlocutor,) and to dismiss the
said Appeal with £ costs, which your Lordships ordered and adjudged to be paid by the Appellant to your Petitioner.

That your Lordships said Order has been duly served on the said Appellant, and also on the said E. F., who entered into the said Recognizance (if such were the fact), and your Petitioner hath demanded the sum of £ from the said Appellant (and also from the said E. F.), but the same hath not been paid:

Your Petitioner, therefore, humbly prays your Lordships, that the said A. B. (and the said E. F.), may be compelled by this Honourable House to pay to your Petitioner the said sum of £, so ordered to be paid to him as aforesaid, or that your Lordships will be pleased to make such Order in the premises as the nature of the case may require, and as to your Lordships shall seem meet.

And your Petitioner will ever pray, &c.

G. H., Agent for the Respondent.

When the Petition is presented, the Respondent must be prepared to prove at the Bar of the House, the personal service of the Order, and the demand and refusal of the Costs. The House may then either order the parties into custody for the contempt,* or direct the Recognizance to be estreated into the Exchequer, which latter is the usual mode.

Costs are recovered in Scotland against the Appellant by an ordinary Action, in which a Decree is pronounced, and this is followed by a personal Diligence against him. How payment can be enforced in Ireland we are not aware, unless by an Action on their Lordships' Judgment.

It has been generally thought, that the House never gives Costs of an Appeal to an Appellant on the reversal of a Judgment. It has certainly not been often done; but there is one instance of it, which occurred above a century ago, and

* As was done in the Case of Mr. Carey, Lords Journ., 21st March, 1717-18, Harg. Pref. 208. But this is hardly ever done now.
that was in the Case of "Hamilton v. the University of Glasgow," 9th May, 1716, in which their Lordships gave the Appellant Costs, as well of the Appeal, as of the previous proceedings.—Smith, 70.

OF COSTS PRIOR TO THE FINAL HEARING.

It has been observed, that the House in certain cases, before the decision of an Appeal, directs parties to pay Costs, as where an expense has been incurred on one side, on account of a neglect, omission, or blunder, on the other. On such occasions, if the Parties' Agents cannot agree on the amount of the Costs, as often happens, there is no officer belonging to the House authorized or competent to tax them; but if the sum demanded should appear to their Lordships to be unreasonable, they will order the Bill to be referred to some Agent or Solicitor agreed on by both sides. Of this, an instance will be seen in the Appendix.

OF THE APPLICATION OF JUDGMENT IN THE COURT OF SESSION.

When the Lords have given Judgment, a Petition is presented to the Court of Session, to have it applied or carried into effect, which Mr. Smith says has sometimes occasioned considerable litigation, and the Terms of the Judgment have not unfrequently created difficulty in the Court below; the Court holding that the words of the Judgment are to be strictly applied, even though it be evident that the House of Lords had not in its View the consequences of the words used. An instance of this, according to Mr. Smith, occurred in the Case of Scott v. Brodie (Lords Journ. 10th March, 1802), in which it is said the House went beyond the subject matter before it; the effect of which was, to bring into the Court of Session the merits of a Cause, and a Judgment upon the merits, before the Cause itself had come before their Lordships. It was, nevertheless, held in the Court of Session, that the Judgment of the
House of Lords could not be touched; and the whole Cause was, therefore, decided in favor of the Appellant, though the Court unanimously declared that an Error had crept into the Proceedings.

A similar Judgment in the Appeal *Geddes v. Wilkie and others* (Fac. Coll. Vol. 18, No. 34, 16th Nov., 1816), is said to have led to a similar Decision. The House of Lords in that Case reversed the Judgment, which was a Refusal of a Bill of Suspension of an Admiralty Decree, and added these words to the Order of Reversal: "And it is further ordered and adjudged, that the Defences in the Action brought at the instance of the Pursuer be sustained, and that the Defenders be assailed, and decreed." There the Court again decided the whole Cause in Terms of the Judgment, although the Case had not come regularly before them.※

The Appellant in this last Case applied for his expenses, both in the previous litigation, and in the Appeal; but it was answered, and successfully, that when the Lords intend to give Expenses, it is distinctly so expressed in the Judgment, as in the Appeals *Douglas v. Dairymple's Trustees* (29th Dec. 1797; Lord's Journ.), and *Ross v. McDowal* (5th Jan. 1798; Lord's Journ.), the House having ordered the Court to ordain the Respondents to pay the Appellants' Costs in the Court below.—See Smith's Procedure, p. 68 to 70.

### OF APPEALS TO THE HOUSE OF LORDS FROM THE COURT OF EXCHEQUER, IN SCOTLAND.

By the Stat. of 6th Anne, cap. 26, Sec. 12, establishing the Court of Exchequer in Scotland, it was enacted, "That any Persons against whom any Order or Decrees in English Causes should be made in the said Court of Exchequer in Scotland, should, and might, have the like Relief and Redress as Persons against whom any Order or Decrees in the Court of Exchequer in England, had been, or should be made, might have in the like cases."

※ One would suppose, that if in any instance a rehearing was allowable, it would be in such Cases as these.
Appeals, properly so called, from the Court of Exchequer in Scotland, are of very rare occurrence; its Judgments, founded on the Verdict of a Jury, being brought under Review of the Lords by writ of Error, pursuant to the same Statute. It is only from Decrees or Orders pronounced upon the Equity side of this Court, that Relief can be sought by Petition of Appeal; but the Proceedings upon Appeals from the Scotch Court of Exchequer to the House of Lords, are different from, and much less complex, than those from the Court of Session. As the standing Orders of the House refer to Appeals from all Courts, whence parties have the right of Appealing, they of course apply to Appeals from the Court of Exchequer, and the practice of the House of Lords on those Appeals is the same as upon Appeals from the Court of Session.

But it may be proper to observe, that no Decisions of this Court can be Appealed from, but such as are pronounced in a Cause, in which the Judges Act solely in their judicial, and not in any parliamentary character, as Commissioners under an Act of Parliament. Therefore, in *Halladane v. Keith*, the Appeal was dismissed as incompetent, upon the ground of the Barons acting in a parliamentary capacity.—26th March, 1718, Lord's Journ.

And it is also to be noticed that the 11th Sect. of 50th Geo. 3d, cap. 112 (ante p. 47) respecting certified copies of Proceedings, refers only to Appeals from the Court of Session. In Exchequer Causes the production of authentic Copies of the Proceedings, &c. is regulated by the Order of 27th March, 1708. An exemplified Copy, signed by the proper Officer of the Court below, and delivered on Oath, being the proper Evidence to produce to the House.

**OF APPEALS FROM THE COMMISSION OF TEINDS.**

According to Mr. Smith's Treatise, the competency of Appeals from the Court of Commissioners of Teinds was questioned in the first instance, in which an Appeal from it was entered,

* Tythes.
IN THE HOUSE OF LORDS.

Magistrates of Montrose, 15 March, 1713, Lords' Journ., and has been objected to several times since. The Appeals nevertheless were always received, and it is now settled that an Appeal from a Sentence of the Lords of Session, as Commissioners for the Plantation of Kirks, and Valuation of Teinds, is competent. The Procedure is in all respects the same as upon Appeals from the Court of Session. The Title of "The Commissioners for the Plantations of Kirks and Valuation of Teinds," being of course substituted throughout for the Court of Session.

OF APPEALS FROM THE JURY COURT.

By the first Jury Court Act, 55 Geo. 3, cap. 42, intitled "An Act to facilitate the Administration of Justice in Scotland, by extending Trial by Jury to civil Causes," it is enacted, (sect. 1) "that as soon as his Majesty, by virtue of that Act, should appoint Judges to form a Court, for the Trial of Issues in civil Causes, it should be lawful for either Division of the Court of Session, in cases where matters of fact were to be proved, to order and direct such Issues as might appear to them expedient, to be sent to the said Court for Trial by Jury, as thereinafter directed."

By Sec. 3, the Judge of the Court of Admiralty is empowered to report to either Division of the Court of Session, the circumstances of Cases in which it shall appear to him that an Issue should be directed to be tried by a Jury, in order that such Division may direct such Issue, or order the Cause to proceed as then practised.

By Sec. 4, It shall not be competent, either by reclaiming Petition, or Appeal to the Lords, to question any Interlocutor granting or refusing such Trial.

By Sec. 7, After enacting "that it should be competent at the Trial of an Issue, to except to the opinion of the Judges as to matter of Law arising at the Trial, and that the Judge who presided should present the said Exception, with the Order directing such Issue, and a Copy of the Verdict indorsed
thereon, to the Division by which the Issue was directed, which Division should order the said Exception to be heard, as therein mentioned; and in case the said Division should allow the Exception, they should direct another Trial of such Issue, or if the Exception should be disallowed, the Verdict should be final;" It is provided "that it shall be competent to the Party against whom any Interlocutor shall be pronounced on the matter of the Exception, to appeal from such Interlocutor to the House of Lords, attaching a Copy of the Exception to the Petition of Appeal, certified by one of the Clerks of Session, so as such Appeal shall be presented to the House of Lords within fourteen days after the Interlocutor shall have been pronounced, if Parliament shall be then sitting; or if Parliament shall not be sitting, then within eight days after the commencement of the next Session of Parliament, but not afterwards; and so as the Proceedings on such Appeal do conform in all respects to the Regulations established respecting Appeals; and every such Appeal shall be appointed to be heard on or before the fourth Cause day after the time limited for laying the printed Cases in such Appeal upon the Table of the House of Lords; and upon the Hearing of such Appeal, the House of Lords shall give such Judgment regarding the further Proceedings, either by directing a new Trial to be had, or otherwise, as the case may require."

Under the last clause, Mr. Smith observes, an Appeal was entered on the 23d March, 1819 (Clark v. Callender), and the Appellant having omitted to annex a certified Copy of the Exception to his Petition of Appeal, afterwards petitioned for and obtained leave to annex it. The Procedure, with the variation as to the time of presenting and hearing, provided by the above clause of the Act, is the same as on ordinary Appeals.

By Sec. 8, It is enacted "That if a new Trial shall not be applied for, or shall be refused, or if the Exception taken to the Opinion and Direction of the Judge or Judges shall be disallowed, the verdict shall be final and conclusive as to the fact or facts found by the Jury, and shall be so taken and considered, by the Court of Session, or by the Judge Admiral
respectively, in pronouncing their Judgment, and shall not be liable to be questioned any where."

By Sec. 9, It is provided "That in all Cases wherein Judgment shall be pronounced as applicable to, or arising out of the finding by the Verdict, it shall be competent for the party dissatisfied with such Judgment, to bring the same under review by reclaiming Petition, or by Appeal; or where the Judge Admiral shall pronounce Judgment on the Verdict, the Parties may bring the same under the Review of the Court of Session as theretofore."

By Sec. 10, His Majesty is empowered to appoint a Court consisting of one Chief Judge and two other Judges, for the Trial of Issues, to be called "The Lords Commissioners of the Jury Court in Civil Causes."

This Act was to be in force for seven years and to the end of the then next Session of Parliament.

In the last Jury Court Act, 50th Geo. 3, c. 35, are contained the following Clauses, the second of which, sec. 17, is respecting Bills of Exception, upon which alone Appeals were allowed by the previous Act already quoted.

Sec. 15 enacts "That it shall not be competent to appeal to the Lords, or otherwise bring under Review, any Interlocutors of the Divisions of the Court of Session, Lords Ordinary, or Judge of the Admiralty ordering a Trial by Jury."

Sec. 17 enacts, "That if the Motion for setting aside the Verdict be founded on the mis-direction of the Judge at the trial, in matter of law, or on the undue admission or rejection of evidence, it shall be competent to the party against whom judgment is given by the Jury Court, to render a Bill of Exceptions to such judgment, in the same manner as at a Trial; and the Proceedings on such Bill of Exceptions shall be conformable, in all respects, to the provisions of the Act of the 55th, Geo. 3, before recited, regarding Bills of Exceptions, provided always that in all Causes remitted by the Court of Admiralty to the Jury Court, the Bills of Exception shall be presented by the Judge of the Jury Court to the Divisions of the Court of Session alternately, beginning with the first Division."
vided further, that Motions for new Trials on a special Verdict, or special Findings, shall be made in the Division of the Court of Session, from which the Proceedings were sent to the Jury Court, in manner directed by the said recited Act of the 55th Geo. 3. Provided, nevertheless, that the Interlocuter to be pronounced on such Motions shall be final, and shall not be subject to Review by Petition, Representation, Appeal to the House of Lords, or otherwise."

"It will be observed (says Mr. Smith) that the above Clause does not in any way repeal or alter the regulations of the former Act, regarding Appeals from Interlocutors on the matter of an exception; and there is no other clause in the Act which refers to the subject.

By Sec. 30. the Jury Court Act is made perpetual.

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**OF REVIVING APPEALS.**

It frequently happens that the Appellant or Respondent dies before the Hearing of the Cause, in which event the Appeal must be revived by Petition to the House, in the name of the deceased Party's Heir or personal Representative, or both, as the occasion may require, and supplemental Cases delivered. This is regulated by the following standing Order:

20th March, 1823.

"Ordered, that where any Parties to an Appeal shall die, pending the same, subsequently to the printed Cases having been delivered, and the Appeal shall be revived against the Representatives, a supplemental Case shall be delivered by the Parties so reviving the same, stating the Order or Orders made by the House in such Case."

"And the like rule shall be observed by the Appellant and Respondent, where parties in the Court below have been omitted in the Appeal, and shall by leave of the House be added as Parties to the Appeal after the delivery of the printed Cases."

According to Mr. Urquhart, if the Respondent's Representative should not apply for such Order, the Cause will nevertheless be heard on the part of the Appellant, without regard
to the Respondent's death; or the Appellant may obtain an order to make the Representative a party. Still it is obvious that it will be most prudent for a Representative of a Respondent who has died, to get himself put in the place of the deceased, in order to instruct Counsel, and defend his interest.

In all cases where the Heir of the deceased party is a minor, his or her prochein amy or next friend, if in an English or Irish Cause, or if a Scotch one, his or her Tutors, Curators, or Guardians, must be joined in the Petition.

It was at one time considered absolutely necessary to revive the Cause in the Court below, before the Appeal could be revived; but a different opinion, as well as practice, now prevails. And the Order of the House gives no directions to revive the Cause in the inferior Court. It will be time enough, therefore, when the Appeal is decided, to revive the Cause below, without doing which there can be no proceedings in it.

Indeed, when the Abatement takes place before the Appeal has been presented, it is the better way to revive first, and to make the Representatives parties to the Appeal.

When the Appellant dies, the Petition to revive, which should be forthwith presented, may be in the form following.

House of Lords.

A, B .............. Appellant,

and

C, D .............. Respondent.

To the Right Honourable, &c.

The humble Petition of E, F, of, &c.

Sheweth,

That on the day of , your Petitioner's late father, A, B. the above-named Appellant, presented his Petition of Appeal to this Honourable House against C, D. the Respondent above named.

That on the day of , your Petitioner's said Father departed this life, having duly made and published his Will, and thereof appointed your Petitioner sole Executor.
That by the death of the said A. B. the proceedings in the said Appeal are become abated.

That your Petitioner has duly proved the said Will in the proper Ecclesiastical Court.

Your Petitioner therefore humbly prays that your Lordships will be pleased to order that the said Appeal may stand revived in your Petitioner's name, in the place and stead of the said A. B. his late father, and that your Petitioner may have the same benefit of the said Appeal as his said Father might have had if living.

And your Petitioner will ever pray, &c.

G. H.
Agent for Petitioner.

Upon this Petition the House will make an Order to revive the Proceedings; and they will then go on as if the original Appellant were living. In Scotch Causes it is usual to be prepared with the proper Vouchers to verify the Statement of the Petitioner.—Smith, 74.

The supplemental Case, which is directed by the standing Order of the 20th March, 1823, may be very short, merely stating the Title of the Appeal, the different facts set forth in the Petition, and the Order for the revival of the Appeal; which Case will not require the names of Counsel, unless it contains arguments or observations. If it should, then it must be signed by Counsel. It must be printed, and indorsed as the original Case, except saying,

"The Appellant's (or Respondent's) supplemental Case."

And a sufficient number lodged at the Parliament Office.

The Order, it will be observed, also directs that supplemental Cases shall be delivered, where Parties in the Court below shall have been omitted, and shall by leave of the House be added as Parties to the Appeal, after the printed Cases have been delivered.
OF PAUPERS.

In the House of Lords, a poor Party, whether Appellant or Respondent, may be admitted in forma Pauperis. To obtain such Admission, the Pauper must present a Petition, accompanied by an Affidavit of his poverty; and also a Certificate to the same effect, from the Minister and Churchwardens (in Scotland called Elders) of the Parish where the Party is resident.

Form of the Petition.

House of Lords.

A. B. ............ Appellant,

and

C. D. ............ Respondent.

To the Right Honourable the Lords, &c.

The humble Petition of the above named C. D. Sheweth,

That your Petitioner being very poor, as by the Affidavit and Certificate annexed appears, and having been served with an Order made by your Lordships, upon the Petition and Appeal of A. B., is by reason of such his poverty, unable to make a defence as Respondent to the said Appeal, unless he shall by your Lordships be admitted in forma Pauperis.

Your Petitioner therefore humbly prays, that your Lordships will be pleased to order him to be admitted to defend as Respondent in this Cause in forma Pauperis, and to assign for his Counsel E. F. and G. H. Esqrs., and for his Solicitor, I. K. Gent.

And your Petitioner will ever pray, &c.

C. D.

- Form of the Affidavit to be annexed to the Petition.

House of Lords.

A. B. ............ Appellant,

and

C. D. ............ Respondent.

c 2
C. D. of &c. the above named Respondent maketh Oath, that he is not worth in the World the sum of five pounds in Lands, Tenements, Goods, or Chattels, his wearing Apparel and the matters in dispute in this Cause only, excepted.

C. D.

Sworn before me one of his Majesty's Justices of the Peace, for the County of this day of

The Certificate.

These are to certify that the above named C. D. is a very poor Man, and that we believe the Contents of the foregoing Affidavit to be true. Witness our hands the day of

G. H. Minister of in the County of

I. K. \{ Church Wardens.

L. M. \}

If the Pauper be in London, no Affidavit in writing, or Certificate, will be necessary; as in that case the Party makes Oath of his or her poverty in person at the Bar of the House. The Petition may then be worded thus:

"That your Petitioner being very poor, of which he is ready to make Oath at your Lordships' Bar," and having been served with an Order, &c. as in the above form.

In case the Pauper is to be an Appellant, and not a Respondent, then, besides an affidavit and certificate of poverty, there must be a certificate produced under the Hands of two Counsel, certifying that they think the Party has a good ground for appealing. For the House would probably be troubled with many frivolous Appeals of litigious Paupers, if the parties bare suggestion of a Decision's being erroneous, were sufficient. It will therefore be requisite for the Petitioner to be prepared to produce a Draft of the Appeal, signed by Counsel, with their Certificate subjoined to it as follows:

We humbly certify, that in our judgment there is just and reasonable ground of Appeal in this Case.

G. H.

R. B.
IN THE HOUSE OF LORDS.

On this subject, the following observation arises: that when the sum of £5. was made the measure of poverty, it was equivalent to more than £20. at this day.

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OF APPLYING TO THE HOUSE FOR PERSONAL PROTECTION.

In case an Appellant or Respondent wishes to attend the Hearing of his Cause before their Lordships, and is afraid of being arrested for Debt, the House will grant him a protection on Petition, which may be to the following effect:

House of Lords.

A. B. .......... Appellant, and


To the Right Honourable, &c.
The humble Petition of the above-named A. B. (or C. D.) Sheweth,

That this Appeal is appointed to be heard before your Lordships on the day of next.

That your Petitioner is desirous to be personally present at the Hearing of the said Appeal, in which he is the Appellant (or Respondent), but is fearful of being arrested for Debt.

Your Petitioner, therefore, humbly prays, that your Lordships will be graciously pleased to grant him your Protection from arrest for Debt, during the Hearing of the said Appeal.

And your Petitioner will ever pray, &c.

A. B.

On this Petition an Order of protection will be granted, which will be only for one day; but if the Hearing should continue for more than that day, an Order can be obtained for every day the Hearing lasts, without another Petition, by applying at the Parliament Office.

It is conceived that parties in a Cause, as well as witnesses, are by Law protected from arrest, in going to, and in returning
from Court; but as a party's assertion may be questioned by a Bailiff, a protection will remove all doubt, and subject the Officer to punishment if he does not respect it.

OF OBTAINING A LICENCE FOR A KING'S COUNSEL TO ARGUE AGAINST THE CROWN, OR THE ATTORNEY GENERAL, OR LORD ADVOCATE.

Where the Crown, or the Attorney General for England, or the Lord Advocate for Scotland, on behalf of the Crown, is a party in a Cause, none of the King's Counsel can argue against the Crown, without a License for that purpose. If, therefore, the other party shall think it material to have the assistance of any of the King's Counsel (either because such Counsel was concerned for the party in the Court below, before he became King's Counsel, or on account of his eminent Talents), he must in that Case prefer a Petition to his Majesty for a License, which is granted as a matter of course.

Form of the Petition.

To the King's Most Excellent Majesty.
The humble Petition of A. B. of, &c.

Sheweth,

That in an Appeal brought by your Majesty's Attorney General (or Advovate General for Scotland), against your Petitioner, in your Majesty's House of Lords, from a Decree (Order, or Sentence), of the Court of C. D. Esq. Counsellor at Law, was several months ago retained to be of Counsel for your Petitioner in the said Appeal (or was of Counsel for your Petitioner in the said Cause in the Court below).

That the said C. D. hath since been appointed one of your Majesty's learned Counsel in the Law, by reason of which he is not at liberty to appear as Counsel on your Petitioner's behalf, without your Majesty's Royal License first obtained for that purpose.

Your Petitioner therefore humbly prays that your Majesty will be graciously pleased to grant your
Royal License to the said C. D. Esq. to appear and argue as Counsel for your Petitioner in the said Appeal.

And your Petitioner will ever pray, &c.

E. F. Agent for the said A. B.

If the fact should not be as in the foregoing Petition, then it will be sufficient to state that such Appeal has been presented, that the Petitioner thinks it material to have the assistance of C. D. one of his Majesty's learned Counsel; but that by reason of his being such, he is not at liberty, &c. as above.

This Petition is to be taken to the Secretary of State's office, where the License will be made out immediately.—It will cost no less than £8. 6s.

We have now gone through the progress of an Appeal to the House of Lords, and stated the several matters generally incident to that proceeding. This we have endeavoured to do correctly and plainly; and we trust that by means of the foregoing Instructions, and a small share of Attention, any Solicitor, however inexperienced, in Parliamentary business, will be enabled to conduct a Cause with little difficulty through the House of Lords. But if any unforeseen impediment should occur to him, he will always be sure to receive Information and Assistance from the very obliging Gentlemen at the Parliament office.

OF PARLIAMENTARY AND APPEAL AGENTS.

It is supposed that persons employed to solicit Acts of Parliament, and to prosecute and defend Appeals from Scotland, Ireland, or the Colonies, need not be admitted as Attorneys or Solicitors in the Courts of Westminster Hall, or in any other Court; and Persons have practised as Agents in such Cases without being so qualified. How far this is just or fair towards those who have expended many hundred pounds in acquiring a qualification, and who pay an annual sum for permission to practice as Attorneys and Solicitors, the Editor will not presume to give an opinion; but one observation he will
venture to make, which is, that as no Person is allowed to act in the character of Attorney or Solicitor in the most inferior Courts, even at the Old Bailey or Quarter Sessions, without being duly admitted, it is difficult to assign a reason for permitting Persons unqualified, and sometimes illinformed and little known, to conduct business of the greatest importance, as Agents in the highest Court of the Empire. Should it be said that the Statutes which regulate the admission of Attorneys in the Ordinary Courts, do not extend to Parliamentary or Appeal Agents, it may be replied that the Courts always had a control over, and a discretionary power in the admission of Attorneys, prior to any Statute on the subject; and why should not the House of Lords exercise a like discretion? But if an Act of Parliament should be deemed requisite, it is presumed one might be easily obtained.
APPENDIX.

STANDING ORDERS OF THE HOUSE OF LORDS, RELATIVE TO WRITS OF ERROR AND APPEALS.

Die Veneris, 13 Decembris, 1661.

Proceedings on Writs of Error.

Forasmuch as upon Writs of Error returnable in this High Court of Parliament, the Petitioners therein often desire to delay Justice, rather than to come to the determination of the right of the Cause, It is therefore ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Plaintiffs in all such Writs, after the same and the Records be brought in, shall speedily repair to the Clerk of the Parliaments, and prosecute the Writs of Error, and satisfy the Officers of this House their fees justly due unto them, by reason of the Prosecution of the said Writs of Error, and the proceedings thereupon; and further, shall assign their errors within eight days after the bringing in of such Writs with the Records, and if the Plaintiffs make default so to do, then the said Clerk, if the Defendant in such Writs require it, shall record that the Plaintiff hath not prosecuted his Writ of Error, and that the House doth therefore award that such Petitioner shall lose his Writ, and that the Defendant shall go without day, and that the Record be remitted; and if any Petitioner in any Writ of Error shall allege Diminution and pray a Certiorari, the Clerk shall enter an award thereof accordingly; and the Petitioner may, before is nullo est Erratum pleaded, sue forth the Writ of Certiorari in ordinary course, without Special Petition or Motion to this House for
the same; and if he shall not prosecute such Writ, and procure it to be returned within ten days next after his Plea or Diminution put into this House, then, unless he shall show some good cause to this House for the enlarging of the time for the return of such Writ, he shall lose the benefit of the same, and the Defendant in the Writ of Error may proceed as if no such Writ of Certiorari were awarded.

Die Sabbati 13 Julii, 1678.

Time limited for bringing in Appeals.

Ordered, that all persons who shall be desirous to exhibit to this House any Petitionss of Appeal from any Court of Equity, do present their Petitions within fourteen days to be accounted from and after the first day of every Session or Meeting of Parliament after a recess, after which time the Lords do declare they will, during every such Sitting, receive no Petition of Appeal, unless upon a Decree made whilst the Parliament is actually sitting; in which case the Party who shall find himself aggrieved, may bring his Petition of Appeal, provided he present it to this House within fourteen days after such Decree is made and entered in any Court of Equity in England or Wales, twenty days in any of the Courts in Scotland, and forty days in any of the Courts in Equity in Ireland.

*13th June, 1685.

Attorney General nor any Assistant to be of Counsel.

Ordered, that neither his Majesty's Attorney General, nor any Assistant to this House, shall be allowed to be of Counsel at the Bar of this House, after having taken his seat on the Woolsack as such, for any private person or persons whatever.

*7th December, 1691.

Question to be put for Reversing.

Ordered, that upon giving judgment in any Case of Appeals, or Writs of Error, the question shall be put for reversing, and not for affirming.

* The Orders thus marked are omitted in the collection usually printed.
APPENDIX.

Die Jovis 14 Februarii, 1694.

Petitions for Rehearing not to be read the same day offered.

Ordered, that no Petition which relates to the rehearing of any Cause, or part of a Cause, formerly heard in this House, shall be read the same day that it is offered, but shall lie upon the Table, and a future day be appointed for reading thereof after twelve of the Clock.

Die Jovis, 3 Martii, 1697.

Counsel signing Appeals.

Whereas by the Rules and Orders of this House, for preventing the bringing of frivolous Appeals, all Appeals are to be signed by two Counsel: It is this day ordered that no person whatsoever do presume, as Counsel, to sign any Appeal to be brought into this House for the future, unless such person hath been of Counsel in the same Cause in the Courts below, or shall attend as Counsel at the Bar of this House, when the said Appeal shall come on to be heard, and unless he shall certify that in his judgment there is reasonable Cause of Appeal.

Emendat per Ordin. 9 Aprilis, 1812.

* 16 March, 1697.

Proxies not allowed in Judicial Proceedings.

Ordered, that no Proxy for the future shall be made use of in any Judicial Cause in this House, although the Proceedings be by Bill.

Die Martis 19 Aprilis, 1698.

Printed Cases to be signed by Counsel.

The House taking notice that upon Appeals and Writs of Error there have been of late several scandalous and frivolous printed Cases delivered to the Lords of this House, for preventing whereof for the future, It is ordered, that no person whatsoever do presume to deliver any printed Case or Cases to any Lord of this House, unless such Case or Cases shall be signed by one or more of the Counsel who attended at the hearing of the Cause in the Courts below, or shall be of Counsel at the hearing in this House.
APPENDIX.

Die Mercurii 22 Decembris, 1703.

Causes not to be put off without two days' Notice.

Upon consideration of the great inconvenience arising by Motions and Petitions for putting off Causes after days have been appointed for hearing thereof, It is ordered, that when a day shall be appointed for the hearing any Cause, Appeal, or Writ of Error, argued in this House, the same shall not be altered but upon Petition; and that no Petition shall in such case be received unless two days' notice thereof be given to the adverse Party, of which Notice, Oath shall be made at the Bar of this House.

*5th April, 1707.

On hearing Causes the Lords to sit on the Bench.

Ordered, that if any Lord at the Hearing of a Cause be not on one of the Benches, the Lord Chancellor shall stop proceedings until such Lord shall take his place on one of the said Benches.

Die Veneris, 26 Januarii, 1710.

Recognizances on Appeals to be entered into within eight days.

Whereas, by Order of the 20th of November, 1680, It is ordered in all Cases upon Appeals to be brought into this House from the Courts in Westminster Hall, the Party or Parties Appellants shall, before any answer to his or their Petition, give Security to the Clerk of the Parliaments by Recognizance to be entered in to her Majesty in one hundred pounds, to pay such Costs to the Defendant or Defendants in such Appeals as this Court shall appoint, in case the Decree or Judgment appealed from shall be affirmed by this Court; It is this day ordered, that in all Cases of Appeals to be brought into this House from any Court in Westminster Hall, from any Court of Equity in England or Wales, from any Court in Scotland, or from any of the Courts of Equity in Ireland, the Party or Parties Appellant shall within eight days after such Appeal received, give Security to the Clerk of the Parliaments by Recognizance, to be entered in to her Majesty, of the
APPENDIX.

Penalty of £400, conditioned to pay such Costs to the Defendant or Defendants in such Appeals as this Court shall appoint, in case the Decree or Judgment appealed from shall be affirmed; and if the Appellant or Appellants shall neglect or refuse to give such Security within the time aforesaid, that then the Clerk of the Parliaments shall inform the house thereof, and the Appeal from thenceforth to be dismissed.

Emendat per Ordin. 4 Mart. 1727, and 6 Augusti, 1807.

28th January, 1715.

*Causes to be the first Business.

Ordered, that on the days Causes are appointed to be heard, the Cause to be the first Business proceeded on after prayers, and no other Business to intervene.

Emendat 13 Mar. 1742.

Die Veneris 21 Februarii, 1717.

Certificate to be given of Certiorari being amended.

Ordered, that in all Cases upon Writs of Error depending in this House, when Diminution shall be at any time alleged, and a Certiorari prayed and awarded before In nullo est erratum pleaded, the Clerk of the Parliaments shall upon request, when made, give a Certificate that Diminution is so alleged and a Certiorari prayed and awarded thereupon.

Die Martis, 19 Januarii, 1719.

Peremptory Days to be appointed for answering Appeals.

Ordered, that when, upon an Appeal to this House, an Order is made for the Respondent to answer thereto by a time limited, and no answer is put in by that time, upon proof made of due Service of such Order, a peremptory day shall be appointed for putting in the Answer, without any further Notice to be given to the Respondent.

Die Martis, 5 Aprilis, 1720.

Appeals to be prosecuted, or stand dismissed.

Ordered, that such Appeals as have been presented during
this Session, to which Answers have been or shall be put in during this Session, and for hearing whereof no day hath been or shall be appointed in this Session, and all such Appeals as shall be presented in any subsequent Session, to which Answers shall be put in during the same Session, and for hearing whereof no day shall be appointed in such Session; if neither the Appellant or Respondent shall apply to this House within eight days, to be accounted from and after the first day of the next Session or Meeting of Parliament, for a day of hearing, such Appeals shall stand dismissed, but without prejudice to the Appellant's presenting any new Appeals thereafter, as they shall be advised.

Appeals not answered also to be dismissed.

Ordered, that such Appeals as have been presented during this Session, to which no Answers have been or shall be put in during this Session, and all such Appeals as shall be presented in any subsequent Session, to which no Answers shall be put in during the same Session, if neither the Appellant within eight days, to be accounted from and after the first day of the next Session or Meeting of Parliament, shall apply to this House to appoint a peremptory day to answer, nor the Respondent put in an Answer within the said eight days, such Appeals shall stand dismissed, but without prejudice to the Appellants presenting any new Appeals thereafter, as they shall be advised.

Answers to be indorsed.

Ordered, that when any Answer to an Appeal shall be put in for the future, the Clerk to whom it shall be delivered, do immediately indorse thereon the day on which such Answer is brought in; and that the names of the parties answering, and to whose Appeal such Answers are put in, be the same day entered in the Journal of this House.

Die Martis, 12 Januarii, 1724-5.

Printed Cases to be delivered four days before Hearing.

Ordered, that in all Causes on Appeals or Writs of Error
appointed to be heard in this House, the Appellants and Respondents, the Plaintiffs and Defendants, or their respective Agents or Solicitors, do for the future deliver to the Clerk of the Parliaments or Clerk Assistant, to be distributed to the Lords of this House, the printed Cases upon such Appeals or Writs of Error, at least four days before the hearing of the same, and that no different Cases, in any such Causes, be at any time afterwards printed or delivered.

*Emendat 23 Feb. 1764.*

**Die Jovis, 24 Martii, 1725.**

**Number of Years allowed for bringing Appeals.**

Ordered, that no Petition of Appeal from any Decree or Sentence of any Court of Equity in England or Ireland, or of any Court in Scotland, before this time signed and enrolled or extracted, shall be received by this House after five years, to be accounted from the expiration of this present Session of Parliament, and the end of the next Session ensuing the said five years: nor shall any Petition of Appeal from any Decree or Sentence of any of the said Courts, to be hereafter signed and inrolled, or extracted, be received by this House after five years from the signing and inrolling or extracting of such Decree or Sentence, and the end of fourteen days to be accounted from and after the first day of the Session or Meeting of Parliament next ensuing the said five years; unless the person entitled to such Appeal be within the age of one and twenty years, or covert, *non compos mentis*, imprisoned, or out of Great Britain or Ireland: in which Case such person shall and may be at liberty to bring his Appeal for reversing any such Decree or Sentence at any time within five years next after his full age, discovertue, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland, and fourteen days, to be accounted from and after the first day of the Session or Meeting of Parliament next ensuing the said five years, but not afterwards or otherwise.

*Emendat 9 Jan. 1737.*
Die Sabbati, 2 Martii, 1727.

How Counsel are to proceed at hearing Causes.

Upon Report from the Committee of the whole House, appointed to take into consideration matters relating to the Proceedings on Appeals and Writs of Error, it is ordered, that at the hearing of Causes for the future, one of the Counsel for the Appellants shall open the Cause; then the Evidence on their side shall be read; which done, the other Counsel for the Appellants may make Observations on the Evidence. Then one of the Counsel for the Respondent shall be heard, and the Evidence on their side to be heard; after which, the other Counsel for the Respondents shall be heard, and one Counsel only for the Appellants to reply.

Die Veneris, 28 Martii, 1735.

Answering Appeals after the end of a Session.

Upon Report from the Lord's Committees, appointed to consider of the standing Orders of this House in relation to the putting in of Answers to Appeals, it is ordered and declared by the Lords Spiritual and Temporal in Parliament assembled, that when upon an Appeal to this House, an Order hath been or shall be made for the Respondent or Respondents to answer thereto by a time limited, if the Session of Parliament wherein such Order hath been or shall be made, shall determine before the time so limited for answering shall be expired, and no Answer shall be put in during the same Session, Service of such Order upon the Respondent or Respondents to such Appeal by the space of five weeks at the least, before the first day of the then next Session, shall be deemed good service, and the Appellant may apply to this House for a peremptory day for putting in the Answer, in Case the Respondent or Respondents shall not put in his or their Answer within three days, to be computed from the first day of the next Session of Parliament.
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Die Jovis, 8 Junii, 1749.

Appeals to be heard in Course the beginning of every Session:

Upon Report from the Lord's Committees appointed to consider of the standing Order of this House of the 5th of April, 1734, in relation to the hearing of Appeals left undetermined in a former Session, and what alterations or amendments are proper to be made therein in order to render the same more effectual; it is ordered by the Lords Spiritual and Temporal in Parliament assembled, that all such Appeals as have been presented for hearing, whereof days have been appointed during this Session, which shall not be determined in this Session; and all such Appeals as shall be presented for hearing, whereof days shall be appointed in any subsequent Session, which shall not be determined in the same Session, shall be heard and determined in the beginning of the next Session of Parliament, in the same order and course as they stand to be heard at the end of this or any future Session, without any new Application to this House to appoint a day for hearing the same; and that such of the said Appeals as shall stand first to be heard, at the end of this or any future Session of Parliament, shall stand to be heard upon the Wednesday in the week next after that week in which any subsequent Session of Parliament shall begin, the second upon the Friday following, and the third upon the Monday following; and from thence the rest of the said Appeals in course, upon every Wednesday, Friday, and Monday, until they shall be all heard and determined; and that in case any such Appeal shall not be adjourned by Order of this House made before the day on which the same is hereby appointed to be heard, and the Party or Parties on one side shall attend by their Counsel, and the Party or Parties on the other side shall not attend by their Counsel on the said day appointed for hearing thereof, such Appeal shall be heard ex parte; and in Case neither of the Parties to such

* By a late regulation, the House sits on Appeals five days in the week, (omitting Saturdays) from ten in the morning until four o'clock in the afternoon.
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Appeal shall attend by their Counsel on the said day appointed for hearing thereof, then such Appeal shall stand absolutely dismissed; but without prejudice, in this last Case, to the Appellant or Appellants’ presenting any new Appeal thereafter, in such manner as the said Appellant or Appellants might have done in case such former Appeal had not been presented to this House, as he or they shall be advised.

Die Martis, 8 Martii, 1763.

Time limited for bringing Cross Appeals.

Ordered by the Lords Spiritual and Temporal in Parliament assembled, that for the future, if the Respondent or Respondents to any Appeal depending in this House, shall be desirous to exhibit a Cross Appeal, they shall present the same within one week after their Answer put in to the original Appeal, otherwise the same shall not be received.

Die Veneris, 12 July, 1811.

Time limited for laying Prints of Cases on the Table of the House.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, that when any Appeal shall be presented to this House on or after the first day of any Session or Meeting of Parliament, the Appellant and Respondent shall severally lay the Prints of their Cases respectively upon the Table of this House, or deliver the same to the Clerk of the Parliaments for that purpose, within a fortnight after the time appointed for the Respondent to put in his Answer to the said Appeal; and in default of so doing by the Appellant, the said Appeal shall stand dismissed, but without prejudice to the Appellant’s presenting a new Appeal within the first fourteen days of the next Session of Parliament, or within the then remainder of the time limited by the standing Order, No. 118, for presenting Appeals to this House; and in Case of default on the part of the Respon-

* Viz. Order of 13 July, 1678.
dent, the Appellant shall be at liberty forthwith to set down his Cause ex parte.

Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that when any Writ of Error shall be brought into this House during the sitting of Parliament, the Plaintiff and Defendant shall severally lay the Prints of their Cases upon the Table of this House, or deliver the same to the Clerk of the Parliaments for that purpose, within a fortnight after the time limited by this House for the Plaintiff to assign Errors, unless an earlier day be specially appointed for that purpose in respect of such Writ of Error being brought merely for delay.

Die Jovis, 9 Aprilis, 1812.

Certificate of Leave, or difference of Opinion, to be signed by Counsel on Appeals.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, that when any Petition of Appeal shall be presented to this House from any Interlocutory Judgment of either Division of the Lords of Session in Scotland, the Counsel who shall sign the said Petition, or two of the Counsel for the Party or Parties in the Court below, shall sign a Certificate or Declaration, stating, either that leave was given by the Division of the Judges pronouncing such Interlocutory Judgment to the Appellant or Appellants, to present such Petition of Appeal, or that there was a difference of Opinion amongst the Judges of the said Division pronouncing such Interlocutory Judgment.

To prevent delay on part of Respondents in delivering Cases on Appeals.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, that to prevent delay on the part of the Respondent or Respondents to any Petition of Appeal presented to this House in delivering their printed Cases, pursuant to the standing Orders of the same, it is Ordered, that previous to any Petition of Appeal being presented to this House, a Notice shall be given to the Agent or Agents of the Party or Parties in the Court below, who shall be made Respondent or Respondents to the said Appeal, of the time when such Petition of
Appeal is intended to be presented to this House; and the day on which such Notice was given, or caused to be given, shall be indorsed by the Agent or Agents for the Petitioner on the back of the said Appeal.

Die Mercurii, 24 Februarii, 1813.

Printed Cases to contain Proofs taken in the Court below.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, that for the future, the printed Cases delivered in Appeals and Writs of Error depending before this House, shall contain a Copy of so much of the Proofs taken in the Courts below, as the Party or Parties intend to rely on respectively, on the hearing of the Cause before this House, together with references to the Documents where the same may be found.

Die Mercurii, 8 Decembris, 1813.

Appendix to be Printed with such Proofs where Cases have been delivered in.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, that in all Cases of Appeals and Writs of Error which were depending in this House, and the printed Cases in which were delivered on or before the 24th day of February, 1813, the Party or Parties do respectively print an Appendix to the said Cases delivered, and do therein set forth so much of the proofs taken in the Courts below, as they intend to rely on respectively on the hearing of the said Causes, and which is not already set forth in the printed Cases by them so respectively delivered; and that such Appendix do contain a reference to the Documents where the same may be found: and further, that the Party or Parties do deliver the same to the Clerk of the Parliaments, or to the Clerk assistant, to be distributed to the Lords of this House, at least four days before the hearing of the said Causes.

Die Jovis, 20 Martii, 1823.

Supplemental Cases to be delivered on receiving Appeals, and adding Parties.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, that where any party or Parties to an Appeal
shall die, pending the same, subsequently to the printed Cases having been delivered to this House, and the Appeal shall be revived against his or her Representative or Representatives, as the Person or Persons standing in the place of the Person or Persons so dying as aforesaid, a Supplemental Case shall be delivered by the Party or Parties so reviving the same respectively, stating the Order or Orders respectively made by the House in such Case.

The like Rule shall be observed by the Appellant and Respondent respectively, where any Person or Persons, Party or Parties in the Court below, have been omitted to be made a Party or Parties in the Appeal before this House, and shall, by leave of the House, upon Petition or otherwise, be added as a Party or Parties to the said Appeal, after the printed Cases in such Appeal shall have been delivered.

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**Form of Petition for Leave to present Cross Appeal, Nunc pro tunc, the Party being in Prison.**

House of Lords.

W. Allen, Esq. ...... Appellant, and

C. D. Mac Guire, Esq. Respondent,

To the Right Honourable, &c.

The humble Petition of the Respondent

Sheweth,

That in the Sessions of the Appellant presented his Petition of Appeal to your Lordships, against certain parts of a Decree made in the Court of Chancery in Ireland, on the day of in a certain Cause wherein your Petitioner was Plaintiff, and the said Appellant and several others were Defendants.

That your Petitioner was advised that certain parts of the said Decree were erroneous and unjust as to your Petitioner, and he accordingly intended to present a Cross Appeal against the same, but was prevented from doing so by his distressed circumstances, your Petitioner having been, at the time of
making the said last-mentioned Decree, confined in Prison for Debt in one of his Majesty's Prisons, the Four Court Marshalsea of Dublin, where he hath ever since remained.

That your Petitioner's Answer was put in to the original Appeal by an Agent employed by your Petitioner's late Solicitor in Ireland, and your Petitioner having had differences with such Solicitor, your Petitioner had no intercourse with the said Agent in England till the time prescribed by your Lordships' standing Orders for presenting a Cross Appeal, had expired; and your Petitioner would have sooner presented his present Petition to your Lordships, but that your Petitioner was in continual expectations of being liberated from his confinement, and was not able to procure access to the necessary documents and papers until lately.

That your Petitioner's said Petition of Cross Appeal is now prepared, and hath been duly signed and certified by two of your Petitioner's Counsel, according to your Lordships' Orders.

Your Petitioner therefore humbly prays that your Lordships will be pleased to permit your Petitioner to present to your Lordships his Petition and Cross Appeal in this Cause, or make such other order for his Relief as your Lordships shall think fit.

And your Petitioner will ever pray, &c.

E. K. Agent for the Respondent.

In this case it was urged that according to the spirit of the standing Order limiting the time for bringing original Appeals, and the saving in favour of persons in prison, the Petitioner, independently of the other circumstances, was entitled to the benefit of the Exception, and should be allowed permission to present his Cross Appeal; Lords Eldon and Redesdale seemed to be of this Opinion, and the Committee of Appeals reported accordingly.
Appendix.

Form of Petition to postpone Hearing, owing to the Agent's not having received the Papers.

House of Lords.  
A. B. .......... Appellant,  

To the Right Honourable, &c.  
The humble Petition of the Appellant  

Sheweth,  

That this Appeal stands seven off in the Cause List; And that although the Papers necessary to be produced on the Hearing were to have been transmitted from Dublin last week, and were delivered to a person coming to London for that purpose, yet owing to some Cause for which your Petitioner is unable to account, the same have not yet arrived.  

Your Petitioner therefore humbly prays that your Lordships will be pleased to order this Appeal to stand over until after the Easter Recess (or to make an Order to postpone the Hearing of this Appeal for weeks).  

And your Petitioner will ever pray, &c.  
J. P. Agent for the Appellant.

Form of Notice to be served on the Respondent's Agent of presenting the above Petition.

House of Lords.  
A. B. .......... Appellant.  

The Appellant intends to present a Petition, of which a copy is herewith sent, to their Lordships, on next, that the Hearing of this Appeal may be postponed till after the Easter Recess. Dated the day of  

Yours, &c.

To Mr. W. Agent for the Respondent,  

J. P. Agent for the Appellant.

Form of Petition to restore Appeal, and for leave to lodge printed Cases.

House of Lords.  
A. B. .......... Appellant,  
and  
To the Right Honourable, &c.
The humble Petition of the Appellant
Sheweth,
That the Petition of Appeal from the Decree of the Court of Exchequer in Ireland, made on the day of in this Case was presented on the day of last, and the Respondent put in his Answer thereto on the day of
That in consequence of the difficulty in procuring a correct copy of the Report of the Trial of the last Issue directed by the Court below, and which was tried at the Summer Assizes for the County of Sligo in the year 18 , and of ascertaining correctly the state of the Proceedings in the Court below, your Petitioner was unable to lay his Cases on your Lordships’ Table within the time limited by your Lordships’ Order, in consequence whereof your Petitioner’s said Appeal stands dismissed; but inasmuch as your Petitioner’s Cases are now printed, and have been exchanged with the Respondent’s Agent,
Your Petitioner humbly prays that your Lordships will be pleased to order that the said Appeal may be restored, and that your Petitioner may have leave to lay his Cases on your Lordships’ table; or that your Lordships will be pleased to make such other Order as to your Lordships shall seem meet.

And your Petitioner will ever pray, &c.
B. & A., Agents for the Appellant.

Form of Petition to admit proceedings, &c. to be read without Oath.

House of Lords.

Charles Nesbitt, Esq. ....... Appellant,

and

William Knox, Esq. ......... Respondent.

To the Right Honourable, &c.
The humble Petition of the Appellant
Sheweth,
That the Petition of Appeal from the Decree or Order of the Court of Exchequer in Ireland in this Case, was presented in
the year 18, to which the Respondent put in his Answer, and the Appeal has been set down and stands for hearing.

That the Office Copies of the several Proceedings in the Court of Exchequer in Ireland, and other Documents mentioned and referred to in your Petitioner’s Case, a List of which has been signed by the Solicitors of your Petitioner and the Respondent in Ireland, have been examined by the said Solicitors with the originals, and it has been agreed by them that they shall be read on the Hearing of the said Appeal, without evidence at your Lordships’ Bar of the same having been so examined.

Your Petitioner therefore humbly prays your Lordships, that all such Office Copies of Proceedings, and other Documents referred to in your Petitioner’s Case, as have been signed by the Agents of your Petitioner and of the said Respondent, may be read on the hearing of the said Appeal without Evidence at your Lordships’ Bar, of the same having been examined with the originals; or that your Lordships will make such other Order in the premises as to your Lordships shall seem meet,

And your Petitioner will ever pray, &c.

B. and A. Agents for the Petitioner.

I consent to the prayer of this Petition.

J. P. Agent for the Respondent.

Form of the Consent above referred to.

After the Title of the Cause, and a List of the several papers, &c. the following was underwritten:

We, the Attorneys for the above named Appellant and Respondent, do hereby consent that the several Papers and Documents above mentioned, and on which we have severally indorsed or written our names, shall be received and read in Evidence at the Bar of the House of Lords on the hearing of this Appeal without Oath. Dated, &c.

G. H. Attorney for the Appellant.

I. C. Attorney for the Respondent.

This petition was granted.
APPENDIX.

Form of Petition to compel the Production of Papers by a former Agent.

House of Lords.

Charles Henry Merkle.... Appellant,
and
Samuel Dick, and others ... Respondents.

To the Right Honourable, &c.

The humble Petition of the said Appellant
Sheweth,

That this Appeal was many years since presented to your Lordships against a certain Decree of the Court of Chancery in Ireland, made in a Cause in the said Appeal mentioned.

That Mr. John Scott, of Dublin, since deceased, was Solicitor for your Petitioner in the said Suit in Ireland, and Mr. M. A. of London, was employed by him to conduct the said Appeal, and the requisite papers and Exhibits in the said Cause were deposited with the said Mr. A.

That a considerable Sum of Money is due to the Executors of the said Mr. Scott for Costs in the said Suit in Ireland, and a large Sum is also due to the said Mr. A. for Costs of the said Appeal.

That nothing having been done in the said Appeal since the year 1810, your Petitioner pressed the said Mr. A. to proceed in the same, and to petition your Lordships to appoint an early day for the Hearing, which the said Mr. A. declined doing, unless he was paid or secured the amount of his demand.

That your Petitioner thereupon applied to Mr. Charles Murray to undertake the Management of the said Appeal, which he agreed to do, and your Petitioner being in very distressed and indigent Circumstances, was, in consequence of a Petition for that purpose, allowed by your Lordships to proceed in the said Appeal in forma pauperis.

That your Petitioner lately presented a Petition to your Lordships to appoint an early day for hearing the said Appeal, when your Lordships were pleased to order that the same should be heard on the 14th day of June instant.
APPENDIX.

That the said Mr. Murray having applied to the said Mr. A. for the Papers necessary to be produced at the said Hearing, the said Mr. A. refused to part with, or produce the same, until Security should be given for the Costs due to him and the said Mr. Scott, together with the Printer's Bill.

That your Petitioner thereupon proposed to give his bond for the said Costs, and the said Mr. Murray offered to give an accountable Receipt and Undertaking for the said Papers, which Offers were rejected by the said Mr. A. who required that the said Mr. Murray should join in a Bond for securing the said Demands.

That the said Appeal came on and was part heard, and an important Exhibit being called for by your Lordships, your Petitioner requested the said Mr. A.'s Clerk, who was present, to produce the same, which he declined doing, and your Petitioner afterwards applied to the said Mr. A. at his office, and intreated him to produce the said Exhibit, which he refused to do.

That your Petitioner is now wholly unable to proceed in the said Appeal for want of the said Papers, and he believes that no professional Man can be prevailed on to agree to the Terms required by the said Mr. A. for delivering the same.

Your Petitioner therefore humbly prays that your Lordships will be pleased to order all the Documents, Exhibits, and other Papers in the said Appeal Cause, which are necessary for the Hearing of the same, now in the custody or possession of the said Mr. A., may be produced by him before your Lordships; and that your Petitioner and his Solicitor may be allowed full and free access to, and the use of the said Papers, for the purpose of enabling him to proceed in the said Appeal on your Petitioner's behalf.

And your Petitioner will ever pray, &c.

C. H. M.

Presented 28 June, 1813. The Prayer was granted.
Form of Petition to expedite Hearing, by appointing an early day, presented in May, 1822.

House of Lords.

C. N............. Appellant,
and
L. K., Widow....... Respondents.

To the Right Honourable, &c.

The humble Petition of the Respondent

Sheweth,

That on the 21st day of March, 1821, the original Appeal which was from an Order of the Court of Exchequer in Ireland, made on the day of came on to be heard before your Lordships, when it appearing that a Decree had been made in the Court below on the day of which was subsequent in date to the Order appealed from, and from which Decree there was no Appeal, your Lordships were pleased to suspend the further Hearing, and to order the Cause to stand over, that the Parties might inform your Lordships' House what proceedings were had in the Court below, subsequent to the said Order appealed from.

That it was not until the 28th day of June following, being upwards of fourteen weeks after the said Hearing, that the Appellant presented the second Petition of Appeal, complaining of the said Decree, to which your Petitioner duly put in his answer.

That if the Appellant had not so delayed presenting his Appeal, which might have been prepared in a few days, the Cause might have come on again before your Lordships immediately or very soon after the Easter Recess of last year, as was intended; but owing to the before-mentioned delay, and the further delay occasioned by the Appellant's not delivering in due time prints of his supplemental Case, the further hearing of the Cause has been hitherto prevented.

That your Lordships have been pleased to Order that the said second Appeal shall be heard at the same time with the
resumed hearing of the said former Appeal, but no day is appointed for hearing the same.

That this Appeal stands in your Lordships' paper, prior to any Appeal heard in the present Session, and were it not for the delay above mentioned, might have been the first heard, but it has been passed over.

That your Petitioner and her Children's principal dependence for their future support, is upon the sum of money which she conceives herself intitled to recover from the Appellant in this Suit; and your Petitioner and her Family are now suffering much pecuniary inconvenience and distress.

Your Petitioner therefore humbly prays, that your Lordships will be graciously pleased to take the premises into consideration, and appoint an early day for resuming the hearing of the said original Appeal.

And your Petitioner will ever pray, &c.

J. P. Agent for the Respondent.

Form of Petition for Costs occasioned by the Appellants Omission and Neglect, presented in March, 1824.

This Petition was in the same Appeal to which the foregoing Petition related, and after stating as in the three first paragraphs of the preceding Petition, further stated as follows:

That your Lordships were pleased to order that the said second Appeal should be heard at the same time with the resumed hearing of the said former Appeal, and on the 1st of July, 1822, the same came on before your Lordships, when Mr. Heald was heard on behalf of the Appellant, and your Lordships were then pleased to order that the further consideration of the Cause should be adjourned generally, and that the Agents should attend your Lordships on the following Wednesday, at which time the Costs of the day were to be considered.

That the Agents accordingly attended your Lordships, but no Order was made respecting such Costs.

That your Petitioner presented her Petition to your Lordships in the last Session, praying that your Lordships would be
pleased to take the premises into consideration, and to appoint an early day for the hearing, which Petition was referred to the Appeal Committee, but the Session terminated without any Report having been made on the said Petition.

That the said Cause stands but a little way off in the paper, and is likely soon to come on for hearing.

That the Bill of Costs of your Petitioner's Agent during the pendency of the said first and second Appeal (the decision of which has, by the death of Parties and other circumstances, been protracted for upwards of seventeen years), amounts to more than £700; and the Costs occasioned by the said second Appeal alone, amount to £148.

That your Petitioner, whose chief dependence for future support is upon the result of her claim in this Suit, and who is at present suffering much from pecuniary difficulties and distress, does not possess the means of seeing Counsel, and hopes your Lordships will Order payment to her Agent of the said last-mentioned Costs.

Your Petitioner, therefore, humbly prays, that your Lordships will be pleased to take the Premises into consideration, and afford to your Petitioner such relief as to your Lordships shall seem meet.

And your Petitioner will ever pray, &c.

J. P. Agent for the Petitioner.

April 14th, 1824, the House Ordered the Appellant to pay the Respondent £148. Costs, in respect of the second Appeal.

Order to refer an Agent's Bill to another Agent.
The Earl of Rosse against Sterling.

This Cause was part heard, when it was found necessary to amend the Appeal, which the House gave leave to the Appellant to do, on payment of Costs. The Respondent's Agent made out a Bill, to which the Appellant's Agent objected; upon which the Respondent's Agent petitioned the House, that the Appellant should amend his Appeal within a limited time, otherwise that the same should be dismissed, and that he should pay the Respondent his Costs. The Appellant, on the other hand, presented a
APPENDIX.

Petition, complaining of the amount of the Costs, and praying that they might be properly ascertained.

These Petitions were referred to the Appeal Committee, by whom the following Order of reference was made.

Die Mercurii, 31 Martii, 1824.

Ordered, by the "Lords Committees, appointed to consider of the Causes in which prints of the Appellants and Respondent's Cases, now depending in this House in matters of Appeals and Writs of Errors, have not been delivered pursuant to the standing Orders of this House, and to report to the House," That the Consideration of the mutual Petitions (on the subject of Costs) of the Parties in the Cause, the Earl of Rosse against the Representatives of the Reverend James Sterling and others, presented to the House, and referred to the Lords' Committees on Appeals in the last Session of Parliament, with the Bills of Costs to which they refer, be remitted to John Palmer, Esquire, Solicitor, of Gray's Inn Square (the Parties consenting thereto), and that he do report to this Committee the amount of the Costs that ought to be paid by the Appellant to the Respondent, by reason of the Error in the said Appeal, and the amendment thereof.

C. P. Rose,
Committee Clerk.

The Referree's Report.

House of Lords.

The Earl of Rosse........Appellant,

and

Sterling and others........Respondents.

Whereas, by an Order made on the 31st day of March last, by the Right Honourable the Lords' Committees, appointed to consider of the Causes in which Prints of the Appellants and Respondents' Cases, in matters of Appeals and Writs of Error, have not been delivered pursuant to the standing Orders of the House, it was ordered, that the consideration of the mutual Petitions on the subject of Costs of the Parties in the Cause, the Earl of Rosse against the Representatives of the Reverend
James Sterling and others, with the Bills of Costs to which they refer, should be remitted to me, John Palmer, of Gray's Inn Square, Solicitor, and that I, should report to the said Committee the amount of the Costs that ought to be paid by the Appellant to the Respondents, by reason of the Error in the said Appeal; Now I, the said John Palmer, in obedience to the said Order, do hereby humbly certify and report, that I have considered the said Petitions, and the Bills of Costs to which they refer, and have heard the Agents for the said Parties, and I am of opinion that the sum of £160. ought to be paid by the Appellant, the Earl of Rosse, to the said Respondents for Costs, by reason of the Error in the said Order mentioned. Dated the 27th day of April, 1824.

J. P.

An order was made confirming this Report.

John Lane, Esq. Agent for the Appellant.

Table of the Common Fees now paid out of Pocket on Appeals.

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retaining Fee to each Counsel, if not employed in the Court below</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Clerks, each</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>To each Counsel for signing Appeal</td>
<td>5</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Clerks, each</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Order of Summons</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>(If procured on day of presenting Petition, extra)</td>
<td>0</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Order for leave to enter into Recognizance, if by any other person than the Appellant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Fees of Recognizance</td>
<td>1</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Copy of Respondent's Answer</td>
<td>0</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Certified Copy of Proceedings payable in Edinburgh*</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

* This Fee is exclusive of the Dues to the Clerks Assistants for collating and comparing the Papers, which Dues vary according to the length of the Proceedings certified.
APPENDIX.

Order to set down the Cause for Hearing, which may be obtained by either Party

Respondent.

Retainer to each Counsel 2 2 0
Clerk 0 5 0
Copy of Appellant’s Petition, per folio of 72 words 0 1 0
Additional Fee to the Clerk 1 1 0
Filing Answer 0 5 0

Appellant and Respondent.

To each Counsel to sign Case 5 5 0
Clerk 0 5 0
For printing the Cases, seldom less than 10 10 0
Lodging Cases 2 2 0
Junior Clerk’s Fee for laying same on Table 1 1 0
Fee with Case to argue to Senior Counsel* 15 15 0
Clerk 0 15 0
To Junior Counsel 10 10 0
Clerk 0 10 6
Consultation, each Counsel 5 5 0
Clerks, each 0 10 6
Refreshing Fee to each Counsel for each day the Cause is in Hearing 10 10
Clerks, each 0 10 6
Bar Fee on Hearing 3 10 0
If a double Cause, (viz. an Appeal and a Cross Appeal) 7 0 0
Gratuity to eight Door-keepers (payable by the successful Party) not less than 4 4 0
Judgment, payable by the successful Party 3 3 0
The Clerks expect an addition of 2 2 0
Copy of Judgment 0 10 6

* The Fee with the Papers is of course regulated by the magnitude and difficulty of the Cause; it is seldom under what is above stated.
Fees to Counsel and their Clerks and Servants, as stated by Mr. Urquhart, in 1773.

Every retaining Fee to Counsel - - - 2 2 0
His Clerk - - - - 0 5 0
Every Fee to Counsel to peruse and sign Petition and Appeal - - - 2 2 0
His Clerk - - - - 0 5 0
Every Fee to Counsel to pursue and settle a Case 5 5 0
His Clerk - - - - 0 5 0
Every Consultation Fee upon the printed Case or otherwise to each Counsel - - - 5 5 0
The Senior Counsel's Clerk and Servants - 0 7 6
The Junior's Clerk - - - 0 5 0
Brief. Fee to each Counsel according to the length of the Brief and eminence of the Counsel, 10 Guineas and upwards.
The Senior Counsel's Clerk and Servant - 0 7 6
The Juniors - - - 0 5 0
Refreshing Fee to each Counsel for every day the hearing of the Cause takes up after the first day - - - 10 10 0
On a Refreshing Fee the Clerks nothing

Table of Fees allowed to the Clerks and Officers of the House of Lords in Cases of Appeal, as agreed to by the House, 21st June, 1824.

On entering into a Recognizance.
To the Clerk of the Parliaments - - - 0 10 0
To the Clerk Assistant - - - 0 8 6
To the Copying Clerk - - - 0 13 0
To the Copying Clerk upon Copies of Appeals under 30 folios - - - 0 10 0
For ditto above 30 folios - - - 1 1 0
APPENDIX.

For filing Answers - - - - 0 5 0
For Copy of the same - - - - 0 6 0
To the Door-keepers - - - - 0 15 4

For any Order made on an Appeal depending, whether by Petition or otherwise.

To the Clerk of the Parliaments - - - - 0 10 0
To the Clerk Assistant - - - - 0 6 0
To the Clerk of the Journals - - - - 0 6 6
If made on a Petition - - - - 0 4 6
From each Party on lodging the printed Cases to the Clerk Assistant - - - - 2 2 0
To the Clerk attending the Table to lay Cases on it - - - - 1 1 0

On the Hearing of Appeals.

From each Party to the Black Rod - - 2 0 0
From ditto to the Yeoman Usher - - 1 0 0
From ditto to the Door-keepers - - 4 0 0
From ditto to the Clerk of the Journals for a Cause List - - - - 1 1 0
To the Clerk of the Parliaments and Clerk Assistant between them for the Copy of a Judgment on an Appeal - - 2 0 0
To the Clerk of the Journals - - - - 1 3 0

NOTE.—In addition to the Fees on Appeals mentioned above, the Respondents pay for Copies of Appeals at the rate of one shilling for each folio of 72 Words, besides the extra sum of one guinea to the Clerk.
It will be observed, that the foregoing Fees are merely sums paid by the Agent out of pocket, there being nothing set down for his own trouble and attendance. Complete Bills of Costs for Appellant and Respondent would occupy a considerable space, and they are the less necessary here, as a variety of such Bills are to be found in a late publication, entitled, The Parliamentary Solicitor's Assistant.
PRACTICE ON WRITS OF ERROR.

THE distinction between Appeals and Writs of Error has been already noticed; the former being the mode of seeking relief against erroneous Decrees or Orders of the Courts of Equity, the latter the method by which Errors in Judgments of the Law Courts are corrected. Having treated of Appeals in the foregoing part of this Work, we will in the ensuing pages shew the method of prosecuting Writs of Error returnable in the House of Lords; introductory to which we will shortly notice some other modes of applying for the redress, or prevention of erroneous Judgments and proceedings in the Courts of common Law.

1. A Writ of Attaint.—When a wrong Verdict was supposed to have been found by a Jury, this Writ was sued out in order to inquire whether the Verdict was false or not; so that if false, the Judgment following upon it might be reversed. The consequences of an attainder were most penal and grievous to the Jury who gave the first Verdict; but this proceeding has been long disused, there having been hardly any instance of an Attaint later than the sixteenth century, for the practice of granting new Trials has nearly if not quite superseded it.—3 Bl. Com. 405.

2. An Action of Deceit might be brought in the Common Pleas to reverse a Judgment obtained by Fraud in that Court, in what is termed a real Action, that is, one for the recovery
of lands or real property.—3 Bl. Com. 405. But this con-
finned remedy is now scarcely, if ever pursued, more speedy and
effectual redress being obtainable by a summary application to
the Court.

3. A Writ of Audita Quærela lies where matter of discharge
has occurred posterior to a Judgment against a Defendant, as
if he had paid the Plaintiff’s Debt without getting satisfaction
entered on the Record. It also lies for Bail who have paid a
Debt unjustly, as where the Judgment against their principal
has been subsequently reversed. But this Writ is rendered
nearly useless by the Relief now granted by the Courts upon

4. An Arrest of Judgment.—Where there happens to be an
Error or Defect on the face of the Proceedings, as if the Decla-
ration is insufficient to sustain an Action; or a Verdict is inconsis-
tent with, or not warranted by the Pleadings (of both which
instances will be given in what follows), an application may be
made to the Court to arrest, namely, to stay the giving of
Judgment, which the Court, on good cause shewn, will order.—
3 Bl. Com. 393, 4. The consequence of which is, that all
Proceedings in that Action cease, the parties are dismissed, and
each bears his own Costs; but this does not preclude a new
Action. To obtain a rule for arresting a Judgment the Court
must be moved within the time limited by the practice for
entering Judgment on the Record, otherwise the motion cannot
be entertained, and the only remedy is a Writ of Error, of
which we shall next treat.

A Writ of Error may be brought for any material mistake,
not only in point of form, such as is not cured or amendable
by the Statutes of Jeofails, as they are called, but also for
what is more important—a wrong Decision on the merits of
the Case.

A Writ of Error, says Sir Anthony Fitz Herbert, properly
lieth where false Judgment is given in a Court of Record, hav-
ing power to hold plea of any Debt or Trespass above forty
shillings.—F. Nat. Brev. 20. B. A Writ of Error may be
more fully described as a Writ in the nature of a Commission,
IN THE HOUSE OF LORDS.

which issues out of Chancery, at the instance of a party who thinks himself aggrieved by an erroneous Judgment of a Court of Record, not otherwise amendable, authorising a superior Court, and sometimes the same Court, to examine the Proceedings, and thereupon to affirm or reverse the Judgment according to Law.—2 Bac. Abs. 187, Stra. 607. And Writs of Error are of great antiquity, for in the Registram Brevium, that most ancient Collection of legal Forms (3 Bl. Com. 183, Pref. to 8 Rep.), are contained Precedents of Writs of Error.

To redress an erroneous Decision of a base Court, that is, a Court not of Record, the remedy is different, viz. a Writ of false Judgment.—2 Inst. 40 Finch. 2, 484—3 Bl. Com. 407.

Writs of Error are of two sorts;* one to correct Errors in Law, by which are meant Errors appearing on the face of the Record, which neither requires any evidence to support it, nor admits of any contradiction, unless it be by matter of Record. The other is, to rectify Errors in Fact, which are not apparent in the proceedings.—Both will be more fully explained.

Writs of Error are grantable of right, (ex debito Justiciae), in all Cases except those of Treason and Felony.—2 Salk. 504, 3 Durnf. and E. 79. And to Writs of Error, it has been said, we are indebted for our fixed and settled legal determinations; which may be true where they were not founded on technical and futile objections.

The history, as given by Sir William Blackstone, of the occasion of many Errors in our judicial Proceedings, is curious. King Edward 1 had declared, "that though he had granted to his Justices to make Record of Pleas, yet their own Record should not be a Warranty for their own wrong; nor should they raise their Rolls, nor amend them, contrary to their original Inrolment," which Sir William Blackstone observes, meant that a Record erroneously made up, should not be a sanction for Error, and that a Record made up according to the truth, should not be altered to any sinister purpose. But subsequently, when King Edward, on his return from his French dominions (after upwards of three years absence),

* See Note 19.
found it convenient, in order to replenish his Exchequer, to prosecute his Judges, even the most upright, for their corruption and malpractices, the perversion of Judgments and the altering of Records, were among the causes assigned for the heavy punishments inflicted on them; the severity of which Proceedings seems to have so alarmed succeeding Judges, that through a fear of doing wrong, they hesitated to do what was right. And in the reign of Richard 2 there are instances of their refusing to amend the most palpable Errors, unless by the authority of Parliament; to which was added such a narrowness of thought, that every slip (even of a letter) was held to be fatal. If, says the learned Commentator, they would not set right mere formal mistakes, they at least should have held that trifling objections were inadmissible; and that more solid exceptions in form came too late, when the merits had been tried.

The Precedents then set, were afterwards most religiously followed, to the great obstruction of Justice, and ruin of the Suitors, who suffered as much by the scrupulous obstinacy of the Courts, as they could have done even by their iniquity. After verdicts and Judgments given upon the merits, they were frequently reversed for slips of the pen, or mis-spellings; and Justice was perpetually entangled in a net of mere technical jargon. The Legislature hath, therefore, been forced to interpose by no less than twelve Statutes, to remedy these opprobrious niceties; and its endeavours have been of late so well seconded by Judges of a more liberal cast, that this unseemly degree of strictness is almost entirely eradicated.—3 Bl. Com. 410, 411.

When the foregoing statement is considered, it will not be matter of wonder if Writs of Error were of very frequent occurrence in those early times.

It will now be not improper to take a view of the Jurisdictions which are empowered by the Common or Statute Law to review and correct erroneous Judgments.

According to Fitz Herbert, if a false Judgment be given in London or elsewhere, in a Court of Record, the party grieved shall have a Writ of Error, which may be returned into the Common Pleas, or into the King's Bench, at the pleasure of
him who sueth the same.—F. N. B. 20 D. But it has long been held, and appears to be quite settled, that a Writ of Error does not now lie from an inferior Court to the Common Pleas.—Cro. Eliz. 26, Finch. L. 480, 3 Bl. Com. 410.

And here it may be stated, as an established rule, that where a Judgment is given by a Court having one superior to it, in which by Law its Errors can be examined, a Writ of Error will not lie immediately, and per Saltum, to a still higher Jurisdiction; as for instance, on a Judgment of the Common Pleas, a Writ of Error does not lie directly to Parliament, but to the King’s Bench.—Hale’s Juris. 123. In the Case of Lord Macclesfield, who brought a Writ of Error from a Judgment of the Court of Exchequer into Parliament, when the Cause was ready for Judgment, it was objected that it came there per Saltum, whereas it ought to have gone first to the Exchequer Chamber under the Stat. 31st Edward 3, Skin. Rep. 517, 1 Lord Raym. 15.

As to the corrective power of the Court of King’s Bench, Writs of Error lie to that Court from the Common Pleas, and from all other inferior Courts in England and Wales, with a few exceptions.—4 Inst. 22, 2 Burr. 777, 3 Bl. Com. 410.

As to reviewing the Judgments of the King’s Bench, it is said by Sir William Dugdale, that there were originally no Writs of Error from Judgments of that Court; for, speaking of the Exchequer, he says, “it was a distinct Court from that Court of the King where he himself used to sit in person, and whence there was no Appeal.” Origines Juridiciales, Cunningham’s Inns of Court, 95. The Court here meant must, it is presumed, have been the King’s Bench. The Author has not mentioned at what period the King thus sat there in person. If he ever did so, an Appeal or Writ of Error would certainly have been then of little use,—for before whom except the King could it have been brought? But according to some writers, the opinion of the King’s presiding as a Judge, is ill founded.—See 3 Bl. Com. 41, Note 4. Leaving this, like other moot points, to be discussed by Antiquaries, let it suffice to observe, as will be more fully shewn, that Writs, or rather
Petitions of Error from the King's Bench to the House of Lords, are very ancient, for to that House alone could Error be originally brought from the Court of King's Bench, which was often productive of much inconvenience when Parliament did not sit.—2 Bao. Abr. 213.

In the reign of Edward 3 a new Jurisdiction was established, rather, it should seem, to assist the Judges of the different Courts, than to review their decisions; for by Stat. 14th Edward 3, c. 5, after reciting that "many mischiefs had happened from Judgments in the different Courts being delayed, sometimes by difficulty, sometimes by divers opinions of the Judges, and sometimes for other Causes," it was enacted, "that at every Parliament there should be chosen a Prelate, two Earls, and two Barons, who should have commission and power of the King, to hear on Petition, complaints of such delays, and to cause to come before them at Westminster, or elsewhere, &c. the tenor of Records so delayed, as also the Judges, and to hear the Cause of such delay; and by the advice of themselves, the Chancellor, Treasurers, the Justices of the one Bench and of the other, and other of the King's Council, as many as they should think convenient, should make a good Judgment, and remand the Record with such Judgment, to the Justices of the Court below, who were immediately to enforce it; and if the difficulty seemed so great that it could not be determined without the assent of Parliament, the Record should be brought into the next Parliament, and there finally adjudged; according to which the Justices below were to give Judgment without delay."

It has been observed in the Introduction, that Lord Hale contends, Writs of Error lay to the whole Parliament as well as the Lords. Now by Parliament as above used, it is presumed, was intended the House of Lords, not only because that is the usual meaning of the word in judicial proceedings, but also because it is believed the two Houses had then separated; and since it seems impossible they could, after such separation, act together as Judges, it is highly improbable they were both meant. If so, this Statute is a legislative recogni-
tion of the Appellate Jurisdiction in the Lords. It may indeed be said there are no negative words, excluding an Appeal to the whole Parliament; but this will not obviate the difficulty of joint adjudication.

This, says an erudite Author, alluding to the enactment in the last-mentioned Statute, seems to be a very extraordinary regulation; as such Prelates, Earls, and Barons, would probably be very incapable of deciding the points on which they were to sit as Judges. But, he conjectures, the Legislature might think them the more proper for not having had a legal education, as it appears by the other parts of this Statute that the decisions in Westminster Hall then began rather to turn on subtleties, than doing substantial Justice.—Barringt. Obser. Stat. 199.

This eminent person seems to have overlooked that part of the Act which directs that the advice of the Chancellor, Treasurer, Justices of both Benches, &c. was to be taken.

Lord Coke, speaking of Cases in which the Court cannot agree, says, "If the Court be equally divided, or conceive great doubt of the Case, then may they adjourn it into the Exchequer Chamber, where the Case shall be argued by all the Judges of England, when, if the Judges shall be equally divided, then it shall be decided at the next Parliament by a Prelate, &c." referring to the above Statute, which it may be observed, he quotes not very accurately. "Before which Statute," he says, "If Judgments were not given, by reason of difficulty, the doubt was decided at the next Parliament, which then was to be held once every year at the least."—Co. Lit. 71, 6.

Although this Statute of 14th Edward 3 was designed to prevent delay, yet it does not appear to have produced much effect; nor are there many traces of Proceedings under it. Indeed, as the learned Author of the Observations on the Statutes intimates, this tribunal would seem to have been ill calculated to answer the end proposed, and for that reason it is presumed, has long been discontinued. Certain it is, that this Jurisdiction by no means superseded the necessity, or the practice of bringing Writs of Error, and accordingly from the
time of Henry 4 to that of Queen Elizabeth, we find they were so common that the title Error is one of the largest in Croke and the other old books. But what was originally meant for the furtherance of Justice was perverted to the purposes of chicane and fraud. Hence Suitors were much perplexed, and Justice frequently delayed, if not defeated, by Writs of Error upon very trivial grounds, as before noticed, such as slight informalities and mistakes, or mis-spellings of Clerks.—3 Bl. Com. 407. Besides, from the great irregularity in the meeting of Parliament in ancient times, notwithstanding the Statutes of 4th Edward 3, c. 14 and 36 Edward 3, c. 10, which ordained that Parliament should be held annually; as well as from the frivolous Causes of Error then generally assigned, it may be doubted whether the disadvantages attending Writs of Error at that early period, did not over balance the benefit derived from them. But now, by the liberality of the Courts, and the Statutes of Jeofails (which it is to be observed, do not extend to criminal Cases.—4 Bl. Com. 375), many amendments are permitted, and mistakes helped, which in former times would have been fatal; and Writs of Error cannot now be maintained but for some substantial and material Error assigned.—3 Bl. Com. 407. They have also been further prevented in many Cases by the necessity of putting in Bail.

As to the Law or plea side of the Court of Exchequer, Errors in this Court were sometimes anciently examined in Parliament, and at other times before Commissioners, by force of the King's Writ under the Great Seal; and it was petitioned in Parliament, 22d Edward 3, that erroneous Judgments in the Exchequer might be reversed in the King's Bench, but it did not succeed.—1 Burt. Excheq. 321. Soon afterwards it was by the 31st Edward 3, Stat. 1, c. 12, enacted, "that in all cases touching the King or other persons, where any man complained of Error made in the Exchequer, the Chancellor and Treasurer should cause to come before them, in any Chamber of Council nigh the Exchequer, the Record and process out of the Exchequer, and taking to them the Justices and other sage persons, such as to them shall seem meet, to be
taken, should cause to be called before them the Barons of the Exchequer to hear their informations and the cause of their Judgments, and thereupon should duly examine the business, and if any Error be found, should correct and amend the Rolls, and send them into the Exchequer to make thereof execution."

The Chancellor and Treasurer meant by this Act are the Lord High Chancellor and Lord Treasurer of England; and that which is there called the Council Chamber is now called the Exchequer Chamber. It was named the Council Chamber, because there was the Assembly of all the Judges, who were the King's Council for deciding matters of Law.—1 Burt. Excheq. 322.

By the 31st Eliz. c. 1, made in aid of the Stat. of 31st Edward 3 above mentioned, in consideration that the Chancellor and Treasurer were great Offices of State, and could not always be present, on which account Writs of Error were often discontinued, it is enacted, that their absence shall not be a discontinuance, but if both the Chief Justices, or either the Chancellor or Treasurer be present, the Cause shall proceed, but no Judgment shall be given unless they are both present; and see 18 Car. 2, c. 2, and 20 Car. 2, c. 4.

In this Court the two Chief Justices have for many years presided as the Lord Chancellor's Assessors, the Chancellor himself, it is said, not having sat there since the time of Lord Sommers.—3 Bl. Com. 410, 1 T. R. 493—511.

Owing to the abuse of Writs of Error in Parliament, the King's Bench formerly, and so far back as the time of Henry 7, would not allow those Writs, unless some Error in the Judgment was first shewn.—1 Vent. 266. And to obviate the great inconvenience which arose from delay in the determination of Writs of Error from the King's Bench, returnable in Parliament, which had long ceased to meet annually, the Stat. 27th Elizabeth, c. 8, was made, which, after complaining, "that Errors in the King's Bench could only be reformed in Parliament, and that it was not, in these days so often held as in ancient times, besides which, the great business of the nation
took up so much of their time as not to allow sufficient leisure for such examination," enacts, "That where a Judgment is given in the King's Bench, in any Action of Debt, Detinue, Covenant, Account, Actions upon the Case, Ejectiona firmae or Trespass, first commenced there, other than such only where the Crown shall be a party, the person against whom Judgment is given may, at his Election, sue forth of the Chancery a special Writ of Error, directed to the Chief Justice, commanding him to cause the Record to be brought before the Justices of the Common Pleas and Barons of the Exchequer, into the Exchequer Chamber, who, or any six of them (being of the Court), shall have power to examine, reverse, or affirm, the Judgment, other than for Error concerning the Jurisdiction of the King's Bench, or the want of Form in any Writ or other Proceedings. And after such Judgment is reversed or affirmed, the said Record shall be brought back into the King's Bench, that further Proceedings may be had thereupon; but such reversal or affirmation shall not be so final but that the party who finds himself aggrieved may sue in the High Court of Parliament, as was then usual."

Here the Jurisdiction of the House of Lords over Writs of Error is again recognized by the Legislature, for that House alone must assuredly have been meant, as it certainly was not then usual to bring Error before both Houses.

In all Actions not mentioned in the Act, in all Suits where the King is a Party, and in the Actions described in the Statute, if the Proceedings commence, not by Bill, but by original Writ sued out of Chancery, the Writ of Error lies immediately and directly to the House of Lords; for the Statute of Elizabeth only enables parties to bring Writs of Error in the Exchequer Chamber in the seven descriptions of Actions therein specified, in Case such Actions were originally commenced in the King's Bench.—3 Bl. Com. 411. A restriction for which we have never seen any good reason assigned.

It might be supposed from the exception in the Statute, of Cases where the Crown is a party, that Judgments in Actions qui tam, could not be removed by Writ of Error into the
Exchequer Chamber; but it has been determined that Error lies there in an Action of Debt *qui tam* for usury.—Doug. 350.

In those Cases where Error may be brought in the Exchequer Chamber, the party has his option of bringing it in Parliament; for the 31st Elizabeth, c. 1, provides, that the person against whom Judgment is given, may, at his Election, bring his Writ of Error in Parliament for the reversal of it, as theretofore had been usual. But if a party chooses to bring Error in the Exchequer Chamber, he cannot regularly bring Error in Parliament upon the first Judgment alone, but must bring Error of the Judgment in the Exchequer Chamber as well as of that in the King's Bench.—1 Saund. 346, Carth. 180 (6), 3 Bl. Com. 410, Lil. Ent. Tit. Error.

This Stat. of 27th Elizabeth, which was intended to expedite the correction of erroneous Judgments, was often made an engine to defeat or defer the effect of just ones. To check this abuse, several Acts were passed in succeeding reigns, requiring Plaintiffs in Writs of Error to put in Bail for securing payment of the Debt and Costs.

It is not within the scope of this Treatise to point out what are the particular Errors for which Judgments may be reversed, the chief object of the Work being to explain the mode of proceeding on Writs of Error in the House of Lords; to give the practice, and not the theory, which may be found in Works professedly written on that subject; but before exhibiting the practice, it may not be improper to say something by way of illustration, of the general nature of the Errors for which Judgments may be reversed, to specify from what Courts Writs of Error do, and from what Courts they do not lie to that High Tribunal, and to shew who are the proper parties to them, with some other particulars.

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**OF WRITS OF ERROR IN LAW.**

A Writ of Error in Law lies, as before stated, to correct the erroneous Decision of a Court of Record, appearing on the face of the Proceedings. There is no method of being relieved
against an erroneous verdict found by a Jury, but by an *Attaint*,
a proceeding of extreme severity, very long out of use, or a new
trial.—3 Bl. Com. 407. And where an Error is in the suggestion
of a Writ itself, and not in the Proceedings, a Writ of Error does
not lie, but the party must bring an *Audita querela.*—Carth. 282,
Salk. 262. This is, however, a remedy now seldom resorted
to, as the Courts afford relief in a more summary manner, as
we have already mentioned.

Errors, it has been observed, are of two kinds, viz. Errors
in Law, and Errors in Fact. The former, which will be first
considered, are such as are *intrinsic*, i.e. appearing on the
Record, and they may be either in the Pleadings, or in the
Judgment. Such as 1st.—Where the Declaration varies from
the original Writ, the Writ, for instance, being in *Debt*, and
the Declaration in *Trover.* Or 2ndly.—Where the Verdict is
quite different from the complaint, as if in an Action for de-
format the words charged were, the Plaintiff is a Bankrupt, and
the Verdict finds specially that the words were, "he *will* be a
Bankrupt." Or 3rdly.—If a Plaintiff recovers more damages
than he claimed by his Declaration, as if he declares for £40.
and the Jury find a Verdict for £50. and the Court gives
Judgment for the latter sum, or for ever so little beyond the
demand, this is considered to be an Error in Law for which
the Judgment may be reversed; although the Plaintiff might
before Judgment have released the overplus.—10 Co. 115, 2
Bac. Abr. 494. And notwithstanding it is a general rule that
a party shall not assign as Error that which is for his benefit,
still this holds not in all Cases; for if a Verdict be found
against two Defendants, and one of them is charged with all
the Damages and Costs, yet this may be alleged for Error by
the other Defendant, it being an Error in the Judgment, and the
fault of the Court.—Ca. temp. Hardw. 50, 2 Stra. 701, 2 Ba.
Abr. 491. Or 4thly.—Where the Case laid in the Declaration
is not sufficient in point of Law to sustain an Action, as if a
person is sued for calling another a *Jew*, and upon denial and
issue joined, a Verdict is found that the words were actually
spoken, still these words are not actionable. Or if in an
Action against the Indorser of a Bill of Exchange, the Plaintiff omits to state in the Declaration that payment was demanded of the Acceptor and refused; this omission has been held to be a fatal Error. Or if upon a Declaration containing several Counts, one of which is bad, a general Verdict is taken, and Judgment given for entire damages, the Judgment will be erroneous.—Doug. 679, 730. And in these different Cases the Defendant may bring a Writ of Error. Also if in an Action of Debt a Defendant pleads not guilty instead of nil debet, and the Defendant has a Verdict and Judgment, this is a defect for which the Plaintiff may bring a Writ of Error.—3 Bl. Com. 393, 4.

In criminal Cases still more nicety is required. For instance, if a man is found guilty of one offence, as Perjury, and receives the Judgment of a different one, as Felony; or if an offence is laid in the Indictment to have been committed in the time of the late King, and concludes with stating it to be against the peace of the present King, these are Errors in Law.—4 Bl. Com. 391, 3 Burr. 1901. In each of these Cases the Judgment is not only reversible by a Writ of Error, but the Defendant might, before Judgment entered up, have moved to arrest or stay it, that is, to prevent its being completed. The consequence of which is, that the Proceedings cease, and the Plaintiff and Defendant pay their own Costs.—3 Bl. Com. 395, 6, Cowp. 407. But if the Defendant omits to move in arrest of Judgment within the prescribed time, he may bring a Writ of Error, which will then be his only remedy.—3 Burr. 1901. Lil. Abr. 96.

In these instances, it may be observed, that Defendants are chiefly the persons who complain, and that the Errors arise on matters of Form; but there are many Cases where the Plaintiff may be aggrieved, and where the Errors are of a more material and substantial nature, as where Actions are brought for the recovery of rights founded on contract, or to recover satisfaction for some wrong committed against a man's person or property. In such Cases, questions may be raised on the Pleadings, which are then called Issues in Law, and are decided
without the intervention of a Jury; and as the decision may be for or against the Plaintiff or Defendant, so either of them may Appeal from it by Writ of Error. Where parties conceive that injustice is done by a Verdict, as if the damages are thought too great or too small, or that the Verdict is contrary to evidence, the only practicable mode of seeking relief, is by applying for a new Trial, as before mentioned.

It has been observed, that upon a Writ of Error the Court of Appeal can only judge of matter of Law appearing upon the Record, and that in some Cases the question is raised and decided on the Pleadings; but in many others this cannot be done, particularly in Actions of Ejectment brought to try the Title, which depends frequently on the operation and constructions of Wills, Deeds of Settlement, and other Instruments. In these Cases, in order to obtain not only the opinion of the Court in which the Action is brought, but also of a Court of Error, if desired, the Jury find a special Verdict, embodying the Instruments and Facts on which the merits depend, and which thus become part of the Record.

It often happens where questions of difficulty arise upon Trials, that special Cases are made for the opinion of the Court, which practice has become more prevalent since special matter has been allowed to be given in evidence under the General Issue, which formerly must have been pleaded.—3 Bl. Com. 306. But if the Judges differ, or either of the Parties are dissatisfied, and it is wished to take the opinion of a superior Court, then the Case is turned into a special Verdict, and so put upon the Record, in order that a Writ of Error may be brought; for the Parties cannot have the benefit of a Writ of Error on a special Case, 3 Bl. Com. 378.

So when upon a Trial a question arises, either as to competency of witnesses, or the admissibility or legal effect of evidence, or the refusal of a Demurrer to evidence, a Bill of Exceptions may be taken in civil Cases; but it has been doubted whether the Statute of Westminster 2 (13th Edward 1, c. 31) extends to criminal Suits. In those Cases the Bill of Exceptions is either drawn separate from the Record, or
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tackled to it, that is, set forth after the Pleadings.—Tidd's Prac. 863. And a Writ of Error may be brought upon it, to remove the Case into a superior Court; for Bills of Exceptions are examinable, not in the Court out of which the Record issues for the Trial at nisi prius, but in the superior Court, upon a Writ of Error, after Judgment given in the Court below.—3 Bl. Com. 372. And therefore a Bill of Exceptions from the Common Pleas goes into the King's Bench immediately, and a Bill of Exceptions from the King's Bench goes originally to the Lords in Parliament.—Cwpp. Rep. 501. 1 Bl. Rep. 676. As a Bill of Exceptions can only be considered on a Writ of Error, where that Writ will not lie there can not be a Bill of Exceptions. 1 Salk. 284. Tidd's Prac. 865.

Upon Trials in civil Cases there may also be a Demurrer to Evidence, and a Question made for the Judgment of the Court; upon which Judgment a Writ of Error lies to the Lords. A Demurrer to Evidence is not allowed in the King's Case, but there the matter in doubt must be found specially. Tidd's Prac. 865.

OF ERRORS IN FACT.

Errors in Fact are extrinsic, and not apparent on the Record. Of this description are the following: If a person who is a Minor, sues or defends by Attorney, instead of his next Friend or Guardian; or a woman who is married, sues or is sued without, her husband, and as a single woman, neither of which can by Law be done, inasmuch as they are not legally capable, the one of appointing an Attorney, and the other of acting alone; or where one of the parties dies before a Verdict or interlocutory Judgment—these are Errors in Fact.—Rol. Abridg. 748, Cro. Ja. 500, 1 Lord Raym. 600. But they are not discoverable by inspection of the Record. Were the Infancy, &c. to be set forth in the Pleadings it would be manifest Error, for which the Judgment would be reversible; but as these Facts do not appear on Record, they can only be taken advantage of by stating the non-age, marriage, or death in the assignment of Errors,
whereby the alleged fact, if denied, is put in Issue, and tried by a Jury.—1 Burr. 410. And being found true, becomes matter of Record. Error in Fact may properly be examined in the same Court, because it does not arise from any mistake in the Judgment or opinion of the Court; wherefore the Judgment, if set aside, is recalled, not reversed.—Rol. Abr. 747, Cro. Eliz. 105, 2 Bac. Abr. 593. Indeed it may be more truly said, that the Judgment becomes a nullity than that it is erroneous; for though an infant or a married woman are not liable in Actions for money lent, or for breach of Contract, yet there are many Cases of transgression in which Judgments may be recovered against them if properly sued.

Though Error in Fact in the Common Pleas may be corrected in the King's Bench, yet when it occurs in Judgments of the last-mentioned Court, it is examined and rectified in that Court, because as the Fact, if disputed, must be tried by a Jury, there is no superior Court in which such a trial can be had.

A SUMMARY OF THE JURISDICTION OF THE LORDS ON WRITS OF ERROR.

Let us now more particularly advert to the Jurisdiction of the House of Lords. According to Lord Chief Justice Hale, whose Treatise on the Lords' Jurisdiction is noticed at some length in the introductory part of this Work, the original mode of reviewing Errors in Parliament was by Petition to the King, who referred them to the Parliament, assisted by the Judges, &c. and his Lordship observes that in the Registrum Brevium there is no form of a Writ of Error in Parliament. Jurisd. 136.

Petitions of Error in Parliament are very ancient, for in Ryley's Placita Parliamentaria there are Precedents of Pleadings and Proceedings in Error so far back as the Reign of Ed. 1, and from the 6th of Ed. 1. (1277) when the printed Rolls of Parliament begin, to the Reign of Hen. 4, (1413) they are full of Petitions and Writs of Error. But from the Acces-
sion of Hen. 5 to that of James the 1st, there appears to have been very little judicial business transacted in Parliament.—Harg. pref. to Hale's Juris. 6, 7.

The first Writ of Error appearing on the Lords' Journals was entered in Feb. 1585; the second was brought into the House by Sir Christopher Wray, when the present Form of introducing them was established. Lord Mountmorres, vol. 2, p. 201.

Although Writs of Error to the King's Bench in civil Suits, are granted of Right, and obtainable as a matter of course, Lord Hale says that originally the Review of Errors in Parliament was not so, and that this was only allowed on Petition to the King, who in weighty Cases referred such Petitions to Parliament, or the Concilium Regis; that in general the Lords, in conjunction with the Council, or the Judges, decided on them; that afterwards, when, instead of Petitions, Writs of Error returnable in Parliament were issued, they still required the sanction of the Crown; that they were at first made returnable, and were to be decided, in full parliament; but after some time the Decision was by the Lords Spiritual and Temporal, who continued to call in the Assistance of the Judges; that such Writs of Error are still supposed to be issued by Consent of the King, and the Style of this supreme Court still is the Court of Parliament, or the High Court of Parliament, and Writs of Error continue to be returnable to the King in his Parliament. Here it may be observed that the word Parliament, as used in early times, especially in relation to legal Proceedings, is of very indefinite meaning; but Lord Hale, though he asserts the Right of the Commons to Jurisdiction, admits that the word Parliament most commonly meant the House of Lords. Juris. 140.

In the Reign of James the 1st and his immediate successor, judicial Proceedings in the House of Lords, as well original as appellate, considerably increased, which led to serious Contests between the Lords and Commons; and towards the latter part of the Reign of King Chas. 2, and the beginning of the last century, the Commons, in the heat of their disputes with the House of
Lords touching original Jurisdiction over Causes, and their Claim to appellate Jurisdiction to review Decrees in Equity, showed an inclination to question the right of the Lords to take exclusive Cognizance even of Writs of Error; contending that the whole Parliament was the last resort, and not the House of Lords. See Harg. pref. to Hale's Juris. cciv, &c. But their Lordships nevertheless insisted on and maintained their Jurisdiction over both Appeals and Writs of Error, while they relinquished that over original Causes; and their appellate Jurisdiction in Cases of Appeal and Writs of Error has ever since been exercised, without the least Opposition or Interruption.

CASES IN WHICH WRITS OF ERROR LIE IN PARLIAMENT.

Writs of Error, as before signified, lie as a matter of course from Judgments of the Court of King's Bench to the House of Lords in all civil cases, except for Error in Fact (if that be an exception), as they do to the King's Bench from the Common Pleas, and all inferior Courts, with a few exceptions; and from Judgments of Affirmance or Reversal in the Exchequer Chamber, a Writ of Error lies to the House of Lords.

The Stat. 27 Eliz. c. 8, is confined to the seven different species of Action mentioned in it, and in these, Error can only be brought when they commenced in the King's Bench. The Act, therefore, does not extend to Actions of Replevin, Rescous, Scandalum Magnatum, Writs of Prohibition, Mandamus, or Scire Facias against Bail. Consequently, in these Cases, as well as in all Actions where the Proceedings in the King's Bench are founded on an original Writ out of Chancery, Error must be brought immediately in Parliament. Tidd. 1139. Upon Judgments of the Common Pleas, or other inferior Courts, affirmed or reversed in the King's Bench, Error does not lie in the Exchequer Chamber, as the Proceedings do not originate in the King's Bench. Indeed, as the Exchequer Chamber in part consists of the Common Pleas Judges, it would be improper that they should have to decide on their
own Judgments. Nor has the Exchequer Chamber any Jurisdiction to examine into the Authority of the Court of King's Bench, to proceed by Bill against a Peer. 2 H. Bl. 270. Austr. 358. Therefore Error in this Case can only be brought in Parliament.

It is thought proper to mention the following Cases particularly, because the Proceedings in them do not fall under the Denomination of Actions in the ordinary sense of the word.

Since the Stat. of 9 Anne, c. 20, which allows of special Pleading to a Writ of Mandamus, a Writ of Error lies on a Judgment upon it, though Error does not lie on the bare award of a Mandamus to which there has been no plea. 1 P. Wms. 350. 3 Bro. Par. Ca. 554.

In an Audita Querela, if Judgment be given against a Defendant on a Demurrer, he may bring a Writ of Error. Tidd. 918.

Although a Writ of Error does not lie from a Court not of Record, but only a Writ of false Judgment, yet if the latter writ be brought in the Common Pleas, and the Judgment is there reversed, Error lies on this Reversal to the King's Bench, it being then Matter of Record. Rol. Abr. 744. 2 Bac. Abr. 453. And from the King's Bench Error would lie in all the preceding Cases to the House of Lords.

Writs of Error do not lie to the King's Bench from the Courts of London, but from the Sheriffs' Courts of that City a Writ of Error lies to the Court of Hustings, held before the Mayor, Recorder, and Sheriffs; and from them, as also from the Law side of the Mayor's Court, Error lies to a Court of Appeal held before Commissioners or Delegates (being generally Judges), appointed under the Great Seal, who used to sit in the Church of St. Martin-le-Grand.—1 Rol. Abr. 745: and thence a Writ of Error lies to the House of Lords, as does an Appeal to that House from a Decree made by the Equity side of the Mayor's Court of London.—2 Leon. 107, 3 Bl. Com. 80 n. 2, Bac. Abr. 484. In the Case of Harrison v. Evans,* where Judgment had been given in the Hustings, it

* See Note 20.
was referred to Judges' Delegates, who sat in Lincoln's Inn Hall, in July, 1762. And from their Decision a Writ of Error was brought to the House of Lords.—Copr. 393—3 Bro. P. C. 465.

Judgments given in the Cinque Ports are examined by Bill, in the nature of a Writ of Error, before the Lord Warden of the Cinque Ports, in his Court of Shepway.—4 Inst. 224, 2 Bac. Abr. 483; and Error lies from that Court to the King's Bench.—Jenk. 71, 1 Sid. 356; and afterwards of course to the Lords. A Certiorari lies to the Cinque Ports to remove indictments.—Hawk. P. C. 286.

In criminal cases, namely, where the Crown is the Prosecutor, a Writ of Error lies to the King's Bench from all inferior criminal Jurisdictions, and thence to the House of Lords; and on Judgments of the King's Bench in criminal cases, Error may be brought in that Court, whether the Error be in Fact or in Law. Though Error in Law lies also in Parliament. 3 Salk. 147. But if the Error be in the Judgment itself, and not in the Process, a Writ of Error will not lie in the King's Bench; it must be brought in Parliament. 1 Roll. Abr. 746.

If a person be attainted on an erroneous indictment, he can only be relieved by Writ of Error; but if he be acquitted on such indictment the King need not bring a Writ of Error, as the Defendant may be newly indicted, for the Judgment being quod eat sine die, may be as well for the insufficiency of the indictment, as for the party's innocence.—3 Inst. 214, 2 Bac. Abr. 451.

It is settled that a person attainted of Treason or Felony, before he can have a Writ of Error to reverse the attainer, must assign the Errors, and have leave of the Court to prosecute his Writ of Error. And no Writ of Error for the reversal of such an Attainer is to be allowed without a warrant from the King, or the consent of the Attorney General.—2 Hawk. P. C. c. 50, s. 11, 12—2 Bac. Abr. 453.

A Writ of Error lies to reverse an Attainer of High Treason, notwithstanding the Stat. 33rd. Henry 8, c. 20, which
enacts, that Attainders by common Law shall be as effectual as if by authority of Parliament, for the Act must mean such Attainders as are legal, and not those that are erroneous or void.—3 Inst. 215, L. Raym. 1, 2, 2 Bac. Abr. 453.

In Cases of misdemeanor, Writs of Error are not granted of course, but on sufficient cause shewn to the Attorney General; and then they are grantable \textit{ex debito justiciae}. But Writs of Error to reverse Attainders in capital Cases, are only to be obtained \textit{ex gratia}, and not without express warrant under the King's sign manual, or at least by consent of the Attorney General.—1 Vern. 170, 175, 4 Bl. Com. 391.

From proceedings on the Law side of the Court of Exchequer, a Writ of Error lies, not immediately to the Lords, but into the Court erected by the Act of 31st Edward 3, held in the Council Chamber (often called the Exchequer Chamber), before the Lord Chancellor, Lord Treasurer, and Judges of the King's Bench and Common Pleas, in which Court the two Chief Justices have for many years presided as the Lord Chancellor's Assessors, as before mentioned; and from that Court Error lies to the Lords.—3 Bl. Com. 410.

Upon a Judgment of the Law side of the Court of Chancery (to which legal Court belong the Petty Bag and the Hanaper Offices), it is said a Writ of Error lies to the King's Bench, though so little business is done in it, that there is no trace of such a Writ of Error since the 14th year of Q. Eliz. (1572). But Lord Keeper North, in 1682, held that no such Writ of Error lay; which opinion, Sir William Blackstone thinks, was not well considered.—3 Bl. Com. 49, 2 Bac. Abr. 455.

On this subject Lord Hale says, that upon a Judgment given in Chancery on a \textit{Scire facias}, or recognizance, or in a suit of privilege, Error lies in the King's Bench; but on a Judgment in Partition, or a Traverse, or Petition of Right, Error lies immediately in Parliament, because these are \textit{Placita coram concilio Regis}, to which the Justices of both Benches are to be called. This, Lord Hale says, he knew to be ruled in a Case which he mentions about 20 Car. 2. Jurisdict. 12, 3, 4.
Writs of Error, therefore, to correct erroneous Judgments in matters of Law, lie either directly or indirectly to the House of Lords, from the Judgments of all the Common Law Courts of England and Wales, with a few exceptions which will be noticed. They can be brought directly to the Lords from all original Judgments of the Court of King's Bench, though in the Cases before enumerated they may be first brought from that Court into the Exchequer Chamber, under the 27th Eliz. From Judgments of the Court of Common Pleas, and other inferior Courts of Record, Writs of Error must first be brought in the King's Bench, from which Court, as before observed, a Writ of Error lies to the House of Lords, and thus Error lies indirectly to their Lordships. From Judgments of Affirmance or Reversal in the Exchequer Chamber also, Error lies directly to the House of Lords. Writs of Error from the Law side of the Court of Exchequer, lie in the first instance to the Court erected by the 31st Edward 4, Stat 1, c. 12, called the Council Chamber, then immediately from that Court, and so mediately from the Exchequer Law Court, to the House of Lords; and according to some opinions, Error from Judgments of the Petty Bag, or Law Court, of Chancery, lies in certain Cases first to the King's Bench, and then to the Lords.

From Judgments of the Court of Exchequer in Scotland, and also from the decisions of the twelve Judges in Ireland, Writs of Error lie to the House of Lords, as will be more fully stated under their proper heads.

CASES IN WHICH WRITS OF ERROR DO NOT LIE IN PARLIAMENT.

A Writ of Error in Fact, it has been observed, is not brought in Parliament, though it is believed there has been no determination of the House to negative the right of a party to bring such a Writ.

It is said a Writ of Error lies only on a Judgment, or an Award in the nature of a Judgment, in which there is Ideo
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consideratum est, and the Writ supposes that a Judgment has been, or will be given, the words being si judicium redditum sit. It is also said it must be a final, and not an Interlocutory Judgment.—Co. Lit. 288, 6, 3 Bl. Com. 56, 6 East. 336. But this should be understood with some qualification; for a Writ of Error lies in certain Cases on a Judgment by default, before damages are inquired of, as in Dower, for there the Judgment is complete as to the reality, the damages being given by the Stat. of Merton, c. 1 (20 Henry 3), by way of addition.—2 Bac. Abr. 454. And in an Action of Ejectment, if the Plaintiff recovers Judgment by confession, nil decit, &c. Error lies before a Writ of Inquiry of damages is executed, as the Judgment to recover possession is perfect.—2 Bac. Abr. 452. Also if a man be indicted for Felony, and an Exigent is awarded, but he dies before Attainder, his representatives may bring a Writ of Error, because by the Exigent his goods were forfeited, though the principal Judgment can never be given.—11 Co. 41, 6 Cro. Ja. 357.

A Writ of Error also lies on a Fine, though it is only an agreement of the parties upon Record.—Cro. Ja. 616, 2 Mod. 194.

In quo Warranto, if Judgment be given as to part of the liberties claimed, that they shall be seized, &c.; and as to the other part, Curia advisare vult, Error may be brought before Judgment given for the other part.—Palm. 1, 2, 2 Rol. Rep. 113.

Subject to these and some few other exceptions, it may be laid down as a rule, that without a Judgment a Writ of Error cannot be brought; and therefore Error will not lie on a Rule of Respondeat Ouster on a plea to the Jurisdiction.—Tidd.1141.

Error does not lie on a Rule or Award for a peremptory Mandamus. A Writ of Error is calculated to restore a party to something he has lost. A Mandamus gives no right. A Writ of Error only lies for what is properly a Judgment, which this is not, for there is no Ideo Consideratum est.—1 Stra. 536, 1 P. Wms. 351.

Error cannot be brought on a Rule granting or refusing a
prohibition, as was determined in the House of Lords in the Bishop of St. David's Case, but on a Judgment in prohibition it would lie.—1 P. Wm. 350, Salk. 136.

Error does not lie on a Judgment against the Casual Ejector, for the Judgment being against a fictitious person, there is not any one to bring Error, and the real Defendant is not a party to the Record.—2 Burr. 756, Barnes 181.

Upon a Judgment of Nonsuit, it is now settled in the Courts of King's Bench and Common Pleas, after various contradictory decisions, that execution may be taken out notwithstanding a Writ of Error, unless a real Error can be shewn.—See Tidd. 1147, and the authorities there cited.

Error will not lie from Orders or Decisions made on motions in the intermediate Stages of proceedings; nor will Error lie on an Award, though made a Rule of Court. Neither does it lie where a Court acts in a summary way; nor in Cases of Contempt; in Settlement Cases removed into the King's Bench from the Quarter Sessions; nor from Decisions under the Annuity Acts. And in Courts newly constituted, which are empowered to proceed in a method different from the Courts of Common Law, their Judgments are not subject to a Writ of Error. Yet the King's Bench may examine them by Certiorari or Mandamus.—1 Salk. 144, 263, 2 Crom. Prac. 329, Com. Rep. 80. But it is said, that where a new Jurisdiction is erected, which is to act according to the course of the Common Law, a Writ of Error lies on its Judgments.—2 Bac. Abr. 456.

If a man is found guilty of Felony, and allowed his Clergy, and burnt in the hand, he cannot bring Error, being only convicted and not attainted, but he may remove the Record by Certiorari into the King's Bench, and be relieved there, in Case of a fault in the indictment.—Cro. Eliz. 489, 2 Bac. Abr. 452.

A Writ of Error cannot be brought for negatory Decisions (if the expression may be allowed), such as the refusal to grant a Writ of Habeas Corpus, or for refusing to grant Informations, or Prohibitions, or Writs of Mandamus; for in these Cases there is no Record on which to assert Error, and the
Error must appear on the face of the Record.—Com. Dig. Tit. Pleader 3 B. 7, Stra. 535.

It seems to be undecided whether a Writ of Error lies on a Judgment given on a *Habeas Corpus*, if it may be considered a Judgment.—See Salk. 504, Lord Raym. 545, Harg. Pref. to Hale's *Juris. cciv.*

The King's Bench having allowed the return to a *Mandamus*, and therefore refused to grant a peremptory Writ, the party applying brought a Writ of Error in Parliament, but it was held that a Writ of Error did not lie.—3 Bro. Parl. Ca. 505.

No Writ of Error lies to the King's Bench, nor to the Lords, from the Court of Stannaries of the Duchy of Cornwall, for matters touching the Stannaries, but there may be an Appeal to the Warden of the Stannaries, and from him to the Privy Council of the Prince of Wales, as Duke of Cornwall; and if there be no Prince of Wales, then to the King in Council.—4 Inst. 230, 3 Bl. Com. 77, 2 Bac. Abr. 483.

The determinations of a *Visitor* of a College are final, and not examinable by Writ of Error or otherwise in any other Court.—1 Burr. 200, 1 Bl. Com. 483.

No Writ of Error to the King's Bench or the House of Lords lies from the Courts of the two Universities of Oxford and Cambridge.—3 Bl. Com. 84.

From the Courts in the Isles of Man, Guernsey, Jersey, &c. or in the Colonies or Settlements in the East or West Indies, or elsewhere, in America, Asia, or Africa, neither Writs of Error nor Appeals lie to the House of Lords, but the Appeal is to the King in Council; though it is said that the Acts of Assembly establishing Courts of Law in the Islands of St. Christopher and Nevis, reserve the Jurisdiction of the King's Bench in England.—Review of the Laws of America and the British Provinces, &c. printed for Otridge, 1790. And it has been declared, that Writs of *Habeas Corpus, Mandamus, and Certiorari*, may issue to any part of the British Dominions.—2 Burr. 855, &c.

When the Courts arrest a Judgment they studiously avoid giving a Judgment in technical Form, the entry on the Roll
being as follows: "And hereupon the said A. B. prays Judgment to be given for him upon the Verdict aforesaid, but because it appears to the Court here, that the Writ and Declaration aforesaid are not sufficient in Law for the said A. B. to have or maintain his said Action against the said C. D., therefore, omitting to give Judgment upon the said Verdict, it is told to the Parties aforesaid by the Court here that they go thereof without Day, &c."

This not being deemed a Judgment, for want of the judicial terms, "It is considered," a Writ of Error does not lie upon it. Yet in effect and common understanding, it is a Judgment, as every Decision of a Court must be. And would it not be better to insert the three omitted words, so as to enable the Plaintiff to take the opinion of a superior Court?

If after granting a Rule to shew Cause why a Judgment should not be arrested, or if on Demurrer, or on a Writ of Error, the Court should be equally divided in opinion, no Rule or Order can be made.—1 Stra. 379, 1 Salk. 17, Tidd. 893, 1178. And it follows that in these Cases a Writ of Error cannot be brought. But one of the Judges usually declines giving an opinion, in order that there may be a Judgment on which to go to a higher Court.

The general opinion is, that Error in Fact does not lie either in the Exchequer Chamber, or in the House of Lords, because of the trial by Jury. Another reason is also given, viz. that a transcript, and not the original Record is removed thither; and it is said too, that it is beneath the dignity of the Peers to try matters of fact.—Rol. Abr. 746, Com. Rep. 507, 3 Salk. 146. The ground usually assigned against Error in Fact's lying in the Exchequer Chamber, viz. that it cannot award a Vessire, has been treated as a mistake, the true reason being that the Statute of Elizabeth was made only to give a new remedy where there was none before, and was not intended to take away the Jurisdiction of the King's Bench, which before the Statute did, as it still does, examine its own Errors in Fact.—Stra. 821. Therefore Error in Fact of Judgments in the King's Bench must be redressed there by Writ of Error.
Coram Nobis.—Skin. 521. Indeed there is one case in which it is said a Fact may be tried by the Court of Exchequer Chamber, namely, where a Release of Errors is pleaded to a Writ of Error there, to decide which they may award a Venire under the Seal of the Court of Exchequer.—2 Stra. 321. May not the authority of the Exchequer Chamber to award such a Venire be doubted? Are not the two Courts perfectly distinct and independent of each other? And could not the Exchequer Chamber by the same mode try Error in Fact?

With respect to the House of Lords, it is believed the true reason that Writs of Error in Fact are not brought there, is that a better mode is appointed, which is by Jury, whom the Law intends to be conversant of the truth of the matter, and who, therefore, must come out of the neighbourhood.—3 Salk. 146, Skin. 523. Their Lordships might certainly examine Witnesses at their bar in such a Case, as they do now on many occasions. And to say that the Lords cannot try matters of Fact is evidently incorrect, as if a Peer is charged with a capital Offence, he is tried by his Peers.—1 Bl. Com. 401. It is true that in those Instances it is unavoidable, but not so in the Case of Error in Fact.

It might perhaps be more proper to say, that it would be inconvenient, rather than that it is not competent to make Writs of Error in Fact returnable in Parliament, because if the Fact assigned for Error should be denied, the Lords would send it to the King's Bench to be tried. Hence it evidently prevents circuity and expense to bring a Writ of Error there in the first instance.

But if the Defendant in Error should admit the fact alleged to be true, and insist that by Law it is not Error, this, we presume, would be decided by the House of Lords. Or if on a Demurrer by the Defendant in Error to the Error assigned in the Court below, that Court should give Judgment for the Defendant, the Plaintiff in Error it is conceived could bring a Writ of Error on that Judgment to the House of Lords. Even upon a Writ of Error in Law to the Lords, a question of Fact might be raised, which must go to a Jury, as if a Release
of Errors should be pleaded. On these points let us refer to
what is said by Lord Chief Justice Hale.

That great Lawyer says, that he never knew an Error in
Fact assigned in Parliament, nor is it needful it should, as the
King's Bench can reverse their own Judgments for Errors in
Fact; but he asks, supposing for all this that Error in Fact
should be assigned in Parliament and put in Issue, or suppose
a Release should be pleaded and put in Issue, how shall it be
tried? In that case, he thinks the regular way would be, to
send it into the King's Bench to be tried, like an Issue joined
in Chancery; and that the Record being for that purpose sent
out of Parliament, is to be remitted back with the Verdict, in
order that Judgment may be given; though possibly where the
Issue on Error in Fact is found for either party, or for a Defend-
ant on a Release, there is no inconvenience if Judgment be
given in the King's Bench. Yet if Issue on the Release be
found for the Plaintiff, it seems necessary the Record should be
remitted, because the Judgment cannot be reversed till the
Errors on the Record are examined, which should be done
only in Parliament.—Hale's Juris. 152-3. Here it may be
observed, there is no difficulty mentioned on account of a tran-
script only being removed; and indeed it is not easy to see how
that circumstance could make any difference.

The instances of Errors in Fact in any Court are very few,
and when they do occur, the Law respecting them is so well
settled, that they are not likely to be contested; wherefore sup-
posing them to be indisputably cognizable by the House of
Lords, it is not probable that a Case of the kind would be
brought before their Lordships once in seven years. Hence
the discussion of the question, it is conceived, can tend to little
purpose.

To conclude this branch of the subject, it may be remarked,
that many of the Errors for which Judgments have been set
aside, were mistakes in matters of form; and that, though
Judgments are presumed to be the sentences of the Law, pro-
nounced by the Judges (3 Bl. Com. 396), and as such, might be
supposed, by the uninformed, to be perfect, yet this, like other
positions, is only a legal Fiction. In truth, the Record is seldom seen by those learned persons; nor from the nature of their judicial occupation, could possibly be examined by them. The drawing up of Judgments, as well as Pleadings, is of necessity left to subordinate Officers of the Courts, or the Agents of the parties; and hence the errors and blunders for which legal decisions have been often overturned.

BY AND AGAINST WHOM WRITS OF ERROR CAN BE BROUGHT.

A Plaintiff may bring a Writ of Error to reverse his own Judgment, if erroneous.—3 Burr. 1772; and may have a new Judgment.—1 Lev. 310.

If an erroneous Judgment be had by consent of parties, it may be reversed, for such a consent shall not alter the Law, unless it be entered on the Record.—Hob. 5. Cro. Eliz. 664.

Writs of Error can only be brought by those who are parties or privy to the Record, or who are injured by the Judgment, and to receive advantage by the reversal of it; nor does a Writ of Error lie against any but those who are parties or privy to the first Judgment, or their representatives.—1 Rol. Abr. 747, Dy. 90.

If the Tenant pending a praecipe against him aliens in fee, and afterwards has Judgment given against him, the Feoffment is no bar to his bringing Error.—1 Rol. R. 306, 1 Rol. Abr. 788, Bridg. 77. But a man who has released his right to Lands is barred from bringing a Writ of Error.—2 Bac. Abr. 497.

All the parties to the Suit below, if living, must be named in the Writ of Error; and in Case any have died, their death must be alleged in the Writ.—2 Mod. 285. If one of several parties refuses to join in bringing a Writ of Error, he should be summoned and severed, and the others may reverse the Judgment.—Carth. 7. Stra. 606, 6 Rep. 26. Therefore in the Case of Judgment against two, a Writ of Error brought by one was quashed with Costs; nor would the Court suffer it to be amended, as the party who chose to bring it should have proceeded by summons and severance.—Rep. Temp. Hardw. 135. It is requisite that all the Defendants should join in a
Writ of Error, if living, otherwise every Defendant might successively bring his Writ of Error, notwithstanding one or more affirmances, and thus delay execution for an indefinite length of time.—6 Co. 25, 3 Burr. 1789, 2 Durn. and E. 737. And where there were several Judgments against three Executors, and two of them brought a Writ of Error, it was held bad.—1 Wils. 88, Lofft. 652.

Where a Writ of Error was brought in the names of two Executors, and one of them would not join in assigning Errors, the Court of King's Bench gave the other time to assign Errors, until there could be Summons and Severance.—2 Stra. 783.

In an Action of Trespass against several Defendants, if one pleads and has a Verdict, and the rest suffer Judgment by default, the latter may have a Writ of Error.—Cowp. 425.

In Error, the non-suit of one party shall not hurt the other, as they are not to recover, but to discharge themselves of a personality.—6 Rep. Ruddock's Case.

If a married woman be sued as a *feme sole*, and as such plead to issue, and Judgment be given against her, upon which she is taken in execution, her husband must join with her in a Writ of Error.—1 Rol. Abr. 748, Sty. Rep. 254, 280.

Bail cannot bring Error of the Judgment against the Principal, nor the Principal bring it of the Judgment against the Bail. Neither can the Bail and Principal join in a Writ of Error.—2 Bac. Abr. 461, 462, Palm. 567, Lil. Ent. 224.

A man's poverty is no ground for denying him a Writ of Error to assert his right, and therefore a Defendant in Ejectment is entitled to bring it, if he will become bound as the Act (16 and 17 Car. 2. c. 8) directs.—4 Burr. 2501.

A Writ of Error is said to differ from an Action in this, that it is not brought to recover a Right withheld, but to have restored what has been lost, or to exempt from damage or penalty; for which reason a Plea of Outlawry will not hold against a Plaintiff in Error.—Cro. Ja. 618, Palm. 151. But surely if a Plaintiff has Judgment against him in an Action brought for a Debt, &c. and afterwards brings a Writ of Error, he thereby seeks to recover a right.
LIMITATION OF TIME FOR BRINGING WRITS OF ERROR.

By the 10th and 11th W. 3, c. 14, no Judgment in any real or personal Action shall be reversed for Error, unless the Writ of Error be commenced and prosecuted with effect within twenty years after Judgment signed or entered of Record, except in Cases of Infants, Feme Coverts, Persons of unsound mind, in prison, or beyond sea; as to whom there is the usual saving. But the Court refused to quash a Writ of Error brought after twenty-nine years had elapsed, as this would deprive the Plaintiff in Error of the exceptions in the Act.—2 Stra. 337. The Statute of Limitation must be pleaded to a Writ of Error as well as to the original Action.—Rep. Temp. Hardw. 345, 346.

EFFECT AND OPERATION OF A WRIT OF ERROR.

A Writ of Error is a supersedeas to an Execution not begun to be executed, as soon as it is allowed, and if the Party have notice of it before the allowance, it is a Supersedeas. And it is said to be a Supersedeas from the Sealing as to Execution, To bring the Party into Contempt, actual notice is necessary.—Salk. 321, 3 Lev. 312, 1 Bur. 340, 1 Crompt. Prac. 361.

But a Writ of Error is not a Supersedeas until allowed by the Clerk of the Errors, or notice of it given; and if the Sheriff has levied under a fieri facias after the issuing, but before the allowance of the Writ, he must proceed to sell the Goods.—Wille's Rep. 271, 280, Barne's 205, 275, Yelv. 6. But if the person of the Defendant is taken in Execution before a Writ of Error, and he afterwards puts in and perfects Bail, he shall be enlarged.—2 Rol. Abr. 491. 2 Barnes 175.

An Execution being an entire thing, cannot be superseded or stopped after it is begun. The Law allows no time for executing the Writ beyond the day of the return, and the sitting of the Court on that day. Before the Execution has actually taken place a Writ of Error will be a Supersedeas, but not afterwards.
A Writ of Error from the time of the allowance is also a *Supersedeas* as to proceedings against the Bail in the Cause below.—Bur. 340; and suing the Bail below, pending a Writ of Error in Parliament, is a Contempt and breach of privilege.—1 P. W. 685. But if Bail in Error be not duly put in, the Plaintiff may take out Execution as if no Writ of Error had been brought. And the Court will not set aside an Execution sued out before, but executed after a Writ of Error allowed, if Bail has not been put in; otherwise if this has been done.—2 Term. Rep. 44.

A Writ of Error is so absolutely a *Supersedeas* that the Plaintiff cannot get a *Capias ad Satisfaciendum* returned, in order to sue the Bail, nor can the Sheriff so much as look after the Defendant.—Stra. 1136, 1 Wils. 16. Though it was formerly held otherwise.—Lord Raym. 342, 1260.

In an Action upon a Judgment pending a Writ of Error, the Court will not stay proceedings unless Bail has been perfected.—5 T. R. 9, 5 B. and A. 903. Nor even then, if the Court sees reason to think it is brought for delay, unless the party swears he believes there is error.—2 D. and R. 208. But the Plaintiff cannot sue out Execution on the second Judgment till the Writ of Error be determined.—3 T. R. 643.

A Writ of Error is not a *Supersedeas*, if brought contrary to agreement, or against good faith, or confessedly for delay.—Nor where it must be presumed to be intended merely for delay, as where it is brought on a Judgment of nonsuit.—Tidd. 1147, and his authorities.

After a confession of Judgment in a second Action, with stay of Execution until a Writ of Error on the first Judgment be determined, the Defendant may bring a Writ of Error on the second Judgment.—Tidd. 1135. And the Court will not permit Execution to be taken out pending a Writ of Error in Parliament, merely because the Defendant suffered Judgment to be affirmed without opposition in the Exchequer Chamber.—6 T. R. 400.

Where a Defendant obtained time to plead, on condition of giving Judgment of the Term, and brought a Writ of Error, the Court quashed it.—Tidd. 1135.
If a Plaintiff in Ejectment after Verdict sues out a Writ of Possession without taxing his costs, a Writ of Error will not be a Supersedeas.—4 Taunt. 289. And the Court instanced the case of a Person who, having recovered a Verdict in the King's Bench for £2000, and foreseeing that a Writ of Error would be brought, waived his Costs, and took the Defendant in Execution, and it was held regular.*

A Writ of Error sued out before final Judgment, continues in force during the whole of the Term in which it is returnable; and if the Judgment be signed at any time in that Term it is a stay of Execution, provided the allowance has been served, and Bail be duly put in as after mentioned.—Tidd. 1144 and authorities there quoted.

A Writ of Error will operate as a stay of Execution, though sued out before interlocutory Judgment.—2 M. and S. 334. And the final Judgment, when signed in the same Term, relates back to the first day of the Term, and Execution issued after the allowance of such a Writ of Error had been served, was set aside.—5 East. 145.

The Court of King's Bench has gone so far as to hold, that if a Plaintiff purposely omits to sign final Judgment till the Writ is spent, that is, until after the return, in order to avoid its operation, and then takes out Execution, they will set the Execution aside.—1 T. R. 279.

If a Writ of Error be sued out before final Judgment, but the allowance not served until after the return, the Plaintiff may afterwards sign Judgment and issue Execution.—3 Taunt. 384.

When a Writ of Error abates by the neglect of a Plaintiff in Error, a new Writ will not be a Supersedeas; otherwise, if it abates without the fault of either party, as by the death of the Chief Justice without returning the Writ.—1 Vent. 353, 3 Keb. 466, Godb. 63.

After a Writ of Error on a Judgment in Ejectment, the Plaintiff may bring an Action for the mesne profits, and proceed to Judgment, but not to Execution.—Ca. Pr. C. P. 54.

* See note 21.
A Defendant in Error may bring an Action on the Judgment, but an arrest is not allowed on it, nor can Execution be sued out on the second Judgment until the Writ of Error is determined.—Tidd. 1174.

But after Judgment in an Action on a former Judgment, and Execution sued out pending a Writ of Error, the Court refused to stay the Execution, because the motion came too late.—2 Barn. 34.

An Executor may revive a Judgment, but can not take out Execution pending a Writ of Error.—Tidd. 1163.

If one of several Defendants who were sued jointly, but pleaded separately, bring a Writ of Error, the Plaintiff cannot take out Execution on an admission by one of the others that the Writ was brought for delay.—2 Bing. 304. And the Court refused to allow Execution to be taken out against three Defendants, where two of them brought a Writ of Error.—Loft. 652, 1 Wils. 88.

It is said a Writ of Error may be pleaded in delay to an Action of Debt on a Judgment.—1 Lord Raym. 47. But see 4 Mod. 247. 3 Burr. 1549.

Although Proceedings have been allowed on the first Judgment where Writs of Error have been brought from the Common Pleas to the King's Bench, and from the King's Bench to the Exchequer Chamber, it is believed that this can not be done after a Writ of Error is brought in Parliament; for as it has been determined by the House of Lords that suing the Bail below, pending a Writ of Error in that House, is a contempt and breach of privilege (1 P. Wms. 685), it is conceived it would be equally so to proceed against the party himself; yet if it can be clearly shewn that the Writ of Error is brought contrary to an agreement, or for the mere purpose of delay, the Plaintiff, it is presumed, would not be restrained from proceeding; as where the Defendant declared, after an Action commenced, that he would bring a Writ of Error and ruin the Plaintiff by Law proceedings, unless he complied with certain terms. Under such circumstances the Court has permitted a Plaintiff to proceed, notwithstanding a Writ of Error, in the Courts below; and it is probable that in a similar case a Plain-
tiff would be allowed to proceed during the recess of Parliament. But this will not be done on mere surmises, nor without express declaration, either by the Defendant or his Attorney, that the Writ of Error is brought for delay; and the declaration to that effect by an Attorney's Clerk, or one of several Defendants, as before observed, will not be sufficient, nor that the Defendant said he would go to Jail, or that the Defendant's Attorney declared that the money would be paid, and that time only was wanted, or a threat to bring a Writ of Error made several months before the Action. — Tidd. 1148.

When such acknowledgements have been made by a Defendant or his Attorney, as make it manifest that a Writ of Error is brought for delay, it is not unusual for the Plaintiff's Attorney to take out Execution at his peril, leaving the Defendant to apply, if he thinks proper, to set it aside; but it is conceived that in the case of a Writ of Error in Parliament, it would be prudent for the Plaintiff's Attorney to apply to the Court below for liberty to sue out Execution.

In Prohibition a Writ of Error, allowed after a consultation has been delivered to the Court below, is not a Supersedeas.

A Writ of Error brought in Parliament, after one in the Exchequer Chamber which has been discontinued, is a Supersedeas of Execution; but if a Writ of Error be brought in Parliament and abate, and a second is brought there, this is not a Supersedeas, because it is in the same Court. — 1 Vent. 100.

OF THE WRIT OF ERROR,* ITS FORM, RETURN, AND TESTE.

This is an Original Writ under the Great Seal, and is tested in the King's Name. When it is returnable in a superior Court, it is partly a Certiorari, as it commands the Record to be sent or certified; and is, by implication, also a commission or authority to the superior Court to examine and correct the Error, if any shall be found. When the Writ directs the Court to examine its own Judgments, as it does for Error in Fact, the certifying or missive part would be improper, and is

* See note 22.
of course omitted. In the latter case the Writ is directed to the Judges of the Court generally, requiring them to inspect the proceedings and correct their Judgment; whereas when the Record is to be removed, the Writ is directed to the Chief Justice only. When brought on a Judgment of the Exchequer, the Writ of Error is directed to the Treasurer and Barons. The Forms differ according to the Court whose Judgment is removed, as will be seen by the following precedents. And when it is supposed that there is Error as well in giving the Judgment as in awarding Execution, the Writ is said to be tam quam; because of the words in the Latin Form, tam in redditione judicii, quam in adjudicatione Executionis.—2 Stra. 1055, Ca. temp. Hard. 345.

And it may here be observed that the Form is the same, whether the Writ is brought for Error in Law or Error in Fact when it is returnable in a superior Court. In Lilly's Entries is the Form of a Writ of Error not elsewhere, we believe, to be found. After the removal of a Judgment and Bill of Exceptions by Writ of Error from the Common Pleas to the King's Bench in Ireland, another Writ of Error issued directed to the Judges of the latter Court, commanding them to examine and correct the Errors, &c.—Lill. Ent. pa. 272, 277.

The Return of a Writ of Error when the Parliament is sitting, is "without delay." If the Parliament is prorogued, it is to be made returnable at the next Session of Parliament, to be held on (naming the day) next; and after a Dissolution, it is to be returnable at the next Parliament to be held on the day (mentioning it) when it is to meet, for it is said that a Writ returnable at the next Parliament is not good; otherwise if prorogued to a day certain.—1 Vent. 266, 2 Lev. 120.

Though the Teste properly signifies the conclusion, viz. Witness ourself at Westminster, &c., yet by the Teste is usually understood the date. And a Writ of Error need not be tested in Term Time, nor on a Seal day, but may bear Testo on the day of suing it out:—1 New. Rep. c. p. 298. Nor need there be fifteen days between the Teste and Return, as is requisite in some other Writs.—Barn. and Cres. 116.
Formerly it was considered, that a Writ of Error could not regularly be brought before Judgment was given, and that if it bore Teste before, it was not a Supersedeas, the words being si judicium redditum sit, &c.—F. N. B. 24 H. 1 Rol. Abr. 749. Yet these words do not imply that Judgment must be given before the issuing of the Writ, and that if it was not, the Record could not be removed. But whatever was the meaning, it has long been settled that the Writ may bear Teste before the Judgment, and this is usually the case. Still the Return should be subsequent to the Judgment.—Sid. 10, 2 Bac. Abr. 462. But it seems that a Writ of Error which bears Teste before the commencement of the suit is not good.—Mar. 140. 3 Keb. 308, Vent. 96, Stra. 807.

If a Writ of Error is returnable before the Term in which Judgment is given, it is of no force, the authority delegated by it being at an end before it could be acted on.—March. 140. These remarks, however, apply chiefly to Writs of Error returnable in the Courts below.

The Writ of Error should agree with the Record in the names of the Parties, and the nature of the Action; for if there be any variance in these particulars, as if the parties are not truly named, or not all inserted, or the Cause of Action be not correctly described, the Writ of Error will not operate as a stay of Execution.—Tidd. 1143. In fact, it will be a nullity unless amended. However, a small share of attention on the part of the Solicitor will prevent mistakes of this kind.

OF ABATEMENT OF WRITS OF ERROR, AND DISCONTINUANCE OF JUDICIAL PROCEEDINGS IN PARLIAMENT.

Lord Hale observes, that there are continuances in the House of Lords much like continuances in other Courts, and that adjournments of Parliament by the King were sometimes called Prorogations, though improperly, the latter being before the Session, but an adjournment after the Session begins.

Private adjournments by the Houses themselves did not discontinue Suits; nor did a Prorogation before a Session discon-
continue a Writ of Error, but carried it over to the day given. The effect of an adjournment by the King was formerly matter of great debate. It was, says Lord Hale, theretofore held that such an adjournment discontinued proceedings, but that the Lords had since declared the contrary. As to Bills depending, the Attorney General in the Parliament of 18th James 1, reported that the word proroguing was not found in adjournments, and that an adjournment determined Committees, but not Bills. But this was not agreed to, and all such matters begin de novo.

If Parliament were dissolved before Judgment given, then, says Lord Hale, the Writ of Error was wholly abated, and the Court below might issue Execution, without any remission of the Transcript; wherefore he thinks that the granting or continuing a Supersedeas by the Lords was not consonant to Law, for it would be an intolerable delay of Justice, as no Parliament might be summoned for seven years; and the more unreasonable because Error is not to be presumed. He therefore considers, that a Writ of Error should not be sued out till a Parliament be actually summoned, as it should have a certain Return, and that to make it returnable ad proximum Parliamentum, was not regular, nor would be a Supersedeas. And formerly, if a Term intervened between the allowance of a Writ of Error and the day of adjournment of Parliament, it was no Supersedeas, the Record not being removed; but it was otherwise if Parliament was prorogued to a long Day after the Record was removed.—166, 9. Lord Chief Justice Hale was not singular in his opinion on this subject, for it was the general understanding of the Judges of his time.—See Cro. Ja. 342, 1 Vent. 267, Sir T. Raym. 5. But the Lords, by their Resolution of the 19th of March, 1678, have declared, "That in all cases of Appeals and Writs of Error they continue in Status quo, as they stood at the Dissolution of the last Parliament." And so the Practice has ever since been. The argument founded on the supposition of the Parliament's not being summoned for several years, has long lost its weight, as Parliament has met annually ever since the Revolution.
Writs of Error abate by the death of the Plaintiff in Error, before Error assigned, but not if he dies after the assignment.—Lord Raym. 244. In the former case his Executors may bring a new Writ; in the latter case the Defendant in Error may proceed to get the Judgment affirmed, but it must then be revived against the Representatives. And before the Act of 8th and 9th Wm. 3. c. 11, s. 7, where there were several Plaintiffs in Error, if one of them died before Errors assigned, it abated the Writ; but since that Statute, which has been held to apply to Writs of Error, the death of one of several Plaintiffs does not cause an abatement if the cause of Action survives.—Barn. and Ald. 586. And a Writ of Error does not abate by the death of the Defendant either before or after Errors assigned.—Salk. 219. But if he dies before Errors assigned, the Plaintiff in Error, in the inferior Courte, must issue a Scire facias against the Representatives to hear Errors, before he can proceed. This he will not do if his object is delay; and therefore the Representatives should sue out a Scire facias to shew cause why they should not have Execution, in order to force him on. If Errors were assigned before the Defendant's death, his Representatives proceed as if he were living, till Judgment affirmed, and then revive by Scire facias.—Barnes, 347.

If on Error in Parliament a Defendant dies before a Rejoinder is filed, the Plaintiff must, if he means to have the Errors argued, petition the House, praying that the Defendant in Error's Representatives may appear to hear Errors and rejoin; and then the Cause proceeds as in other Cases. The Form of such a Petition will be given.

If the Plaintiff in Error declines moving, it is presumed the Defendant in Error's Representatives may, if Errors have been assigned, suggest his death and rejoin in nullo est Erratum; or if Errors have not been assigned, that they may Petition the House to non pros the Writ of Error.

A Writ of Error abates by the death of the Chief Justice, (the Writ being directed to him) in case he did not sign a Return.—1 Keb. 653, 686. But the Defendant in Error cannot take out Execution after abatement by the death of Plain-
tiff or Chief Justice without leave of the Court.—Barnes. 201, 7 East. 296.

A Writ of Error likewise abates by the marriage of a *feme* Plaintiff in Error.—2 Stra. 330, 1015. But it does not abate by Bankruptcy, for the Proceedings go on without regard to that circumstance, till Judgment is given.—1 Durn and East. 463.

After the abatement of a Writ of Error by the Act of God, or any other cause than the neglect of the Party; a second Writ of Error will be a *Supersedeas*.—1 Vent. 353, 1 Kel. 666.

A Writ of Error was brought in the King's Bench in the Reign of George 1. It was argued and Judgment affirmed after the accession of George 2. On Error in Parliament this Judgment was reversed, the first Writ being held to have abated by the death of George 1, who was the sole Plaintiff in the suit.—

Arch. of Armagh v. the Attorney General, 3 Bro. Ca. par. 507.

It was formerly held that a Writ of Error abated by the dissolution or even prorogation of Parliament, which was an abatement by Act of Law; but the House of Lords long since determined otherwise, and that the Proceedings continued in *Statu quo*, as we have before shewn.

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**OF AMENDING WRITS OF ERROR.**

When the Transcript is brought in, but not before, the Plaintiff in Error may move to amend his Writ of Error if defective; if not amended, the Defendant in Error may apply to quash it. Before the 5th George 1, c. 13, Writs of Error could not be amended; but by that Act they may be amended for any variance from the Record, by the Court in which they are returnable; and this may be done of course and without costs: but this Act extends not to Cases of Felony, or other similar Offences. And where the Writ of Error was returnable before Judgment given, the Court held it was not amendable.—Tidd. 1162. And as a Writ of Error may be amended, so may a Judgment on which a Writ of Error is brought, be amended in matter of Form, without Costs.—Tidd. 714.
OF SUPERSEDING AND QUASHING WRITS OF ERROR.

By 4th Ann, c. 16, s. 25, for preventing vexation by suing out defective Writs of Error, it is enacted, that on quashing Writs of Error for variance or other defect, the Defendant shall recover his Costs as if Judgment had been affirmed. And on quashing a Writ of Error the Plaintiff is in all Cases liable to Costs.—2 Stra. 834.

A Writ of Error, which has been sued out in a Case wherein it does not lie, may be superseded by the Court of Chancery (out of which it issues), quia improvide emanavit.—1 P. Wms. 361.

The general grounds of quashing Writs of Error are defects not curable by the 5th George 1, c. 13; and the application to quash may be to Chancery, whence the Writ issues, or to the Court in which it is returnable; but the Defendant in Error should apply without delay, and not after having acquiesced in the Proceedings. It may also be quashed, when brought by some only of the Parties aggrieved by the Judgment.—Tidd. 1162-3.

A Writ of Error in the Exchequer Chamber was quashed, because brought as well on the Judgment against the Principal, as on the award of Execution against the Bail.—Lil. Ent. 224.

OF BAIL ON WRITS OF ERROR.

By the Common Law, no Bail or Security was required on bringing Writs of Error, for which reason the Courts were formerly careful not to allow those Writs without shewing actual Error.—Tidd. 1149. For the Courts exercised a discretion in the allowance of such Writs, and they must now be allowed by the Officer of the Court, although it is a matter of course. Still more to discourage the delays caused by frivolous Writs of Error, various Statutes were made requiring Bail: viz. 3d James 1, c. 8 (made perpetual by 3d Car. 1, c. 4, s. 4); 13 Car. 2, c. 29, s. 9; 16th and 17th Car. 2, c. 8, s. 3; 22nd and 23d Car. 2, c. 4.
By 3d James 1, c. 8, mentioned above, it was enacted,—

"That no Execution should be stayed on any Writ of Error for reversing any Judgment in the Actions therein mentioned, in the Courts at Westminster, or in the Counties Palatine, or the Courts of Great Session in Wales, unless the person bringing such Writ of Error, with two sufficient Sureties, should first be bound to the Party for whom Judgment was given, by Recognizance to be acknowledged in the same Court, in double the sum adjudged to be recovered, to prosecute the Writ of Error with effect, and to satisfy and pay, if the Judgment should be affirmed, or the Writ of Error non prossed, the Debt, Damages, and Costs of the former Judgment, and all Costs and Damages to be awarded for the delaying of Execution; or that the Bail shall do it for him."

This and the other Acts referred to, only required Bail in particular Actions and Cases, and did not extend to Judgments by default, in many instances, nor to Executors or Administrators. But now by the Stat. 6th George 4, c. 96, s. 1, for preventing the delays occasioned to Creditors by frivolous Writs of Error, on Judgments given in his Majesty's Courts of Record at Westminster, and in the Counties Palatine, and in the Courts of Great Session in Wales, it is enacted, "that upon any Judgment thereafter to be given in any of the said Courts, in any personal Action, Execution shall not be stayed by Writ of Error, or Supersedeas thereupon, without the special Order of the Court, or some Judge thereof, unless a Recognizance, with condition according to the Statute of 3d James 1, c. 8, intitled, 'An Act to avoid unnecessary delays of Execution,' be first acknowledged in the same Court."

In order, therefore, that a Writ of Error may have the effect of a Supersedeas, Bail in Error is now required in all cases after Judgment, whether it be after Verdict or by default, for the Plaintiff in any personal Action, unless it be otherwise ordered by the Court or a Judge.—Tidd. 1154. But the Statutes requiring Bail on Writs of Error seem to be confined to Cases in which the Judgment has been for the Plaintiff, and the Writ of Error brought by the Defendant, it being holden
that a Plaintiff who has Judgment against him, and consequently is Plaintiff both below and above, need not give Bail. The Judgment for the Defendant not being to recover any Debt, but only his Costs, the Form of the Recognizance prescribed by the Act certainly would not apply.

By 16th Car. 2, c. 8, where a Defendant in Ejectment brings a Writ of Error, he is to be bound to the Plaintiff in such a reasonable sum as the Court shall think proper, which sum has been settled at double the amount of one year's rent.—4 Burr. 2502. And the Court will oblige a Defendant in Ejectment who brings Error to enter into a Rule or undertaking not to commit waste or destruction pending the Writ.—3 Burr. 1823.

If a Judgment given in favour of a Defendant be reversed, where the Action is a bailable one, the Bail in the Action still remain liable, because, besides the reversal, Judgment is also given that the Plaintiff shall recover his Debt.—Cro. Ja. 94.

There is this material difference between Bail in Error and Bail in the Original Action, that in the latter case they may discharge themselves by surrendering the Defendant to prison, or he may surrender himself and exonerate them, which cannot be done on a Writ of Error, the Condition of the Recognizance being absolute, to pay the Debt and all Costs. Neither are they discharged by the Plaintiff's taking the Defendant in Execution.—2 Bos. and Pul. 440, which seems to be a hard Case, the Body of the Party being, in general, deemed a satisfaction. —Tidd. 1029; nor will the Bail be discharged by the Plaintiff's becoming a Bankrupt while the Writ of Error is depending.—1 Term. Rep. 624.

It may here be observed, that if a Defendant brings more than one Writ of Error, there must be a fresh Recognizance on each, as if after a Writ of Error from the Common Pleas to the King's Bench, or from the latter Court to the Exchequer Chamber, a Defendant brings Error in Parliament, he must on each new Writ put in Bail, because the first Recognizance does not include the Costs to be given on the new Writ.—Lord Raym. 840, Stra. 527, Salk. 97. And the latter Recognizance will of course be in a larger sum than the original one, by the
amount of the Costs of the first Writ of Error. But the same
Bail, if able to justify, are admissible.

Bail who have been excepted to, and have not justified, may
be struck out of the Recognizance. But where, after an ex-
ception, notice of Justification was given for the next term, and
in the mean time the Plaintiff non prosed his own Writ of
Error, and the Bail therefore did not justify, the Court refused
to stay Proceedings against them.—Tidd. 1158.

The omission of the Plaintiff in Error to put in Bail, will not
hinder his proceeding with the Writ of Error.—Lord Raym. 340,
Stra. 527, the only consequence of not putting in Bail, being
that the Writ of Error will not operate as a suspension of Pro-
cedings; and, therefore, if the Plaintiff succeeds, he will be
intitled to restitution.

OF THE TRANSCRIPT OF THE RECORD.

Notwithstanding the Writ of Error requires the Court
below to send the Record itself, and the Return to the Writ
imports that it is sent, yet the practice has been, as well on
Writs of Error from the Common Pleas to the King's Bench,
as on Writs of Error from the latter Court, and the Exchequer
and Council Chamber, to the House of Lords, to send only a
Transcript or Copy of the Record.

It has been said that the Record can be transcribed only
at the instance of the Plaintiff, and not of the Defendant in
Error,—1 Wils. 35; but some practical books say the contrary.
—Law and Prac. of Error, 92. However this may be in the
Courts below, the practice is otherwise on Writs of Error in
Parliament. For we have been told at the Clerk of the
Errors' Office, that either party may get the Record certified;
and though it is very seldom done by the Defendant in Error,
because in general it is his interest to non pros the Writ, yet
Cases may occur where both sides are desirous of prosecuting
it, as when the Court happens to be equally divided in opinion,
and Judgment is given merely to enable one of the Parties to
bring a Writ of Error, upon an understanding that the Judg-
ment is not to be enforced.
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But if after the Record is certified, that is, taken into the House, by either Party, the Writ may be non prossed for want of assigning Errors.

Although to some purposes the Record is removed into Parliament, yet to other purposes it remains in the Court below; and that Court proceeds on it after a Remittitur of the Transcript.—Hale’s Juris. 162.

It has been assigned as a reason for sending a Transcript and bringing back the Record itself from the Lords, that it is done in order, if Judgment be affirmed, that the inferior Court may proceed to grant Execution.—4 Inst. 21, Dy. 375, a. Cro. Ja. 241. But this seems to be unsatisfactory, because as the Transcript is returned, so might the Record be, when the Lords give Judgment; and the Court below must have the Transcript or some authority from the House to proceed. Indeed when a prorogation was held to abate a Writ of Error, so that the Court below could then proceed, the Record would in that Case be wanted; but it is otherwise now that the Writ does not abate. Another reason has been given, namely, to guard against Loss or Accidents, which is a very probable one; and it has also been said, that the Roll was brought back, because it concerned other matters, which is perhaps the best reason of any.—Hale’s Juris. 149.

When a Bill of Exceptions has been taken at a Trial, it accompanies the Writ of Error and Judgment. And it is understood to be now the practice for the Chief Justice, whether the Cause was tried before himself or not, to acknowledge his own seal, or certify that of another Judge. In Lilly’s Entries, p. 250, is an Assignment of Errors in the House of Lords on a Bill of Exceptions, taken on a Trial at the Assizes, which concludes with praying a Writ to be directed to the Judge (Baron Mountague), who tried the Cause and sealed the Bill, to appear in Parliament to confess or deny his Seal.—Palmer v. Strode. Upon examining the Lords’ Journals it appears, that in February, 1718, the Chief Justice, Lord Macclesfield, delivered in the Transcript of the Record; but there is no further entry in the Journals on the subject.
A Transcript may be amended, for where a clerical Error has happened to be found in a Transcript, the Court above has ordered it to be rectified by the Record.—1 Wils. 337, Tidd. 715.

OF THE ASSIGNMENT OF ERRORS, AND ALLEGING DIMINUTION.

The assignment of Errors stands in the place of a Declaration. In the Courts below, if the Plaintiff in Error applies to amend the Assignment, it will only be permitted on payment of Costs.—2 Cromp. Prac. 340.

It is a Rule, that nothing shall be assigned for Error that contradicts the Record, and Judgments being matters of Record cannot be subverted by matter in Pais, nor opposed by any thing of less authority than themselves. Therefore, though the matter assigned for Error should be proved by the most credible witnesses, their evidence, if contrary to the Record, could not be admitted; consequently a person cannot assign for Error against the Record that the Defendant appeared by J. S. his Attorney, when no such person existed, though he might have assigned for Error that J. S. had no Warrant of Attorney,—Cro. Eliz. 669; nor on a Writ of Error to reverse a Fine can it be assigned for Error, that the Conusor died before the date of the Dedimus, because that would contradict the Record of the acknowledgment.—Dy. 89, 1 Rol. Abr. 757.

But where Judgments have been fraudulently or unduly obtained, it is the constant practice of the Courts to set them aside. And if it were made appear that a Party had been personated in levying a Fine, or that any other malpractice had been used, there is no doubt it would be vacated.

A Party cannot assign Error in Law and Error in Fact together, as they require different modes of Trial. He may assign any number of Errors in Law, but no more than one Error in Fact, because it is to be tried by a Jury.—F. N. B. 20 E. 2 Lord Raym. 883, 1 Stra. 439.

The Assignment of Errors in Law may be either general or
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special. The first and common mode of assigning Error is, that Judgment was given for the Defendant instead of the Plaintiff in Error, or that the Declaration is insufficient to maintain the Action. A special Assignment states either particular defects apparent in the Record, or the want of certain Proceedings requisite to sustain the Judgment, as that there is no Original Writ, no Bill filed, or Warrant of Attorney; and this is called alleging Diminution. That word, in its legal sense, means keeping back or withholding something which ought to be produced, and it is either of the Body of the Record, or of its members or out branches. When any part of the former is omitted, or not correctly set forth, this is a Diminution of the Body of the Record, and the Court below may be called upon by Writ of Certiorari to certify the whole of the Record truly, or what is deficient.—F. N. B. 25 a. Lil. Ent. 226. If the Original Writ, or the Bill by which the Action was commenced, or if the Warrants of Attorney, or some collateral matter, are not returned (as they seldom are) with the Record, this is Diminution of the Branches; to obtain which a Writ of Certiorari issues to the Chief Justice.—Tidd. 1167; and the purpose of having them certified is, to compare them with the Record, in order to see if there be any discrepancy or inconsistency in the Proceedings, on which to ground an argument for reversing the Judgment. But it is a rule that nothing can be alleged that contradicts the Record.—Tidd. 1167.

Diminution is usually alleged by the Plaintiff, it being very rarely done by the Defendant in Error; but the latter also may allege it, and with equal reason, for if there be any omission or mistake in the Transcript, which may be assigned for Error, the Defendant is justly intitled to have it rectified, by alleging Diminution, and praying a Certiorari to have the original inspected;* but this he must do before pleading in nullo est Erratum, because it would be inconsistent to allege Error in the Record after asserting that there was none in it. And if the Plaintiff meant to allege it, he should have done it before;

* See Lil. Ent. 245.
therefore, after this plea, neither Party can allege Diminution, or pray a Certiorari.—1 Salk. 269, 2 Cromp. Prac. 362. But though the Parties, who are bound by their own admissions, cannot pray a Certiorari, the Courts are not restrained from looking into the Record, and either before or after Errors are assigned, awarding, ex officio, for their own information, a Certiorari, to supply any defect in the Record, or Proceedings connected with it.—1 Stra. 440, Tidd. 1174.* Some years ago, on a Writ of Error from Ireland, the House of Lords held that Diminution could not be alleged of the Body of the Record, contrary to the Transcript, and refused to issue a Certiorari for certifying it.—Rowe v. Power, Dom. Procer., 8th March, 1803. This decision seems to be at variance with several old authorities.—See 1 Salk. 49, Lil. Abr. 422, Lil. Ent. 226, 245, 556, &c. But in that Case of Rowe v. Power, probably a difficulty arose respecting the issuing of a Certiorari. No Writ is issued by the House of Lords. From what Court then could it now issue? and to whom would it be directed? It is understood that the standing Order of December, 1661, does not apply to Scotch or Irish Writs of Error, except as to the time for assigning Errors. Yet there can be no doubt that if there should be any material omission or blunder in the Transcript, the House would make an Order to have it set right; so that a Certiorari would be unnecessary. However, the practice of alleging Diminution, being in general meant for delay, is not now encouraged.

It is pretty evident, that formerly, alleging Diminution and assigning Errors were distinct Acts, and that the former was pleaded prior to the latter. On a Writ of Error in the Exchequer Chamber, a Rule is first given to allege Diminution, and at the expiration of that Rule, another is given to assign Errors; and it would seem from the standing Order of the House of Lords of December, 1661, that they were considered by their Lordships as separate steps. But whatever was the ancient course, the practice has long been to allege Diminution in the Assignment of Errors, of which we shall

* See Lil. Ent. 235.
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give a few precedents; though, as original Writs, Bills, &c. can always be supplied, Diminution is now seldom alleged in the House of Lords except for delay. Still if it should be, and the Defendant in Error's Attorney should neglect to file the Bill, or get the Original Writ returned within the time allowed, the Chief Justice makes his Return to the Certiorari accordingly, and the want of such Bill or Original Writ will be Error.

An Assignment of Error in Fact may be, that the Defendant in the Action was a Minor, and appeared by Attorney; that a woman who sues, or is sued as single, was married; or that either of the Parties died before interlocutory Judgment or Verdict.—Tidd. 1169, and his authorities. An Assignment of Error in Fact, according to some authorities, should conclude with an Averment, and not to the Country.—1 Burr. 410, 2 Stra. 829. But see Yelv. 58, and Lil. Ent. Tit. Error.

In the inferior Jurisdictions, if Diminution be alleged, a Certiorari must indispensably be issued and returned, in order to verify the Assignment of Errors, and to shew the Court that it is well founded.—Tidd. 1170.

The want of an original Writ, &c. is cured after Verdict, by the Act of 18th Eliz. c. 14, but not after Judgment by default, Confession, or on a Demurrer. Hence it would be of no avail to assign the Want of an Original as Error, after Verdict; and in the other Cases, an Original Writ may be sued out and returned, or a Bill filed, at any time before in nullo est Erratum is pleaded; so that if they are certified by the return of the Certiorari, the Court will not enquire when they were filed.—1 Salk. 267, 2 Lord Raym. 1476, Tidd. 1172.

OF THE PLEA OR JOINDER IN ERROR.

To an Assignment of Errors in Law, the Defendant may plead a general or special Plea. The general and usual one is in nullo est Erratum (that there is no Error in the Record), which submits the question to the Court, and leads directly to a decision. After this Plea neither Party can allege Diminution, as before observed. The Defendant may also plead specially, viz. a release of all Errors, or the Statute of Limita-
tions; to which the Plaintiff in Error may reply, and proceed to Trial or argument; but the Trial must be had in the Court below. A Release by one of several Plaintiffs in Error, is not a bar to the others.—Tidd. 1175. Though a Release or other discharge of a Judgment to one of several Defendants, will, by Operation of Law, ensure to the discharge of all.—See Lord Ellenborough’s opinion in the Appendix.

If Errors in Fact are assigned, and the Defendant does not admit the alleged Fact, he should by his Plea expressly deny and put it in issue; for if he pleads in nullo est Erratum, it implies and amounts to a confession of it. But if he admits a Fact, and would contend that it is not Error, he may plead in nullo est Erratum, because that is in effect a Demurrer, and puts the matter to the Judgment of the Court without any Trial. And if Error in Fact and Error in Law should both be assigned, and the Defendant pleads no Error, he confesses the Error in Fact, and a Reversal must follow.—Carth. 338. In this Case, if he had demurred, the Assignment being bad, the Judgment would have been affirmed.—1 Stra. 439, Tidd. 1173.

OF COSTS ON WRITS OF ERROR IN PARLIAMENT.

Upon Writs of Error in the House of Lords, no Recognizance is entered into with the Clerk of the Parliaments by the Plaintiff in Error, to secure the payment of Costs which may be awarded by the House to the opposite Party, as is done in the Case of Appeals; and doubtless for this reason,—that Plaintiffs in Error in most cases must put in Bail in the Court below.

By Stat. of 3d Henry 7, c. 10, and 19th Henry 7, c. 20, where Writs of Error are brought for delay, and the Judgments are affirmed, or the Writs discontinued, or the Plaintiff in Error is nonsued therein, the Defendant in Error shall recover his Costs and Damages for the delay and wrongful vexation, by discretion of the Justice, before whom the Writ of Error is sued.

Though the word Justice (in the singular number) is here used, it has been held to mean Court, as there is no Judicature
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for reviewing Error, consisting of only a single Judge.—Doug. 561, N. 5.

These Acts are confined to Judgments recovered by the Plaintiffs below, and affirmed on Writs of Error.

By 13th Car. 2, Stat. 2, c. 2, s. 10, persons prosecuting Writs of Error for the reversal of any Judgment given after Verdict in any Court of Record at Westminster, or of the Counties Palatine, or the Courts of Great Session in Wales, where the Judgments shall be affirmed, shall pay to the Defendants in Error double Costs, to be assessed by the Court in which the Error shall be depending, for delay in Execution.

This Act does not extend to cases where the Defendants below obtain Judgment on a Special Verdict.—5 East. 545.

By the 8th and 9th William 3, c. 11, if any person shall commence any Action wherein upon Demurrer, either by the Plaintiff or Defendant, Judgment shall be given against the Plaintiff; or if after Judgment for the Defendant in any such Action, the Plaintiff shall sue out a Writ of Error, and the Judgment shall be affirmed, the Writ discontinued, or the Plaintiff be nonsuit therein, the Defendant shall recover his Costs against the Plaintiff.

This Clause only relates to Judgments given on Demurrer for Defendants below.—10 East. 5.

These Acts apply to Cases of Affirmance, and not to Reversals of Judgments; and, therefore, it has been held, that where Judgment is reversed, the Plaintiff in Error shall not have Costs of the Writ of Error, but each Party pays his own Costs; nor would it be reasonable were it otherwise, the Error being that of the Court.—Str. 617, 5 East. 49, 3 Wood. 361.

If a Writ of Error is non pressed for not assigning Errors in the Courts below, Execution goes on the first Judgment, wherefore the Defendant in Error has no Costs awarded to him; but he has a remedy on the Recognizance of Bail.—2 Bac. Abr. 500. But if, after the Transcript is carried to the House of Lords, the Writ of Error is non pressed, for not assigning Errors, the House gives Costs. And a Writ of Error in Parliament may be non pressed without carrying over the
Transcript.—1 Maul. and Sel. 103. A Plaintiff in Error may non pros his own Writ, without taking over the Transcript, and thereby avoid paying Costs.—2 Maul. and Sel. 210.

There have been several conflicting decisions on the question, whether upon Writs of Error brought to reverse Judgments in formdon, quare impedit, and some other Cases where Costs are not recoverable in the original Action, the Defendant in Error was intitled to Costs on Affirmance; but it seems to be now settled that Costs in those Cases will be allowed.—Str. 1084.

By 4th Ann, c. 16, upon quashing Writs of Error for variance from the Record, or other defect, the Defendant shall recover his Costs as if Judgment had been affirmed.

Although when a Judgment is reversed, the Court of Appeal cannot give Costs in Error, yet in an Action for mesne profits, the Plaintiff may recover, by way of damages, the Costs of reversing a Judgment in Ejectment, obtained by the Defendant.—7 Barn. and Cres. 404. And in a Case where the Judgment of the Common Pleas was reversed by the King's Bench, the latter Court held that the Defendant was intitled not only to an acquittal, but to his Costs of defending the Action, being the same Judgment which the Court below ought to have given, for the Defendant was intitled to Costs by the 23d Henry 8, c. 15, 12 East. 668.

There have been several decisions in the Courts below, in which Costs were refused to be awarded against Executors and Administrators bringing Writs of Error, because they were not liable to Costs in the original Action.—Carth. 281, 4 Mod. 245, 1 Vent. 166. But by later determinations Costs have been allowed.—Str. 1084.

The King’s Bench would not give the Defendant in Error Costs on an Affirmance of a Judgment by the House of Lords, where their Lordships did not order Costs.—Tidd. 1183.

After Execution levied and executed, Costs are not allowed on a Writ of Error, though the Judgment has been subsequently affirmed, because the Defendant in Error has not been delayed, for the Stat. of 3d Henry 7, only gives Costs where the Judgment has been delayed.—L. and P. E. 129.
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It has been judged proper to refer to the Statutes above noticed, which give Costs on Writs of Error, although the Editor doubts if they apply to Error in Parliament, because the Lords do not confine themselves to any certain Rule respecting Costs, but give large, or small, or no Costs to the Defendant in Error, as they think fit, upon affirming a Judgment. They, however, seldom give more than £150, though on one occasion they gave £400 Costs upon an affirmation. Their Lordships always fix the amount, giving a round sum, as there is no Officer of the House to tax Costs.

Costs have been increased in modern times, for early in the last century so small a sum as £5. Costs was given on an Affirmance of a Judgment in Parliament, where the Case was argued.—Smith v. Phelipps, 7 March 1718, Lords' Journ.

The Order made by the House on that occasion was as follows:—

"Whereas by virtue of his Majesty's Writ of Error, returnable into the House of Peers, in Parliament assembled, a Record of the Court of King's Bench was brought into this House, on the sixth day of January last past, with the Transcript thereof, wherein Judgment is entered for Edward Phelipps, Esquire, against Thomas Smith, Bailiff of the Borough of Ivelchester, upon which Errors were assigned and issue joined, and this day Counsel heard at the Bar to argue the Errors thereupon: It is Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that the said Judgment given for the said Edward Phelipps against the said Thomas Smith be, and is hereby affirmed, and that the said Edward Phelipps do recover £5. for his Costs, occasioned by the delay of Execution of the said Judgment, by pretence of the said Writ of Error, according to the Statute in that Case made and provided, and that the Transcript of the said Record, wherein Judgment is entered as aforesaid, be remitted."

By the foregoing Order it will be seen, that the Statute (we presume that of 3d Henry 7) has been expressly recognized in a Judgment; and this is understood to be the usual Form
of their Lordships' Judgments when they give Costs on Writs of Error. If the House is governed by the Act, may it not be enquired, why it is that they do not, in conformity with the Statute, give Costs on every Affirmance of a Writ of Error? Perhaps it will be said that the Act of Henry 7 leaves it to the discretion of the Court to give or refuse Costs, and that though the Acts of Charles 2 and William 3, above quoted, give no express discretion to the Courts, yet, as being on the same subject, they are to be understood to refer to the first Act, and by implication to allow a discretion; but giving double Costs can hardly be reconciled to such an interpretation. Allowing a discretion probably encouraged frivolous Writs of Error, by inducing a hope to escape Costs; and effectually to deter litigious parties from bringing such Writs, it is likely the Statute of Car. 2 imposed the additional Penalty. That, and the Act of William 3, are clear, express, and positive, and it is believed there has never been a Decision by the Courts, in Westminster Hall, to sanction the supposed construction; for those Courts always give Costs on the Affirmance of Judgments. Hence, as before signified, it may be inferred that none of the Acts giving Costs extend to the House of Lords. If they do not, then the reference to the Statute ought to be omitted in the Judgment.

Should the opinion of Lord Chief Justice Hale and other learned persons, be adopted, viz. that Writs of Error in Parliament were originally determined before the King and both Houses, all doubt on this point would be removed, inasmuch as it was competent to that high Assembly, as possessing legislative power, to establish such Rules as to Costs and other matters connected with judicial Proceedings, as they thought proper; but in that Case no reference to any Statute would be requisite.

Reasoning on principle, it ought to be incident to all Courts of Justice to have the power of awarding to every person claiming a right, or suffering a wrong, not only the thing claimed, or satisfaction for the Injury, but the expence of the Suit, (which is often considerable) according to the maxim, "Victus victori in Expensis condemnandus est,"—3 Bla. Com. 399; and where an
unfounded demand, or a false charge is made, the aggrieved party should be indemnified by adjudging to him his Costs: the expenses in each Case to be paid by the party who is culpable. It must indeed appear strange to persons unacquainted with our legal system, that legislative Enactments should be required to enable our Courts of Law to order the payment of Costs.* Courts of Equity give or refuse Costs at their discretion; and surely the Supreme Court of the Kingdom must possess at least an equal power.

But whatever may be the effect of the Statutes in question, it is manifest they cannot extend to Writs of Error from Scotland or Ireland.

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OF INTEREST.

The Courts below give Interest, as well as Costs, on affirming Judgments; but upon non prosing a Writ of Error in Parliament for not transcribing the Record, the Court below will not direct Interest to be added to the Costs.—2 Term. Rep. 58. Nor on the Affirmance of a Judgment by the House of Lords, where the Writ of Error is manifestly brought for delay, does the House give Interest as such, but awards a sum as Costs sufficient to cover the Interest, as well as the Defendant in Error's expenses.

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JUDGMENT IN PARLIAMENT ON WRITS OF ERROR.

Judgments are considered as the Determinations, not of the Court, but of the Law, speaking by the mouths of the Judges. —3 Bl. Com. 396.

Upon a Writ of Error in Parliament, according to Lord Chancellor Ellesmere, the Lords are to examine the Errors by the advice of the Judges, who are to inform them what the Law is, and to direct them. And if the Judgment be reversed, they are to give their command to do Execution accordingly; but if the Judgment be affirmed, then the Court below are to proceed to Execution.—Lord Ellesmere in the Post Nati Case, 11 St. Tr.

* See Note 23.
Lord Coke and other Authors observe, that in judicial Proceedings the Lords are governed by the Common and Statute Law, as well as the Courts.—4 Inst. And their Lordships, in judging of the decisions of inferior Courts, consider themselves bound to adhere to the Rules of the Courts whence the Appeals come.—1 Ves. 207, 3 Bl. Com. 57.

Lord Hale says, that anciently, if the Writ of Error was before both Houses, both must have consented to the Affirmance or reversal, or nothing could be done; but such Writs of Error had been very long out of use: that when the Writ of Error, as now in use, was made returnable before the Lords, Judgment was given by them sometimes per Curiam, or in Curia Parliamenti, and sometimes per Magnates et Proceres, &c. And that in ancient times, though the decision was virtuously and interpretively that of the Lords, yet the actual determination was by a select number of Lords and Judges; which course, Lord Hale thinks, ought still to be followed.—Hale’s Juris. 156, 158.

The judicial power, says Lord Chief Justice Holt, is in the Lords, but legally and virtually it is the Judgment of the King, as well as the Lords, and perhaps of the Commons.—Lord Raym. 15. When this opinion was given, the Commons were disputing the exclusive Appellate Jurisdiction of the Lords.

A Judgment, being an entire thing, cannot, generally speaking, be reversed in part and affirmed in part, or reversed for one Party, and stand good as to the rest; though if there be Error in awarding Execution, that only may be reversed, but not the Judgment.—Carth. 235, Keb. 90, 2 Bac. Abr. 500. But it appears from Lord Hale, that there may be a reversal of a Judgment by the Lords as to particular Lands, and the Case he mentions was one in which the Judgment of a former Parliament was reversed.—Juris. 180. And the King’s Bench determined that a Judgment may be reversed in part, and affirmed in part.—4 Burr. 2018, see Tidd. 1178-9.

Where Judgment was given for the Plaintiff on one Count of a Declaration, and for Defendant on another, the Judg-
ments being distinct, one of them may be reversed.—Durn. and East. 200.

If a Judgment consists of different and distinct parts, it may be reversed as to one part only, as for Costs alone in a Scire facias, or for Damages and Costs in a qui tam Action.—2 Stra. 808, 4 Burr. 2018.

Upon the reversal of a Judgment on a Conviction, all former Proceedings are set aside, and the Party stands as if he had never been accused, restored in his credit, his capacity, his blood, and his estates. And if the estate be granted away by the Crown, the owner may enter upon the Grantee without ceremony, as on a Deseizon; but he still remains liable to another prosecution, because the first being erroneous, he never was in Jeopardy by it.—2 Hawk. P.C. 462. Such a prosecution, it is conceived, would, at this day, be deemed a severe hardship.

It has been said that when a Judgment is reversed, the Record becomes a Nullity, and if set up in pleading, Nul tiel Record may be replied.—Dale's, 100-3. And it is in general true that when Judgment against a Defendant is erroneous, and he brings Error, it is only reversed; but in a Case where the Judgment of the Common Pleas, on a special Verdict, was reversed by the King's Bench, the latter Court held that the Defendant was entitled not only to Judgment of Acquittal, but also for his Costs of defending the Action, the Defendant being entitled to them under the Statute of 23 H. 8, c. 15. 12 East 668.

A Judgment of the King's Bench having been reversed in the House of Lords, and the Record remitted, the Plaintiff in Error moved the Court below for a new Judgment; but the Court said it could not be done there contrary to the Judgment already given, and that the same Court which reversed the first must give the new Judgment, which the Lords afterwards did, though it was objected that they could not do so, having only a Transcript of the Record.—Philips v. Bury, Lord Raym. 9, 10; Carth. 319, Skin. 514. This Case is noticed for another purpose in the Introduction, p. lx.
When a Judgment is given against the Plaintiff on a special Verdict, and the Jury have assessed Damages, the Lords, in case of Reversal, may give a new and complete Judgment for the Plaintiff to recover those Damages; but where Damages are not assessed, or where Judgment is given on Demurrer, the Lords cannot give a complete Judgment; the Court below must award a Writ of Inquiry and give final Judgment.—Tidd. 1180, and his Authorities.

When a Judgment given against the Plaintiff below upon Demurrer is reversed, and a Writ of Inquiry is necessary to ascertain the Damages, the Record is remitted, that the Court below may award the Inquiry, and give final Judgment.—2 Crom. prac. 376.

The House of Lords may order a Venire de novo, to be issued by the Court of King's Bench, though Aston Just. doubted if it could be done by the King's Bench on Error from the Common Pleas; but we believe this doubt no longer exists. See Doug. 703; Lofft. 560; 5 T. R. 367; Tidd. 923, and the Authorities there noticed.

When one Judgment depends upon another, as if an Action is brought upon a Judgment, and a Recovery had on it, and the first Judgment is reversed, that which is obtained upon it must also fall,—2 Bac. Abr. 506; but the reversal of a second does not affect the first, or principal one, for the former may be good, though the latter is erroneous.

A Court of Error should give the same Judgment the Court below ought to have done.—4 Mod. 127. 1 Anstr. 178. Therefore, when a Judgment is given for the Defendant below, and the Plaintiff brings Error, the Judgment, if wrong, is not only reversed, but the Court gives such Judgment as the Court below ought to have given, viz. that he shall recover what he is entitled to in his Action.—1 Salk. 262, 401. 4 Burr. 2150. 12 East. 669.

If the Judgment for the Plaintiff below be reversed, he may, notwithstanding, bring a new Action for the same Matter.—1 Lev. 310. And he shall have the advantage of the commencement of his first Action, in case the Statute of Limitations
should be pleaded, provided the second Action be brought within a year and a day.*—6 Rep. Ruddock's Case.

Although the year and day are passed after signing Judgment, and no Execution has been issued, yet the Writ of Error having renewed the Record, (or rather it is conceived having suspended Proceedings on the Judgment) the Plaintiff may sue out Execution without a Scire facias to revive.—Cro. Eliz. 416, 392. Cro. Ja. 364.

OF THE EXECUTION OF JUDGMENTS OF THE LORDS.

Judgments given in Parliament were formerly sometimes executed by the Lord Chancellor, 4 Inst. 21, Finch 233; but this has long ceased to be the practice.

Concerning the Execution of Judgments in the Lords' House, Lord Hale says that the ancient course was to remand the Record to the inferior Court, with a Mandate to issue Execution. In after times the Lords, in cases of Reversal, commanded the Chancellor to make Execution of the Judgment, by writ under the Great Seal returnable in Chancery, because Parliament might be adjourned; but now the Judgment, whether of Affirmance or Reversal, is entered on the Transcript, with a Remittitur, and sent to the King's Bench, which Court proceeds on the original Record, and enters the Reversal when the Judgment has been reversed. Also, if a Writ of Error in Parliament abate by Death, a Record is made of it by the House, and the Judgment of Abatement entered on the Transcript, which is remanded to the Court below, to proceed according to Law.—Jurisd. 161. And Lord Hale says, that though to some purposes the Record was removed, yet it really remains as to many purposes in the Court below. And after a Remittitur the Court below proceeds on the Original Record,

* "Year and Day." This often occurs in the old Law.—4 Bl. Com. 316, 335. The Day, it is presumed, is added to remove any doubt as to the Completion of the Year by inclusive or exclusive computation of the first or last Day.
on which is entered the Reversal and Remittitur. Therefore, says Lord Hale, if Parliament be dissolved before Judgment, the King's Bench proceeded on the Record before them, though there was no Remittitur of the Transcript.—Jurisd. 162. But here it may be observed that an opinion then prevailed that a Dissolution abated a Writ of Error, which is not now the Case.

Where a Judgment was given for the Defendant in the Hustings of London, which was reversed by Writ of Error to the Commissioners at St. Martin's le Grand, whose Judgment was affirmed by the Lords, and Parliament was adjourned before Execution, the Plaintiff removed the Tenor of the Affirmance into Chancery by Certiorari, directed to the Clerk of the Parliaments, whence it was sent into the King's Bench by Mittimus, commanding that Court to proceed to Execution, which was accordingly done by Scire facias.—23 Car. 2 in Cole's Case. Hale's Jurisd. 162.

There is something peculiar in this Case: as no judgment was given by the King's Bench, and the cause originated in the Hustings, it seems difficult to understand why it was remitted to the King's Bench, and not to the Hustings; and as it appears from what Lord Hale says a little before, that the Court below may proceed on the Record, though Parliament be dissolved, why could not this be done in Cole's Case?

RESTITUTION ON REVERSAL OF JUDGMENTS.

Where a Judgment is reversed, the successful party shall be restored to all he has lost by the Judgment as far as practicable, and a writ of restitution shall issue for that purpose.—Cro. Ja. 689. This Writ is made out in the Court below, if the Reversal is by the House of Lords.

When a Party in an Action has had Execution, and received the Money levied under it, if the Judgment is afterwards reversed the other party shall receive it back.—2 Salk. 588.

If the Sheriff under a Writ of Fieri facias, or an Elegit, sells a Term of Years to a Stranger, and the Judgment is
reversed, the Defendant shall only have the Money for which the Term sold, and not the Term itself.—Moor, 573. Yelv. 179. 2 Bac. Abr. 505.

But if a Sheriff under a Writ of _Elegit_ deliver a Lease for years to the Person who recovered, at a reasonable price, in satisfaction of so much of the debt, and the Judgment is subsequently reversed, the Lessee shall be restored to the Term. And if personal goods are delivered to the party recovering, at the estimated value, the owner shall have them restored specifically, on a Reversal of the Judgment.—1 Rol. Abr. 778. 2 Bac. Abr. 505. See Tidd. 1033, 1186.

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**THE ANCIENT MODE OF PROCEEDING ON WRITS OF ERROR IN PARLIAMENT.**

According to Lord Hale, the ancient method of removing a Record for Error into Parliament, and proceeding on it, was this. There was a Petition to the King, in order that his Majesty might advise with his Council whether it lay or not; whether it were of sufficient moment to be brought into Parliament; or whether there was probable cause of Error. The Application being allowed, there were two ways of removing Records into Parliament.

1. The Chief Justice was commanded to bring the Record of the Judgment into Parliament. The Party then assigned his Errors, and a _Scire facias_ issued under the Great Seal to the Sheriff, to give notice to the Defendant to hear the Errors, returnable commonly at the next Parliament. This, says Lord Hale, was the most usual course, for the Chief Justice being ordinarily present, and receiving the command _oræ tenús_, there was no need of a Writ of Error, which Lord Hale takes to be the reason why in the Register there is no Precedent for a Writ of Error in Parliament, though there is of the _Scire facias_.

2. The second mode was by Writ of Error directed to the Judge who had the Custody of the Record, which has been the general method since the time of Edw. 4, and is the most regular way.

The Chief Justice having brought the Record of the Judg-
ment into Parliament, it was read, and sometimes entered on
the Rolls of Parliament. Then the Complainant assigned his
Errors, and had a *Scire facias* to warn the Defendant to
appear, and hear the Errors at the next Parliament. The
Chief Justice was then commanded to have the Record again,
(if not entered on the Parliament Roll) in Parliament at the
return of the *Scire facias*. But in the time of Hen. 4 the
course was settled which has since obtained; and the Chief
Justice brought up the Roll containing the Record, and a
Transcript* of it, and both being left with the Clerk of the
Parliaments to be examined, the Roll (which often concerned
different matters), was afterwards carried back to the Treasury.
The *Scire facias* was made returnable the next Parliament, or
Session, but was seldom issued till the New Parliament was
summoned, it being uncertain when it would be held. Where
the King was a party there was no *Scire Facias*, because the
King is always supposed to be present in Court.

In the time of Cha. 1, the ancient course was altered, and
Notice given by Orders of the House to the Defendant; the
old method of *Scire facias* being laid aside, but without any
Law to warrant it. This, says Lord Hale, is now the common
course; the Defendant appears upon the Orders without a
*Scire facias*, and pleads *gratis*; and thus is supplied the defect
of regular Process, which yet the Defendant may insist on if
he will.—Lord Hale's Jurisdict. 135 to 151.

Lord Hale, although his Work was written several years
after the Order of the House of Lords of Dec. 1661, does not
seem to have been aware of it. Nothing is said in that, or any
other standing Order of the House of Lords, about giving
Notice to the Defendant. And if it was then the practice to
do so, it has long been discontinued.

**THE PRESENT COURSE OF PROCEEDING ON WRITS OF
ERROR IN PARLIAMENT.**

The party who thinks himself aggrieved by the decision of
the Court below, sues out a Writ of Error, in order to

* See Note 24.
IN THE HOUSE OF LORDS.

remove: the Judgment complained of into the House of Lords. This Writ is taken to the proper Officer whose duty it is to allow it (of which he gives a certificate), and to prepare a Transcript of the Record for the Lords. Bail must then be put in (in case Bail is required), to pay the Debt and Costs, if the Judgment should be affirmed. The Record being carried up to the Lords, the complainant, who is called the Plaintiff in Error, assigns Errors, by lodging an Allegation or Declaration, called an Assignment of Errors, stating that the Judgment is erroneous, and should have been given for him, instead of his opponent, who is called the Defendant in Error. The Defendant in Error takes a copy of the Record; puts in his Answer or Plea, which is generally a denial of the alleged Error, and called a Joiner in Error, and thereby prays that Judgment may be affirmed. The Cause is then set down for hearing; Cases on both sides are prepared, settled, and signed by Counsel, printed, exchanged, and delivered into the House; Counsel are heard, two on each side, and their Lordships give their Judgment, which is remitted to the Court below.

This is an outline of the different steps in the prosecution of a Writ of Error in Parliament, when it is meant to be argued, and is not brought merely for delay. We shall treat of each in its turn.

OF OBTAINING THE WRIT OF ERROR.

A Writ of Error is considered in some respects as a new Action, and the party who brings it may do so by a new Attorney, without obtaining an Order to change his former Attorney. —7 Term. Rep. 337, Tidd. 1141.

When it is intended to bring a Writ of Error, the Solicitor employed to sue it out, should obtain, and serve the opposite Attorney with a Rule or Order requiring him to give notice of taxing the Costs, that the Plaintiff in Error's Attorney may be prepared with the allowance of the Writ of Error, before Execution can be taken out; and to this end he should bespeak the Writ in due time.
In order to obtain a Writ of Error, the Solicitor makes out, on a slip of paper, which is called a Precipe, instructions as follows:—

ENGLAND.—Writ of Error in Parliament for C.D. at the Suit of A. B. (if for the Defendant), or for A. B. against C. D. (if for the Plaintiff), on a Judgment in Case (or in Debt, &c.) in the King's Bench, by original (or Bill) in an Action in which the said A. B. was Plaintiff, and the said C. D. Defendant, returnable immediately, or (if Parliament is not then sitting) at the next Session, to be helden on the day of next.
1st June, 1829.

G. H. Solicitor.

The Precipe is taken to the Cursitor's Office, Chancery Lane, where the Writ will be made out, for which the usual charge is £5. 15s.; but if there is a private Seal, it will be 8s. 6d. more.

Though in civil Cases a Writ of Error issues as a matter of course, there is a Warrant for it from the Crown, which is obtained by the Cursitor. This Warrant, which was anciently indispensable, is continued as a mark of respect. It was laid aside during the Usurpation, but revived after the Restoration.

When a Defendant wishes to bring a Writ of Error in qui tass Actions, as they are termed, or in prosecutions at the Suit of the King, the Attorney General's Fiat must be obtained, upon an application, stating the alleged errors.

The course of Proceeding is this: The Indictment and Judgment are laid before Counsel for his opinion; and if he finds them erroneous, he is to certify it, stating not merely that he thinks there is Error, but specifying in what it consists. The Certificate may be to this effect:—

The King against A. B.

"I conceive there is sufficient ground for a Writ of Error in this Case, the Indictment being for Perjury, and the Judg- ment being of Transportation simply, and not of Transportation annexed to some other punishment according to the Act of Parliament."

Dec. 16th, 1822.

D. F. Jones.
IN THE HOUSE OF LORDS.

This being laid before the Attorney General, that Officer, as a matter almost of course, grants his Fiat, which is prepared by the Solicitor, and is in the following form:—

The King v. A. B.

Let a Writ of Error issue, directed to the Chief Justice of his Majesty's Court of King's Bench, for removal of the Record and Proceedings in this Case for a certain Misdemeanor, &c. (mentioning the Offence) returnable in the present (or at the next) Parliament.

S. S. (the Signature.)

The Fiat, when obtained, is to be taken to the Cursitor, to make out the Writ of Error.

It was formerly contended that a Defendant in a qui tam Action, or in a criminal Proceeding, was not entitled to the Attorney General's Fiat as a matter of right, but of grace. This was agitated before that great man, Mr. Yorke, when Attorney General, in the Case of Lookup, who sued out a Writ of Error in Parliament to reverse a Conviction for Perjury, upon an apparently trivial ground; and Mr. Yorke, after hearing Counsel, endorsed the Writ, considering it a matter of right,—Urquhart 106; and the Defendant succeeded.—See Burr. Rep. 1901.

But in Treason or Felony, though the Error be ever so manifest, the Writ is entirely of Grace, and the Crown's denial is conclusive.—4 Burr. 2527.

With respect to the form of the Writ of Error, it is the Cursitor's province to take care (having the requisite instructions), that it be properly worded; but in cases of nicety, lest the Writ may be quashed for any defect of form, the Solicitor may have a Draft, as prepared by the Cursitor, perused and settled by Counsel.

The following are Forms of Writs of Error in Civil as also in some Criminal Cases.

Form of a Writ of Error in Parliament to reverse a Judgment of the Court of King's Bench.

George the Fourth by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of
the Faith. To our right trusty and well-beloved Charles Lord Tenterden, our Chief Justice, assigned to hold Pleas in our Court before us, Greeting. Forasmuch as in the Record and Proceedings, and also in the giving of Judgment in a Plaint, which was in our Court before us, by our Writ (or by Bill), between A. B. and C. D. late of of a Plea of Trespass on the Case (or as the Plea is), as it is said, manifest Error hath intervened, to the great damage of the said C. D. as by his complaint we are informed; We, being willing that the Error, if any there be, should be duly corrected, and full and speedy Justice done to the parties aforesaid in this behalf, Do command you, that if Judgment be thereupon given, then without delay (these two words are to be omitted if Parliament is not sitting), you distinctly and plainly send, under your Seal, the Record and Proceedings aforesaid, with all things touching the same, to us in our present Parliament (if the Parliament be prorogued, then it must be "to us in our Parliament at the next Session thereof, to be holden on the day of next ensuing.")—If after a Dissolution, say "in our Parliament to be holden on the day, &c."). and this Writ, that the Record and Proceedings aforesaid being inspected, we may cause further to be done thereupon, with the assent of the Lords Spiritual and Temporal in the same Parliament, for correcting the said Error, what of right and according to Law ought to be done. Witness ourself at Westminster the day of in the year of our reign.

If the Writ of Error be after the Affirmance of a Judgment of the Common Pleas by the King's Bench, the Precipe and Writ will be as follows:—

ENGLAND.—Writ of Error in Parliament for C. D. of a Judgment in Case (or Debt, &c.) of the King's Bench affirming a Judgment of the Common Pleas in an Action in which, &c. as above.

* It is said that a Writ of Error returnable "at the next Parliament" is not good; otherwise if prorogued to a day certain.—1 Vent. 266, 2 Lev. 120
Form of a Writ of Error in Parliament of a Judgment of the
King's Bench, affirming a Judgment of the Common Pleas.

George the Fourth, &c. To our right trusty and well-
beloved Charles Lord Tenterden, our Chief Justice, as-
signed to hold Pleas in our Court before us Greeting.
Because in the Record and Proceedings, and also in the
giving of a Judgment in a Plaint which was before Sir
William Draper Best, Knight, and his companions, our Justices
of the Bench, by our Writ between A. B. and C. D. late
of Westminster, of a Plea of Trespass on the Case (or as
the Plea is), and also in the Affirmance of the same Judgment
in our Court before us, manifest Error hath intervened, to the
great damage of the said C. D., as by his complaint we are
informed; We, being willing that the said Error, if any there be,
should be duly corrected, and full and speedy Justice done to
the said parties in this behalf, Do command you that if Judg-
ment be thereupon given and affirmed, then you distinctly and
plainly send under your Seal the Record and Proceedings
aforesaid, with all things touching the same, to us in our Par-
liament at the next Session thereof, to be holden on the
day of next ensuing, and this Writ, that the Record
and Proceedings aforesaid being inspected, we may cause, &c.
as in the last.

If the Writ of Error is brought after a Reversal of a Judg-
ment in the Common Pleas, the Precipe and Writ will be as
follows:—

ENGLAND.—Writ of Error in Parliament for A. B. of a
Judgment of the King's Bench reversing a Judgment of the
Common Pleas, wherein the said A. B. was Plaintiff, and C.D.
Defendant in Case (or Debt), returnable the next Session.
July, 1829.
J. P. Solicitor.

Form of a Writ of Error in Parliament on the Reversal of a
Judgment of the Common Pleas by the King's Bench.

George the Fourth, &c. To our right trusty, &c. Greeting.
Because in the Record and Process, and also in the reversal of
the Judgment in a certain Plaint, which was before Sir William
Draper Best, Knight, and his companions, our Justices of the Bench, by our Writ, between A. B. and C. D. late of London, of a Plea of Trespass on the Case (or as the fact is), in which Judgment was given for the said A. B. against the said C. D. which Record and Proceedings by reason of Error intervening, as was said, we caused to be brought by our Writ for the correcting of Error, into our Court before us, and the said Judgment was in our same Court before us reversed, as it is said, manifest Error hath happened, to the great damage of the said A. as by his complaint we are informed; We, willing that the Error, if any there be, should be duly corrected, and full and speedy Justice done to the said A. in this behalf, Do command you that if the Judgment on the Writ of Error aforesaid be reversed, then you distinctly and plainly, under your Seal, send the Record and Proceedings aforesaid, with all things touching the same, to us in our Parliament at the next Session thereof (or at our next Parliament), to be holden on the day of and this Writ, that the Record and Proceedings aforesaid being inspected, we may cause, &c.

Writ of Error in Parliament of a Judgment of the King's Bench affirmed in the Exchequer Chamber.

George the Fourth, &c. To our right trusty and well-beloved Charles Lord Tenterden, our Chief Justice, assigned to hold Pleas in our Court before us Greeting. Whereas in the Record and Proceedings, and also in the giving and affirming of Judgment, in a Plaint which was in our Court before us by Bill between A. B. and C. D. of a Plea of Trespass on the Case (or as the fact is), which Record and Proceedings by reason of Error happening therein, as was said, we caused to be brought before the Justices of the Common Bench, and the Barons of our Exchequer, into our Exchequer Chamber, and the Judgment thereupon is affirmed, as it is said, manifest Error hath intervened, to the great damage of the said C. D. as by his complaint we are informed; We, being willing that the Error, if any there be, should be duly corrected, and full and speedy Justice done to the parties aforesaid in this behalf, Do com-
mand you that if Judgment be thereupon given and affirmed, then without delay, you distinctly and plainly send, under your Seal, the Record and Proceedings aforesaid, with all things touching the same, to us in our present Parliament, and this Writ, that the Record and Proceedings aforesaid being inspected, we may cause, &c.

Writ of Error in Parliament brought by an Heir against an Administrator, on a Judgment of the King's Bench, obtained against the Ancestor by the Intestate, in a former Reign.

George the Fourth, &c. To our right trusty, &c. Greeting. Because in the Record and Proceedings, and also in the giving of Judgment of a Plea which was in the Court of the Lord George the Third, late King of Great Britain, &c. before the said late King himself, by Bill, between T. S. and W. F. as well of a Debt of £3000, which the said T. in the same Court recovered against the said W., as of 8s. which to the said T. in the same Court were adjudged for his damages and Costs of Suit, which said W. and T. afterwards died, as by the suggestion of N. Son and Heir of the said W. we have understood, manifest Error hath happened, to the great damage of him the said N. the said Son and Heir of the said W. as by his complaint we have been informed; We, willing that the Error, if any hath been, should be duly corrected, and full and speedy Justice done to the parties aforesaid in this behalf, Do command you that if Judgment be therein given, then without delay, the Record and Proceedings aforesaid, with all things touching the same, you distinctly and plainly, under your Seal, to us, &c. as before.

Precise for Writ of Error in a qui tam Action.

England.—Writ of Error in Parliament for C. D. at the Suit of A. B. who prosecutes as well for the King as for himself on a Judgment in Debt for £500 in the King's Bench.

Returnable immediately (or at the next Session.)

(Date.)

J. P.

Form of a Writ of Error in a Qui tam Action.

George the Fourth, &c. To our right trusty, &c. Forasmuch as in the Record and Process, as also in the giving of Judgment
in a Plea which was in our Court before us, by Bill, between C. D. who prosecutes as well for us as for himself, for that the said A. B. should render to us and the said C. £500, as it is said, manifest Error hath intervened, to the great damage of the said A. B. as by his complaint we are informed; We, willing that the said Error, if any there be, should be duly amended, and full and speedy Justice done to the said parties in this behalf, Do command you that if Judgment be given thereupon, then without delay, you distinctly and plainly, under your Seal, send to us in our present Parliament, the Record and Process of the Plea aforesaid, &c.

Writ of Error in Parliament on a Judgment on a Mandamus.

George, &c. To our right trusty, &c. our Chief Justice, assigned to hold Pleas in our Court before us, Greeting. Because in the Record and Proceedings, and also in the giving of the Judgment in a Plea which was in our Court before us, by our Writ of Mandamus, in the Nature of an Action on the Case, according to the form of the Statute in that Case made and provided, between G. S. and J. P., as it is said, a manifest Error hath happened, to the great damage of the said J. as by his complaint we have been informed; We, willing that the Error, if any hath been, should be duly corrected, and full and speedy Justice done to the parties in this behalf, Command you that if Judgment be therein given, then the Record and Proceedings aforesaid, with all things touching them, you send to us in our present Parliament, under your Seal, distinctly and openly without delay, and this Writ, that the Record and Proceedings aforesaid being inspected, we may cause, &c.

Writ of Error in Parliament on a Judgment of the King's Bench reversing a Judgment for High Treason, of which a Party deceased had been convicted at the Old Bailey, brought by the Assignee of the Crown.—Lill. Entries, p. 244.

William the 3d, &c. To our trusty and well-beloved John Holt, Knight, our Chief Justice, assigned to hold Pleas before us Greeting. Because in the Record and Proceedings, as also
IN THE HOUSE OF LORDS.

in the giving of Judgment, of a certain Indictment against T. W. late of London, Gentleman, now deceased, for certain High Treasons touching the person of the Lord Charles the 2d, late King of England, whereof he was indicted, and thereupon by a certain Jury of the Country thereon, between the said late King and the said T. W. taken before the Justices of the said late King assigned to deliver the Jail of Newgate for the City of London, of the Prisoners being in the same, was convicted, and Judgment thereupon was given for the said late King against the said T. W. [manifest Error intervened*] as it is said, the said Record and Proceedings by reason of [the said*] Error happening we caused to be brought [by our Writ for correcting Error*] into our Court before us, and the Judgment thereof in our said Court before us is reversed; and because in the reversal of the Judgment aforesaid before us, on the Writ of Error aforesaid, a manifest Error hath happened to the great damage of Isabel Dillon, Widow, Countess of Roscommon, in our Kingdom of Ireland,† as by the complaint of the said Isabel we have been informed; We, willing that the Error, if any hath been, should be duly corrected, and full and speedy Justice done to the same Isabel in this behalf, command you that if the Judgment on the Writ of Error aforesaid be reversed, then you send the Record and Proceedings aforesaid, &c.

The Writ of Error brought by the Heir of the person convicted was as follows:—

* The words in Hook’s, though omitted in Lilly, seem necessary.

† In other parts of the proceedings, she is described “Assignee of Wm. Dillon, Esq. late Earl of Roscommon aforesaid, to which said W. the said Lord Charles the 2d, late King of England, by his Letters Patent under the Great Seal of England gave and granted all the Lands and Tenements which belonged to the said T. W. in the said Kingdom of Ireland, which were forfeited to the same late King by the Attainder of him the said T. W. to hold to the said W. his heirs and assigns for ever.” This Grant, according to subsequent Decisions in Ireland, would be held invalid, because not under the Great Seal of Ireland.
Writ of Error on a Judgment for High Treason.

William, &c. To our Justices by our Letters Patent made under the Great Seal of England to enquire by the Oath of good and lawful Men of the City of London, and other ways, methods, and means whereby they could or might better know of all Treasons, Misprisions of Treason, Rebellions, and other Misdemeanors, Offences, and Injuries whatever, And also to our Justices assigned to deliver the Jail of Newgate for the City of London of the Prisoners being in the same, and to every of them, Greeting. Because in the Record and Proceedings, and also in the giving of the Judgment of a certain Indictment against T. W. late of London, Gentleman, deceased, for certain High Treasons, touching the person of the Lord Charles the 2d, late King of England, whereof he is indicted and thereupon by a certain Jury of the Country thereon, between the said Lord the late King and the said T. W. taken before the Justices of the said Lord Charles the 2d, late King of England, &c. assigned to deliver the Jail aforesaid, is convicted and Judgment is thereon given, as it is said, manifest Error hath happened, to the great damage of J. W. Son and Heir of the said T. W. as by his complaint we are informed; We, willing that the Error, if any hath been, should be duly corrected, and full and speedy Justice done to the said J. in this behalf, command you that if Judgment be given, then the Record and Proceedings aforesaid, with all things touching the same, to us under your or any one of your Seals, you distinctly and openly send, and this Writ, so that we have them from the day of Easter in three weeks wheresoever we shall then be in England, that the Record and Proceedings aforesaid being inspected, we may further cause to be done therein to correct that Error what of right and according to the Law and Custom of our Kingdom of England shall be to be done. Witness ourself at Westminster, &c.—Lil. Ent. 240.

The return to this Writ was made by the Lord Mayor.
Writ of Error in Parliament to reverse a Judgment of the King's Bench on an Indictment for a Misdemeanor.

George, &c. as before. Because in the Record and Proceedings, and also in the giving of Judgment on a certain Indictment against A. B. and C. D. for certain Trespasses, Riots, Contempts, and Misdemeanors whereof they were indicted, and thereof by a Jury of the Country thereon between the Lord the King and the said A. B. and C. D. taken in our Court before us, were convicted, and Judgment thereupon was given for us against the said A. B. and C. D., as it is said, manifest Error hath intervened, to the great damage of them the said A. B. and C. D. as by their complaint we are informed; We, being willing that the said Error, if any there be, should be duly corrected, and full and speedy Justice done to the said parties in this behalf, Do command you that if Judgment be thereupon given, then, &c.

The preceding forms will, it is presumed, give a sufficient Idea of Writs of Error; though there are many more, which may be found in Lilly's Entries, Tit. Error.

OF GETTING THE WRIT ALLOWED, AND PUTTING IN BAIL IN ERROR.

When the Writ of Error is obtained, it must be taken to Mr. Smith, the Clerk of the Errors, and allowed by him, to whom you pay £4. for the Certificate of Allowance; which is to be served on the Defendant in Error's Attorney, by delivering him a Copy, and at the same time shewing him the Original.

This immediately suspends the Proceedings.

The next step to be taken is to put in Bail, if requisite, as it now is in nearly all Cases.

This, according to the Rules of Court, should be done within four days from the delivery of the Writ to the Clerk of the Errors, if it be sued out after final Judgment; or if sued
out before, the Bail should be put in within four days after final Judgment is signed and the Costs are taxed; otherwise Execution may be sued out notwithstanding the Writ of Error.

To put in Bail, make out instructions for the Clerk of the Errors, containing their names, places of abode, and profession, as follows:—

Error from the King's Bench to the House of Lords.

Denn v. Fenn.

Judgment for £ of Trinity Term, 10th Geo. 4th. The Bail are A. B. of, &c. (adding place of abode and profession) and

C. D. of, &c.

I. K. Defendant's Attorney.

The Clerk of the Error's attends to take their acknowledgment in the Court wherein the Judgment was given, or before a Judge of that Court, as may be agreed on. Bail in Error can not be put in before a Commissioner in the Country.

The following are the Terms of the Recognizance:—

"You severally acknowledge to owe to John Denn the sum of £ upon condition that Richard Fenn prosecutes his Writ of Error with effect, and if Judgment be affirmed, shall satisfy and pay the Damages and Costs (or Debt, Damages, and Costs) recovered, together with such Costs and Damages as shall be awarded by occasion of the delay of Execution, or else that you will do it for him."

The amount of the Recognizance is double the sum recovered. If the Action is in debt on Bond, the Recognizance is in double the penalty, though the Bail only justify in double the sum due. In Ejectment, the Bail become bound in double the improved yearly value.—Tidd. 1155-6.

Notice of Bail having been put in, should immediately be served on the Defendant in Error's Attorney, which notice is entitled with the parties' names, as in the original Action.
IN THE HOUSE OF LORDS.

Notice of Bail in Error.

King's Bench.

Between John Denn ............... Plaintiff,
and
Richard Fenn............. Defendant.

Take Notice that special Bail was this day put in upon the Writ of Error brought in this Cause, with the Clerk of the Errors, at the Chambers of Mr. Justice Parke in Serjeant's Inn, Chancery Lane, and the names and additions of the Bail are E. F. of Gentleman, and G. H. of Cabinet Maker. Dated the day of 18

To Mr. L. M. } Yours, &c.

In general, if the Defendant in Error does not object to the Bail for Insufficiency, within 20 days after such notice, they shall be allowed. But if what are called Sham Bail, viz. Persons notoriously insolvent, are put in, they may be treated as a nullity, and Execution issued, without further notice; though the safer way is to except to them.

If the Defendant in Error doubts the sufficiency of Bail he will of course object to them; and the mode of doing so is by getting a Rule for better Bail from the Clerk of the Errors, and serving a Copy on the opposite Attorney. The Plaintiff in Error's Attorney must then give two clear days' notice of Justification, as follows:—

(Title as before.)

Take notice that the Bail already put in upon the Writ of Error brought in this Cause and of whom you have had notice will on the day of next justify themselves in Court as good Bail for the Defendant. Dated, &c.

When the Rule for better Bail is given in Vacation time, the Bail may justify the first day of the next ensuing Term, but Notice of Justification must be given within the four days.
If the Bail first put in cannot justify, then others must be added, of which give notice as follows:—

Take notice that N. O. of, &c. and P. Q. of, &c. will on the day of next be added to the Bail already put in for the Plaintiff in Error in this Cause, and that they will at the same time justify in open Court as good Bail for the said Defendant. Dated, &c.

Make an affidavit of the Service, apply to Mr. Smith, the Clerk of the Errors, to take the Bail Book down to Westminster, give the Affidavit to Counsel, with a fee of 10s. 6d. to move to justify, draw up the Rule for the Allowance at the Clerk of the Rule's Office, and deliver a Copy thereof to the Defendant in Error's Attorney, shewing the original, which completes the Justification.

The Bail cannot be changed after the Notice of Justification served, if the Rule for better Bail has expired; nor will the time be enlarged, except the omission to put in and perfect the Bail has arisen from some inevitable accident, or unless a real Error be shewn.—Tidd. 1157.

The same persons who were Bail in the original Action may become Bail in Error, if they are able to Justify.

With respect to a Writ of Error in Fact, there being no recorded Instance of its having been brought in the House of Lords, it is difficult to say what the course of proceeding would be, if the experiment were now tried. A Writ of Error in Fact, when brought in the King's Bench, is allowed, not by the Clerk of the Errors, but by the Master in open Court, and it appears that in some Cases an Affidavit is necessary to support it. The Rule for the allowance is drawn up by the Clerk of the Rules, and is to be served on the opposite Attorney.—Tidd. 1144.

The Statutes requiring Bail in Error extend not to Writs of Error in Fact, because those Writs do not of themselves operate as a stay of Execution. To stay Proceedings, there must be an Order or Rule of the Court, which it is understood
will only be granted on putting in and justifying Bail within four days.—Tidd. 1154.

As the Writ is not allowed by the Clerk of the Errors, it is presumed the Transcript of the Record, on a Writ of Error in Fact returnable in Parliament, would not be prepared by him, but by, or under the direction of, the Master of the Court.

OF TRANSCRIBING THE RECORD.

Bail being put in, the Attorney of the Defendant in Error gets a Rule to transcribe the Record at Mr. Smith’s Office, in Serjeant’s Inn. It is a four-day rule, of which a Copy is to be served on the Plaintiff in Error’s Attorney, and the pleadings are to be left with Mr. Smith to prepare the Transcript. He will send to the Plaintiff in Error’s Attorney for the Transcript money, and if it be not immediately paid, a non prosp may be signed, and Execution sued out.

It is proper to mention here, that giving a Rule to transcribe is a Waiver of the justification of Bail; therefore if that is not intended, the Rule to transcribe should not be taken out till the Bail have justified. But immediately after the justification, the Rule may be obtained and served, notwithstanding Parliament should not be sitting, so that the Transcript may be completed, and ready to be carried to the House of Lords the first day it sits.

When a Writ of Error is sued out during a Recess of Parliament, it is usually made returnable on the day to which the Parliament is prorogued. And though the Parliament meets then only pro forma, to read the Commission for a further prorogation, a Rule to transcribe may be obtained on that day; and if the Transcript is not completed within the four days, a non prosp may be signed, and an Execution issued. But on a non prosp for not transcribing, no Costs are allowed.

When the Transcript has been made and examined, it is annexed to the Writ of Error, and the Chief Justice, accompanied by the Clerk of the Errors, takes the Record and Transcript in person to the House of Lords; and in Case there
should be a Bill of Exceptions, he acknowledges his Seal. The Transcript is left at the House, but the Record itself is brought back.

The following is the Chief Justice's return to the Writ.

"The answer of Charles Lord Tenterden, the Chief Justice within named:—

"The Record and Process whereof mention is within made, with all things touching the same, to the Lord the King, in the present Parliament, with my proper hands I have produced in a certain Record to this Writ annexed, as I am within commanded.

Tenterden."

The Fee to be paid on this occasion is £4.

As soon as the Record is brought into the House, the Cause is considered as depending in Parliament, and the original Title, which has been continued up to this time in the Notices and Rules, is reversed, except when the Writ of Error is brought by the Plaintiff below.

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OF THE PROCEEDINGS IN THE HOUSE OF LORDS AFTER THE TRANSCRIPT IS CERTIFIED.

The old course of proceeding on Writs of Error after the removal of the Record, having been very slow, and it being found that such Writs were in many cases brought with the sole view of delaying Justice, the House, in order to prevent this abuse, made the standing Order of the 13th of December, 1661, stated in the Appendix to the Practice of Appeals, pa. 89.

By which it is ordered that the Plaintiffs in Error, after the Writs of Error and the Records are brought in, shall speedily prosecute the same, and shall assign their Errors within eight days after the bringing in of such Writs and Records, and if the Plaintiff make default so to do, then the said Clerk shall record that the Plaintiff hath not prosecuted his Writ, and the Plaintiff shall lose it, and the Record shall be remitted; and if a Plaintiff shall allege Diminution and pray Certiorari, the Clerk shall enter an award thereof, and the Plaintiff may, before in nullo est Erratum pleaded, sue forth a Writ of Certiorari without Petition or Motion to the House; and if he shall not
IN THE HOUSE OF LORDS.

prosecute such Writ, and get it returned within ten days next after his Plea of Diminution put into this House, then, unless good cause shewn for enlarging the return of such Writ, he shall lose the benefit of it, and the Defendant in Error may proceed as if no Certiorari were awarded.

By another Order, made several years afterwards, viz. 21st Feb. 1717, also before set forth, the House ordered that when Diminution shall be alleged, and a Certiorari prayed before in nullo est Erratum pleaded, the Clerk of the Parliaments shall, upon request made to him, give a Certificate that Diminution is alleged and a Certiorari awarded.

In the first mentioned Order there is an evident inaccuracy. Instead of the words, "after his Plea of Diminution put into this House," it is presumed the words should have been, "after his alleging Diminution." Indeed, the Order seems in other respects to be obscure, perhaps owing to a Change in Practice, for it is conceived that alleging Diminution, and assigning Errors, were originally distinct Acts, though now, when Diminution is alleged, it is done in the Assignment of Errors.

Alleging Diminution has been already explained to mean, that something belonging to the Record, such as the original Writ, or the Bill, has not been returned with it; but in point of fact the allegation is generally used only as a pretext to gain ten days further time; for though the Writ or Bill do not accompany the Record, they are always forthcoming. When, therefore, the Plaintiff in Error alleges Diminution and prays a Certiorari, upon the Clerk's entering an award thereof, the Plaintiff may, before in nullo est Erratum pleaded, sue forth the Certiorari as a matter of course (though it is now seldom done), which he is allowed ten days to get returned. Hence it follows, that as Errors must be assigned within eight days, and the Defendant in Error may plead in nullo est Erratum (viz. that there is no Error in the Judgment) immediately on the Plaintiff's assigning Errors, the Plaintiff must allege Diminution within those eight days; and having ten days to return the Certiorari, he has thus eighteen days in the whole. If he does not sue out the Certiorari, or if sued out, does not get the Writ returned within that time, he cannot do so afterwards without
good cause shewn; and the Defendant in Error may proceed as if no Certiorari had been awarded. But in truth the Plaintiff in Error, by praying for the Certiorari, gets all the benefit he wished, viz. ten days further time; and he now seldom actually sues out the Certiorari, contenting himself with merely praying that it may be awarded.

After the Record is certified, that is, brought into the House, the Defendant in Error's Attorney must bespeak a Copy of it, and if Errors are assigned, the Plaintiff in Error's Attorney also must take a Copy.

By the Order of Dec. 1661, the Plaintiff in Error is bound to assign Errors within eight days after the bringing in the Record, and this without any Motion or Order to compel him. If he omits to do so, the Defendant in Error may petition for a non pros, which the House now constantly orders with £40. Costs. The form of the Petition, of which two days notice must be given to the other side, is as follows:—

**Petition for a non pros for not assigning Errors.**

House of Lords.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble Petition of J. L. Defendant in a Writ of Error wherein A. B. is Plaintiff in Error

Sheweth,

That your Petitioner having recovered a Judgment in his Majesty's Court of King's Bench against the said Plaintiff in Error, for £ damages and Costs, the Plaintiff hath brought a Writ of Error thereon, returnable in Parliament; and the Record having been transcribed, was, together with the said Writ, brought up into your Lordships' House, on the 16th day of last

That the said Plaintiff in Error hath not assigned any Errors within the time allowed by your Lordships' standing Order for that purpose.

Your Petitioner therefore humbly prays, that your Lordships will be pleased to Order a non pros to be entered on the said Writ of Error, with
such Costs for the delay of the Execution of the Judgment, as to your Lordships shall seem meet.
And your Petitioner will ever pray, &c.

J. P. Solicitor for the Defendant in Error.

When this Petition comes on, the Defendant in Error's Solicitor must be in attendance to prove the notice, and an Order is made as a matter of course. The Transcript is then remitted, and Execution follows in the Court below.

If the Plaintiff in Error's object is further delay, he will, to gain more time, not only assign Errors, but allege Diminution and pray a Certiorari, in order to get the ten days allowed by the standing Order of December, 1661, for the Return of the Certiorari; by which means, if the Session is near closing, the Writ of Error may be carried over to another Session; but as already observed, the Writ is rarely sued out or returned.

If the Certiorari is not returned, as it is likely not to be, the Defendant in Error rejoins in nullo est Erratum, and proceeds as if no Certiorari had been prayed.

When, therefore, the purpose of a Writ of Error is merely procrastination, and it is brought late in a Session, or the Session is likely to terminate before the Case would come on to be heard in course, the Defendant in Error, to defeat it, may Petition that the Plaintiff in Error shall be compelled to assign Errors within a shorter time than is allowed by the standing Order, which, when the Case is urgent, as where the sum is large, and it is certain the House will soon rise, their Lordship will order the Plaintiff to do, sometimes in two days, or even instanter, viz. the same day, to prevent the Plaintiff's gaining the advantage of a Prorogation or Recess.

To this end a Petition should be presented as follows, giving the Plaintiff's Attorney two day's notice of it:

*Petition for a short Day to assign Errors in Parliament.*

House of Lords.

To the Right Honourable the Lords, &c. (as before).

The humble Petition, &c.

Sheweth,

That your Petitioner obtained a Verdict (if the fact be so),
and recovered a Judgment against the said Plaintiff in Error in Term 18 for the sum of £ besides Costs, whereupon the said Plaintiff in Error brought a Writ of Error in the Exchequer Chamber (if such were the fact), which in Term last, was unanimously affirmed.

That the said Plaintiff in Error hath lately brought a Writ of Error returnable in Parliament, which like the former is brought merely for delay, and to prevent your Petitioner from obtaining the benefit of his said Judgment, and the payment of a just debt.

Your Petitioner therefore humbly prays your Lordships to order the said Plaintiff in Error to assign Errors immediately, and that your Lordships will appoint an early day for arguing the said Errors, or that your Lordships will be pleased to make such other Order in the premises as to your Lordships shall seem meet.

And your Petitioner will ever pray, &c.

J. P. Solicitor for the Defendant in Error.

In case the Plaintiff should have previously assigned Errors, the Petition must be varied, by stating before the prayer, "That the Plaintiff has assigned Errors on the said Judgment, and your Petitioner has rejoined in nullo est Erratum, but that the said cause is not likely to be heard for a considerable time, unless your Lordships shall be pleased to appoint a short day for that purpose," and confine the prayer to asking for the appointment of an early day.

Upon this Petition the Defendant in Error's Solicitor must attend as before directed, when the House will most probably make the desired Order.

If the Plaintiff in Error has assigned, or shall assign Errors, then it will be incumbent on the Defendant in Error to prepare and print a short Case, as hereinafter will be stated.
OF ASSIGNING ERRORS IN PARLIAMENT.

When it is intended to argue the Errors, the Plaintiff must of course assign Errors, which are either general or special, though in either Case they are little more than matter of form, importing that the Judgment is wrong, that it ought to have been in favour of A. instead of B., and praying that the Judgment may be reversed; the reasons or arguments being reserved for the printed Cases, and the fuller discussions of Counsel at the Bar of the House.

General Assignments of Errors, which are the most usual, need not be signed by Counsel, though they generally are, but special Assignments are understood to require a Counsel's Name. The Assignments of Errors is copied on plain Paper, and filed at the Parliament Office. The following are forms of both:—

General Assignment of Errors in Parliament on a Judgment of the Court of King's Bench.

House of Lords.

Doe v. Roe in Error.

Afterwards to wit on the day of in the year of our Lord 18 *, before the Lord the King and the Lords Spiritual and Temporal in Parliament assembled, the said John, by A. B. his attorney (or in his own proper person), comes and says that in the Record and Proceedings aforesaid, and in giving the Judgment aforesaid, there is manifest Error in this, to wit, that it appears by the Record and Proceedings aforesaid, that the Judgment was given for the said Richard against the said John, when by the Law of the Land Judgment in the Plea aforesaid ought to have been given for him the said John against the said Richard; wherefore, and for other Errors in the Record and Proceedings aforesaid, the said John prays that the Judgment aforesaid may be reversed, annulled, and held entirely void, and that he may be restored to all things which he hath lost by reason of the said Judgment,

* The Year of the King's Reign is often inserted, but this is not considered to be necessary, nor is it used in the Journals of the House.
and that the said Richard may rejoin to the Errors aforesaid, &c.

Assignment of Errors in Parliament on a Judgment of the King's Bench, that the Declaration is insufficient, &c.


Afterwards, to wit, on the day of December in the year of our Lord 18, before the Lord the King and the Lords Spiritual and Temporal in Parliament assembled, the said John in his own proper person (or by James Johnson his Attorney), comes and says that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, to wit, that the Declaration aforesaid and the matters therein contained are not sufficient in Law for the said Richard to have and maintain his aforesaid Action against the said John. There is also Error in this, to wit, that by the Record aforesaid, it appears that the Judgment aforesaid was given for the said Richard against the said John; Whereas by the Law of the Land the said Judgment ought to have been given for the said John against the said Richard. And the said John prays that the Judgment aforesaid for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said Judgment; and that the said Richard may rejoin to the said Errors, &c.

John George.

This is the Form most commonly used. Though the foregoing Assignments are usually signed by Counsel, it is not requisite.—Tidd. 1169.

Assignment of Errors in Parliament on a Judgment of the Common Pleas, affirmed in the King's Bench.

B. against D. in Error.

Afterwards to wit on the day of in the year of our Lord 18, before our said Lord the King and the
Lords Spiritual and Temporal in this present Parliament assembled, comes the said C. D. in his own proper person (or by E. F. his Attorney), and says that in the Record and Proceedings aforesaid, and also in giving and affirming the Judgment aforesaid, there is manifest Error in this, to wit, that it appears by the Record and Proceedings aforesaid that the Judgment aforesaid given by the Court of the Lord the King of the Bench at Westminster, was given for the said A. B. against the said C. D., Whereas by the Law of the Land the said Judgment ought to have been given for the said C. D. against the said A. B., Therefore in that there is manifest Error. There is Error also in affirming the said Judgment, because he says that the Judgment aforesaid was affirmed by the Court of the Lord the King before the King himself, Whereas no such Affirmance of the said Judgment ought to have been given, but by the Law of the Land the said Judgment ought to have been reversed; therefore in that there is manifest Error. And the said C. D. prays that the Judgment aforesaid for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said Judgment, and the Affirmance as aforesaid; and that the said A. B. may rejoin to the Errors above assigned, &c.

W. E. Taunton.

Assignment of Errors in Parliament of a Judgment of the Common Pleas, reversed by the King's Bench.

And hereupon on the day of in the year of our Lord 18 , before the Lord the King and the Lords Spiritual and Temporal in Parliament assembled, comes the said P. O. in his own proper person (or by A. B. his Attorney), and says that in the Record and Proceedings of the reversing and annulling of the Judgment aforesaid, on the first Writ of Error, there is manifest Error in this, to wit, that the Judgment aforesaid given by the said Court of the Lord
the King, before the King himself, on the first Writ of Error, was reversed and annulled, whereas by the Law of the Land that Judgment ought to have been in all things affirmed, and therefore in that there is manifest Error; And the said P. prays that the reversal and annulling of the Judgment aforesaid for that Error and others in the Record and Proceedings of the reversal and annulling of the same Judgment, may be reversed, annulled, and held as entirely void; and that the said first Judgment may be in all things affirmed, and that he may be restored to all which he hath lost by reason of the reversal and annulling of the same; and that the said R. S. to the Error aforesaid may rejoin, &c.


Afterwards, that is to say, on the day of in the year of our Lord 18 , before our said Lord the King and the Lords Spiritual and Temporal in this present Parliament assembled, the said John by C. D. his Attorney (or in his own proper person), comes and says that in the Record and Proceedings aforesaid, and also in giving and affirming the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid, given by the said Court of our said Lord the King before the King himself, was given for the said Richard against the said John, whereas by the Law of the Land the said Judgment ought to have been given for the said John against the said Richard; therefore in that there is manifest Error. There is also Error in the Affirmance of the said Judgment, because he the said John says that the Judgment aforesaid was affirmed in the Court of our Lord the King of the Exchequer Chamber at Westminster, before the Justices of the Common Bench and the Barons of the Exchequer aforesaid, Whereas no such Affirmance ought to have been given thereon, but by the Law of the Land the said Judgment ought to have been reversed; therefore in that there is manifest Error. And the said John prays that the Judgment aforesaid for the Errors aforesaid,
and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and entirely held for nothing; and that he may be restored to all things which he has lost by occasion of the said Judgment and Affirmance thereof as aforesaid; and that the said Richard may rejoin to the said Errors, &c.

T. J. Platt.

Another Form of Assignment of Errors on the Affirmance of a Judgment by the Exchequer Chamber.

(As before until) Comes and says, that in the Record and Proceedings aforesaid, and also in the giving of the Judgment aforesaid in the said Court of Exchequer Chamber, there is manifest Error in this, to wit, that the Judgment aforesaid in the said Court of Exchequer Chamber, was given for the said John for the affirmation of the said Judgment of the said Court of the Lord the King before the King himself, and for the damages, costs, and charges of the said John by reason of the delay of execution of the same Judgment, on pretence of prosecuting the said Writ of Error thereon in the said Court of Exchequer Chamber, when by the Law of the Land the Judgment in the said Court of Exchequer Chamber ought to have been given for the said Richard, for the reversal of the said Judgment of the Court of the Lord the King before the King himself; therefore in that there is manifest Error; and the said Richard prays, &c. (The rest as in the foregoing precedent.)

General Errors in Parliament assigned on Judgment against the Bail in a Scire Facias.

Afterwards, to wit, on the day of in the year of our Lord , before the Lord the King in Parliament, comes the said James Burr in his own proper person (or by J. L. his Attorney), and says that in the Record and Proceedings aforesaid, and also in the Adjudication of Execution aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Adjudication of Execution on the
Writ of *Scire facias* aforesaid was given for the said John Attwood against the said James Burr, when by the Law of the Land Judgment thereon ought to have been given for the said James Burr against the said John Attwood, and therefore in that it is manifestly erroneous, And he the said James Burr prays that the said Judgment, for that and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and held entirely void, and that the said James may be restored to all things which he hath lost by reason of the Judgment aforesaid; and that the said John Attwood to those Errors may rejoin, &c.

*Assignment of Errors on a Judgment on a Writ of Mandamus where there was a Bill of Exceptions.*

After the Judgment of the Court below, the Errors are assigned as follows:—

Afterwards, to wit, on the day of in the year of our Lord 18 , before the Lord the King and the Lords Spiritual and Temporal in the present Parliament assembled, comes the said A. B. in his proper person (or by E. F. his Attorney), and says that in the Record and Proceedings aforesaid, and also in the giving of the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid was given for the said C. D. against the said A. B., when by the Law of the Land that Judgment ought to have been given for the said A. against the said C.; therefore in that it is manifestly erroneous. And the said A. B. further says that at the Assizes held at in the County of , to wit, on the day of in the year of the said Lord the now King before Sir J. B., Knight, and Sir W. G., Knight, then Justices of the said Lord the King assigned to take the Assizes in the County of aforesaid, &c., on the trial of the Issue aforesaid in the Record aforesaid above joined, certain Exceptions on behalf of the said A. B., by his Counsel learned in the Law, were taken and made to the opinion of the said Sir J. B.,
IN THE HOUSE OF LORDS.

Knight, then one of the Justices, &c. by him then and there expressed, by which the same Sir J. B., Knight, declared, that a certain matter on the behalf of the said A. in the plea aforesaid, by the said Counsel of the said A. to the Jurors aforesaid then and there offered to be given in Evidence (in opposition and contradiction to certain other matter then and there on the behalf of the said C. D. in the same plea given in Evidence) on the trial of the Issue aforesaid, ought not to be admitted. And the same Sir J. B., Knight, then one of the Justices, &c. then and there altogether refused to permit the said matter, then and there offered to those Jurors, to be given in Evidence, wherefore because the matter so as aforesaid offered to be given in Evidence, doth not nor could appear by the Verdict of the Jurors aforesaid, the said Exception in a certain Bill was then and there written, and the said Sir J. B., Knight, then and there set his Seal to the Bill of Exceptions aforesaid, at the request of the said A. B. according to the form of the Statute in that case made and provided; And the same A. B. produces before the Lord the King, in his Court of Parliament here, the Bill of Exceptions aforesaid, with the Seal of the said Sir J. B., Knight, then one of the Justices, &c. put to the same Bill, which Bill follows in these words, to wit (here follows the Bill of Exceptions). And the said A. B. prays the Writ of the Lord the King to be directed to the said Sir J. B., Knight, to command him to be before the Lord the King in the Court of Parliament to confess or deny his Seal to the said Bill. And it is granted, &c.

The foregoing Assignment of Errors is applicable where the Bill of Exceptions is separate from the Record of Nisi Prius. When the Bill is tacked to, or forms part of the Record, the Assignment will be as follows:—

Afterwards, &c. comes the said C. D. and says that in the Record and Proceedings aforesaid, and also in the matters contained in the said Bill of Exceptions, and also in giving the Verdict upon the Issue joined between the parties aforesaid, as well as in giving the Judgment aforesaid,
there is manifest Error in this, to wit, that the said Chief Justice, before whom the said Issue was tried, did upon the trial of the said Issue declare and give his opinion to the Jury aforesaid, that the Evidence offered to be given on the part of the said A. B. was sufficient and admissible, and ought to be received; Whereas the said C. D. says that the same was not sufficient nor ought to have been admitted. There is Error also in this, that it appears by the Record aforesaid, that the Verdict aforesaid was given for the said A. B.; Whereas by the Law of the Land the Verdict on the said Issue ought to have been given for the said C. D. There is Error also in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid was given for the said A. B. against the said C. D.; Whereas by the Law of the Land the Judgment ought to have been given for the said C. D. against the said A. B. And the said C. D. prays that the Judgment aforesaid for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and held for nothing, and that the said C. D. may be restored to all that he hath lost by occasion of the Judgment aforesaid, &c. And that the said A. B. may rejoin to the said Errors, &c.

Counsel's Name.

Special Assignment of Errors, alleging the Want of a Bill and Warrant of Attorney.

Afterwards, to wit, on the day of in the year of our Lord 18 , before the Lord the King and the Lords Spiritual and Temporal in Parliament assembled at Westminster, comes the said C. D. by G. H. his Attorney, and says that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, to wit, that there is no Bill filed and remaining of Record in the Court of the said Lord the King before the King himself, to warrant or support the Judgment or Proceedings aforesaid; therefore in that there is manifest Error. There is also Error in this, to wit, that by the Record aforesaid it appears that the said A. B. put in his place E. F. his Attorney, to prosecute his Suit against the said C. D. in the plea aforesaid, Yet there is no
IN THE HOUSE OF LORDS.

Warrant of Attorney filed and remaining of Record in the said Court of the said Lord the King before the King himself, to warrant the said E. F. to prosecute the said Suit; therefore in that there is manifest Error. There is also Error in this, to wit, that the Declaration aforesaid, and the matters therein contained, are not sufficient in Law for the said A. B. to have or maintain his aforesaid Action thereof against the said C. D. There is also Error in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid was given for the said A. B. against the said C. D., Whereas by the Law of the Land Judgment in the Plea aforesaid ought to have been given for the said C. D. against the said A. B. Whereupon the said C. D. prays His Majesty's Writ of Certiorari to be directed to His said Majesty's Chief Justice of the said Court of the said Lord the King before the King himself, to certify more fully the truth of the premises to the Lord the King in Parliament, and it is granted to him, &c. And the said C. D. also prays that the Judgment aforesaid, &c. (as in the last).

Assignment of Errors by the Plaintiff on a Judgment for the Defendant in an Action brought against the Defendant as Administrator.

Afterwards, to wit, on the day of in the year of our Lord , before our Lord the King in Parliament, comes the said W. F. by A. B. his Attorney (or in his own proper person), and says that in the Record and Proceedings aforesaid, as also in the giving of the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment was given for the said J. H. against him the said W. F., when, by the Law of the Land, the Judgment ought to have been given for the said W. F. against the said J. H. There is Error also in this, that where by the Record aforesaid it appears that the Judgment aforesaid was given that the said J. H. might go thereof without day, and that he the said J. H. should recover against the said W. F. £16 10s. to the same J. H. adjudged for his Costs and Charges by him in that behalf sustained, nevertheless Judgment ought
to have been given that the said W. F. should recover against the said J. H. his damages, by reason of the nonperformance of the said promises and undertakings of C. D. the Intestate aforesaid, as also his Costs and Charges which he the said W. F. had sustained in and about that suit, of the Goods and Chattels of the said C. D. in the hands of the said J. H. to be administered, if he had so much in his hands to be administered; and if he had not, then those Costs and Charges to be levied of the proper Goods and Chattels of the said J. H.; therefore in that there is manifest Error; And the said W. F. prays that for those Errors, and others in the Record and Proceedings aforesaid appearing, the Judgment aforesaid may be reversed, annulled, and held as entirely void, and that he the said W. F. may be restored to all things which by reason of that Judgment he hath lost; and that such Judgment may be given in this Court of the Lord the King in Parliament for the said W. F., as by the Law of the Land ought to have been given for the same W. F. against the said J. H. in the said Court of the Lord the King before the King himself, And that the said J. H. may rejoin to those Errors, &c.

Counsel's Name.

Assignment of Errors of a Judgment for High Treason,
Lil. Ent. 241.

Afterwards, to wit, on the day of in the year of our Lord , before our Lord the King himself in Parliament, comes J. W., the son and heir of the said T. W. deceased, who of the High Treason aforesaid was convicted and attained, by A. B. his Attorney, and says that in the Record and Proceedings aforesaid, and also in the giving of the Judgment aforesaid, there is manifest Error in this, to wit, that it appears by the Record aforesaid that the Judgment aforesaid is given for the said Lord the late King, when by the Law of the Land the Judgment aforesaid ought to have been given for the said T. W., and in that it is manifestly erroneous. There is Error also in this, to wit, that the Crimes in and by the Indictment aforesaid charged against the said T. W., are uncertainly,
doubtfully, and too generally alleged, and that the said Indictment supposes, and on the same T. W. charges and imposes, crimes in a different manner, and entirely in themselves disagreeing, and that the Judgment thereon given, is contrary to Law, and not to be pronounced, or set, for or upon such Crimes as in the Indictment aforesaid are supposed; and in that the said Judgment is manifestly erroneous; Wherefore he prays the Judgment of the Court of the Lord the King in Parliament in the premises, and that the Judgment and Attainder aforesaid, for the Errors aforesaid, and others in the Record and Proceedings aforesaid found and being, may be reversed, annulled, and held as entirely void; and that he the said J. W., the Son and Heir of the said T. W., may be restored to all things which he the said J. by reason of the Judgment and Attainder aforesaid hath lost, &c.

Counsel's Name.

Assignment of Errors in Parliament by the Attorney General, on the Reversal of a Judgment for Treason, stating that no Warrant of Attorney was filed, and the common Errors, and praying a Certiorari to the Chief Justice.

And hereupon T. T., Knight, the Attorney General of the Lord the now King, who for the same Lord the King in this behalf prosecutes, before the Lord the King in this present Parliament, in his proper person comes and says, that in the Record and Proceedings, and also in the giving of the Judgment upon the said former Writ of the Lord the King to correct Error, by the said J. W. prosecuted, for the reversing and annulling of the Judgment aforesaid against the said T. W., on the Indictment aforesaid for the high Treason aforesaid, there is manifest Error in this, to wit, that where by the Record aforesaid it is supposed, that the said J. W. did put in his place one A. B. his Attorney, to prosecute the said former Writ of Error, in and upon the Indictment for the high Treason aforesaid, nevertheless the said A. B. hath no Warrant of Attorney for the same J. W. filed of Record; therefore in that there is manifest Error. There is Error also in this, to wit, that by
the Record aforesaid it appears that the Judgment aforesaid, for the reversing and annulling of the Judgment aforesaid against the said T. W. in form aforesaid given, was given for the said J. W. against the said Lord the King, when by the Law of the Land that Judgment ought to have been given for the said Lord the King against the same J. W.; therefore in that there is likewise manifest Error. And this he is ready to verify, Wherefore he prays Judgment, and that that Judgment for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and held as entirely void; and that the said Lord the King to all things which, by reason of the reversing and annulling of the Judgment aforesaid, he hath lost, may be restored, &c. And the said T. T., Knight, the Attorney General of the Lord, the new King, who for the same Lord the King in this behalf prosecutes, prays a Writ of the Lord the King to the said J. Holt, Knight, to certify the same Lord the King in the same Court of Parliament, in the premises more fully the truth thereof, and it is granted him, whereby the said J. Holt, Knight, the Chief Justice aforesaid, is commanded that searching the Files of the said Court of the Lord the King before the King himself, whether any Warrant of Attorney be filed of Record in the same Court, for one A. B. to prosecute a Writ of Error for the Reversal of the Judgment of a certain Indictment against T. W. now deceased, for certain high Treasons whereof he is indicted, and thereupon is convicted, to the said Lord the King here in the present Parliament he without delay certify; which said J. H., Knight, the Chief Justice aforesaid, to the said Lord the King here in this present Parliament, hath returned and certified, that searching the Files of the Court of the Lord the King before the King himself of Record, there is no Warrant of Attorney for the said A. B. to prosecute the Writ of Error aforesaid for the Reversal of the Judgment aforesaid there filed, as by the Writ he is commanded.
FORMS OF ASSIGNMENTS OF ERRORS IN FACT.

Assignment of Infancy in the Defendant.


Afterwards, to wit, on the day of &c. (as before) comes the said C. D. in his own proper person (or by G. H., his Attorney) and says that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, to wit, that he the said C. D. appeared in the Suit aforesaid by J. K. his Attorney; nevertheless the said C. D. at the time of his said appearance, and also at the time of giving the Judgment aforesaid, was under the age of 21 years, to wit, of the age of 20 years and 15 days and no more, to wit, at , in which Case the said C. D. ought to have been admitted to appear in the Court aforesaid to defend the Suit aforesaid by his Guardian, and not by his Attorney; therefore in that there is manifest Error. And this he the said C. D. is ready to verify, wherefore he prays that the Judgment aforesaid for the Error aforesaid may be revoked, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said Judgment, &c.

J. George.

Assignment of Coverture at the Time of bringing the Action.

C. D. and Wife against A. B. in Error.

Afterwards, to wit, on the day of &c. (as before) comes C. D. and E. his Wife, which E. was and is implicated in this Suit by the name of E. F., in their proper persons (or by J. K. their Attorney) and say that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, to wit, that before the day of exhibiting the Bill (or suing out the original Writ) of the said A. B. against the said E. by the name of E. F., and before the giving of the Judgment aforesaid, to wit, on in the said County of , the said E. inter-
married with and took to Husband the said C. D. and that she the said E. at the time of exhibiting the Bill (or suing out the Original Writ) aforesaid, and also at the time of giving the Judgment aforesaid, was and still is covert of the said C. D. then and yet her husband, to wit, at aforesaid; therefore in that there is manifest Error; and this they the said C. D. and E. his Wife are ready to verify; wherefore they pray that the Judgment aforesaid, for the Error aforesaid, may be revoked, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the Judgment, &c.

Counsel's Name.

Assignment of the Death of the Plaintiff before Trial.

C. D. against A. B. in Error.

Afterwards, &c. (as before) comes the said C. D. in his proper person (or by G. H. his Attorney) and says that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid was given for the said A. B. against the said C. D., when in truth and in fact the said A. B. before the Trial of the Issue joined in the Record aforesaid, and before the giving of the Judgment aforesaid, to wit, on at died; therefore in that there is manifest Error, and this he the said C. D. is ready to verify; Wherefore he prays that the Judgment aforesaid, for the Error aforesaid, may be revoked, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said Judgment, &c. And the said C. D. also prays the Writ of our Lord the King to give Notice to and Executors of the last Will and Testament of the said A. B. that they be before our said Lord the King in Parliament, to hear the Record and Proceedings aforesaid, and the matter above assigned for Error, and it is granted to him, &c.

Counsel's Name,
IN THE HOUSE OF LORDS.

Assignment of the Death of one of two Defendants in the Action before Trial.

C. D. against A. B. in Error.

Afterwards (as before) comes the said C. D. by G. H. his Attorney (or in his own proper person) and says that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid was given for the said A. B. as well against the said E. F. as against the said C. D., when in truth and in fact the said E. F. in the plea aforesaid named, before the Trial of the Issue joined in the Record aforesaid between the parties aforesaid, and before the giving of the Judgment aforesaid, to wit, on at in the County of died, and so the said Judgment is erroneous and void; And this he the said C. D. is ready to verify; Wherefore he prays that the Judgment aforesaid, for the Error aforesaid, may be revoked, annulled, and altogether held for nothing; And that he may be restored to all things which he hath lost by occasion of the Judgment aforesaid, &c. Counsel's Name.

OF THE WRIT OF CERTIORARI.

It has been already mentioned that on Writs of Error to the House of Lords, the Writ of Certiorari is rarely sued out; yet it is undoubtedly competent to a Plaintiff in Error, who alleges Diminution, to sue out that Writ, the intent and purpose of which is to require the production of proceedings alleged to be deficient.

Mr. Urquhart says the Certiorari issues under the Great Seal, and this was also the Editor's idea, for he conceived that a Writ issued by Order of a superior Court to an inferior Court, or a Judge of it, could not regularly issue from the latter Court, and accordingly a Certiorari directed to the Chief Justice of the King's Bench, to certify a Record into Chancery, passes under the Great Seal.—2 Lil. Ent. 554. Yet the Editor has been informed by that very intelligent Gentleman, Mr. Edge of the King's Bench Treasury, that a Certiorari issued on alleging
Diminution in Parliament, is a King's Bench Writ, and as such tested in the Name of the Chief Justice. But upon referring to the Lords' Journals for 1696 it appears, that in the case of the King and Walcot, which was a Writ of Error from the King's Bench, where a Certiorari was prayed, there is an Entry of an Order for the Cursitors of London and Middlesex to issue the Writ; consequently it must in that Case have issued out of Chancery under the Great Seal.—See Lil. Ent. 243. The following are forms of this Writ:

**Certiorari directed to the Chief Justice of England to certify Warrant of Attorney returnable in Parliament.**

William the 3d, &c. To our trusty and well-beloved J. Holt, Knight, our Chief Justice assigned to hold pleas before us, Greeting. Being willing, for certain reasons, to be certified whether any Warrant of Attorney be filed in our Court before us, for one A. B. to prosecute a Writ of Error for the Reversal of the Judgment on a certain Indictment against T. W. late of London, Gent., now deceased, for certain high Treasons whereof he was indicted, and was thereupon convicted; We command you that searching the Files of our same Court before us in your Custody of Record remaining, what of the said Warrant you shall find, you certify to us here in our present Parliament without delay, and this Writ. Witness, &c.

The Answer of J. H., Knight, the Chief Justice within written:

Having searched the Files of the Court of the Lord the King before the King himself being in my Custody of Record, I find no Warrant of Attorney for the within named A. B. to prosecute the Writ of Error for the Reversal of the Judgment within mentioned, filed of Record there. And this I certify to the Lord the King in this present Parliament, as within I am commanded.

J. H.

It is observable that in the case of Rex v. Walcot, in Lilly, where the Attorney General alleged, and the Chief Justice certified Diminution of the Warrant of Attorney, the Judgment was affirmed.—1 Lil. 243.
A Certiorari for a Bill and Warrant of Attorney directed to the Chief Justice of the King’s Bench, returnable in Parliament, may be in the following Form:—

George the 4th, &c. To our right trusty and well-beloved, &c. our Chief Justice assigned to hold Pleas in our Court before us, Greeting. We being willing, for certain Causes, to be certified whether there be any Bill filed against C. D. at the Suit of A. B., in a plea of Trespass on the Case (or as the Fact is), and also whether there be any Warrant of Attorney filed of Record in our said Court before us, for E. F. to prosecute the Suit of the said A. B. against the said C. D., Do command you that, searching the Files and other remembrances of Bills and Warrants of Attorney of Term in the year of our Reign, which are filed of Record in your Custody, what of the said Bill and Warrant of Attorney you shall find therein, you certify to us in our Parliament immediately, together with this Writ. Witness, &c.

The Answer of, &c.

Having searched the Files and other Remembrances of the Bills and Warrants of Attorney of Term in the year of our said Lord the King filed of Record in my Custody, I there find a certain Bill, and also a certain Warrant of Attorney, both in the same term, between the parties within named, of the Plea within mentioned, the tenor of which Bill and the tenor of which Warrant are set forth in a certain Schedule to this Writ annexed. And this I certify to His Majesty in Parliament, as within I am commanded.

The Schedule is to contain a verbatim Copy of the Bill and Warrant.

A Certiorari for an original Writ.

George the 4th, &c. To our right trusty, &c. We being willing, for certain reasons, to be certified whether any original Writ between A. B. and C. D. late of in a Plea of Trespass on the Case (or as the plea is) be filed in your Custody
or not, Do command you, that, searching our original Writs directed to the Sheriff of and filed of Record in your Custody, of Term in the year of our reign, what you shall find therein of an Original Writ between the Parties aforesaid of the plea aforesaid, you certify to us without delay in our present Parliament; together with the return and Indorsement thereof, as fully as the same remain in your Custody, and this Writ. Witness, &c.

The Answer, &c.

OF COMPPELLING THE DEFENDANT IN ERROR TO APPEAR AND PLEAD.

There is no time fixed by the standing Orders of the House for the Defendant's pleading or joining in Error.

Formerly, according to Lord Chief Justice Hale, a *Scire facias* issued out of Chancery to warn the Defendant in Error to appear and plead, for which was afterwards substituted an Order of the House; but the latter as well as the former, has been long discontinued; and the reason probably is, that nineteen times in twenty the Defendant in Error is much more desirous of proceeding than the Plaintiff in Error, which rendered any such process or order needless. But where there really are Merits, and the Defendant in Error does not, within a reasonable time after the Assignment of Errors, that is, within the time allowed for answering Appeals, appear and plead, or join in Error, as it is termed, the Plaintiff in Error may petition the House to compel him, which the House will order him to do, usually allowing seven days, as in the Case of Peremptory Answers to Appeals.

*Petition that the Defendant in Error may be compelled to rejoin.*

House of Lords.

A. B. . . . . . . . Plaintiff, ( in Error.
C. D. . . . . . . . Defendant,)

To the Right Honourable, &c.
IN THE HOUSE OF LORDS.

The humble Petition of the Plaintiff in Error,

Sheweth,

That your Petitioner hath lately brought his Writ of Error in Parliament to reverse a Judgment of the Court of King's Bench, in an Action wherein your Petitioner was Plaintiff, and the said C. D. Defendant (or as the Fact is) and the Record, having been transcribed, was brought into this Right Honourable House on the day of last

That your Petitioner on the day of last assigned Errors pursuant to your Lordship's standing Orders, but the Defendant in Error has not pleaded or rejoined to your Petitioner's Assignment of Errors.

Your Petitioner therefore humbly prays that your Lordships will be pleased to order that the Defendant in Error shall within a time to be limited by your Lordships, plead or rejoine to the said Assignment of Errors, or that in default thereof, the Cause may be heard ex parte, and that Service of this Order on the Attorney of the said C. D. may be deemed good Service.

And your Petitioner will ever pray, &c.

J. K. Solicitor for the Plaintiff in Error.

Upon this Petition the House will make an Order on the Defendant in Error to plead or rejoine within a Week after the Service of it, which the Plaintiff in Error's Solicitor should be prepared to prove, and in default of the Defendant in Error's complying with the Order, the Cause will be set down to be heard ex parte.

The following are Forms of Pleas or Joinders in Error:—

**Joinder in Error in Parliament.**

House of Lords.

A. B. at the Suit of C. D. in Error.

And the said A. B. in his own proper person (or by J. P., his Attorney) comes and says that neither in the Record and Proceedings aforesaid, nor in giving the Judgment aforesaid, is
there any Error, and he prays that the Court of the Lord the
King in his Parliament here may proceed to examine as well
the Record and Proceedings aforesaid, as the matters above
assigned for Error, and that the Judgment aforesaid may be in
all things affirmed, &c. *But because the Court of the said
Lord the King in his Parliament aforesaid is not yet advised
what Judgment to give of and concerning the premises, a day
is therefore given to the said parties here until
to hear the Judgment thereon, for that the
Court of the said Lord the King in his Parliament aforesaid is
not yet advised, &c.

V. Lawes.

If there has been an Affirmance in an inferior Court, then
say, "that in the Record and Proceedings aforesaid, or in
giving the Judgment aforesaid, or in the Affirming of the same
Judgment, there is not any Error;" the rest as above.

Joiner in Error where the Judgment below was reversed.

And the said R. S. in his own proper person (or by John
Jones his Attorney) before the said Lord the King in Parliament
comes and says, that there is no Error in the Record and
Proceedings of the Reversal and annulling of the Judgment
aforesaid, on the first Writ of Error aforesaid reversed and
annulled, and prays that the Lord the King in Parliament now
here may proceed to the examination as well of the Record
and Proceedings of the Reversal and annulling of the Judgment
aforesaid on the said first Writ of Error, as of the matter
above for Error assigned; and that the Judgment of Reversal
and annulling of the Judgment aforesaid on the first Writ of
Error aforesaid may be in all things affirmed, &c. But
because, &c.

Joiner in Error where the Judgment was reversed in a
Criminal Case.

Whereupon the said J. W. afterwards, to wit, on the
day of in the year of the Reign of the Lord the

* This is added by the Clerk of the Parliaments.
now King in his proper person (or by A. B. his Attorney) before the said Lord the King in this present Parliament, comes, and oyer being had of the Errors aforesaid, says that neither in the Record and Proceedings aforesaid upon the said former Writ of Error, nor in the giving of the Judgment aforesaid, for the reversal of the said Judgment against the said T. W. for the high Treason aforesaid, is there any Error; Wherefore he prays that the Judgment of Reversal of the said Judgment against the said T. W. may in all things be affirmed. But because the Court of Parliament now here are not yet advised, &c.

Joiner containing a Suggestion of the Death of one of two Defendants in Error, and then Plea of no Error.

And be it known that after the Judgment aforesaid was given, and before this day, to wit, on the day of
in the year of our Lord the said G. T. died, to wit, at Westminster aforesaid in the County of Middlesex. And the said J. B. on the day of in the year of our Lord
before the Lord the King in this present Parliament in
his own proper person (or by E. F. his Attorney) comes and says that in the said Record and Proceedings, or in giving the Judgment aforesaid, there is not any Error, And he prays that the said Lord the King in his Parliament here may proceed to examine the Record and Proceedings aforesaid and the matters above assigned for Error, and that the Judgment aforesaid may be in all things affirmed, &c. But because the Court of the Lord the King in his Parliament aforesaid is not yet advised, &c. (as before).

J. George.

Joiner to Assignment of Infancy as Error.

A. B. at the Suit of C. D. in Error.

And hereupon the said A. B. by E. F. his Attorney (or in his own proper person) comes and says, that by reason of any thing above for Error assigned, the Judgment aforesaid ought not to be revoked, annulled, or held for nothing, because he
says that the said C. D. at the time of his said appearance, and also at the time of giving the Judgment aforesaid, was of the full age of 21 years, to wit, at afterward, and of this he the said A. B. puts himself upon the Country, &c. *And the said C. D. doth the like, &c.

Joinder to Assignment of Coverture.
A. B. at the Suit of C. D. and wife in Error.
And hereupon the said A. B. by E. F. his Attorney (or in his own proper person) comes and says, that by reason of any thing above for Error assigned, the Judgment aforesaid ought not to be revoked, annulled, or held for nothing, because he says, that the said E. at the time of exhibiting the Bill (or suing out the original Writ) aforesaid, was not, nor is covert of the said C. D. in manner and form as the said C. D. and E. have above alleged, and of this he the said A. B. puts himself upon the Country, &c.

Joinder in Error to an Assignment of the Death of a Defendant before Judgment.
And the said A. B. by E. F. his Attorney (or in his proper person) comes and says, that by reason of any thing above for Error assigned, the Judgment aforesaid ought not to be revoked, annulled, or held for nothing, because he says that the said E. F. in the plea aforesaid named is yet living, and in full life, to wit, at without this, that he the said E. F. before the Trial of the Issue aforesaid, joined in the Record between the parties aforesaid, died, in manner and form as the said C. D. hath above alleged, and this he the said A. B. is ready to verify; wherefore he prays that the Judgment aforesaid may be in all things affirmed, &c.

Replication to the foregoing.
And the said C. D. as before says, that the said E. F. before the Trial of the Issue aforesaid, joined in the said Record between the parties aforesaid, died, in manner and form as the

* This similitute is added afterwards.
said C. D. hath above alleged, and this he the said C. D. prays may be enquired of by the Country, &c.
And the said A. B. doth the like, &c.

Plea of Release of Errors.

A. B. at the Suit of C. D. in Error.

And the said A. B. by J. N. his Attorney (or in his own proper person) comes and says, that the said C. ought not further to prosecute or maintain his said Writ of Error against him the said A., because he says that after the Judgment aforesaid, to wit, on the day of in the year of our Lord he the said C., by the name and description of C. D. of, &c. at Westminster, in the said County, by his certain Writ of Release, sealed with his Seal, and to the Court of the Lord the King in Parliament now here shewn, the date whereof is the same day and year aforesaid, did remise, release, and for ever quit claim to the said A. by the name and description of, &c. his Heirs, Executors, and Administrators, all and all manner of Error and Errors, Writ and Writs of Error, and all benefit and advantage of the same, and all misprisions of Error, defects, and imperfections whatsoever, had, made, committed, or suffered, in, touching, or concerning the said Judgment obtained against him the said C. by the said A. in Term then last past, in the Court of the Lord the King, before the King himself, for £ debt, besides Costs of Suit, or in, touching, or concerning any Warrant, Process, Original Writ, Declaration, Plea, Entry, or other Proceedings whatsoever of, or in any manner concerning the same Judgment, and this the said A. is ready to verify; wherefore he prays Judgment if the said C. ought further to prosecute his said Writ of Error against him, the said A., &c.

Counsel's Name.

Replication to the foregoing.

And the said C. says, that by reason of any thing by the said A. above in his Plea alleged, he ought not to be barred from maintaining his said Writ of Error against the said A. on the Judgment aforesaid, because he says that the said writing
of Release by him the said A. above pleaded in bar of the Errors aforesaid, by the said C. above assigned, is not the Deed of him the said C., and this he prays may be inquired of by the Country, &c. And the said A. doth the like, &c.

**Demurrer to an Assignment of Coverture.**

And the said A. B. in his own proper person (or by B. F. his Attorney) comes and says, that by reason of any thing by the said C. D. and E. his wife above assigned for Error, the Judgment aforesaid ought not to be revoked or annulled, because he says that the matter aforesaid, in manner and form aforesaid, by the said C. D. and E. his wife above assigned for Error in the Judgment and Proceedings aforesaid, is not sufficient in Law to revoke or annul the said Judgment, to which the same A. hath no necessity, nor is bound by the Law of the Land in any manner to answer, and this he is ready to verify; wherefore he prays Judgment, and that the Judgment aforesaid may be in all things affirmed, &c.

Counsel’s Name.

**Joinder in Demurrer.**

And the said C. D. and E. his wife say, that the Error aforesaid, and the matter by them above assigned, are sufficient in Law to annul and reverse the Judgment aforesaid, and to compel the said A. to rejoin to the said Error, which matter the said C. D. and E. are ready to verify and prove, as the Court here shall direct and award. And because the said A. doth not rejoin to the said Error, nor in any way deny the same, the said C. D. and E. his wife, as before, pray that the said Judgment may be revoked, annulled, and held as void, and that they may be restored, &c. But because, &c.

For other Precedents of Pleadings in Error see Lilly’s Entries, Tit. Error.

The Joinder in Error is usually signed by Counsel, though when drawn in the common Form this is not requisite.—Tidd. 1175. Indeed it is not required by any order of the House, that pleadings in Error should be signed by Counsel, though
the printed Cases must be. But if it should be thought expedi-
tent to plead specially, it will of course be prudent to have the
advice of Counsel, and right to put his name to the Plea or
Joinder, which, after being fairly written on plain paper, is filed
at the Parliament Office.

The Issue being joined, either the Plaintiff or Defendant in
Error may, upon Petition to the House, or Motion made by a
Lord, get the cause set down for hearing after those already
appointed.

Cases are then prepared, prints of which are directed to be
laid on the Table of the House by both parties, within a fort-
night after the time limited for assigning Errors (Order 12th
July, 1811). There is no penalty annexed to the neglect of this
Order, but it is presumed that the consequences of its non-
observance would be similar to those directed in the Case of
Appeals.

The Cases on Writs of Error are drawn in the same man-
ner as those on Appeals, with this difference, that instead of
Appellant and Respondent, the parties are termed Plaintiff in
Error and Defendant in Error. The Case of the former is
styled, "The Case of the Plaintiff in Error;" and of the latter,
"The Case of the Defendant in Error." The Case, which
consists of a Copy, or abridgment of the Record, with the
reasons, is settled and signed by Counsel, printed, exchanged,
and lodged in the House, Briefs delivered, Fees given to
Counsel (not more than two on each side), and a Consultation
held, as on Appeals, except that in the latter the Fees are
in like manner generally larger.

The only materials requisite for Counsel, beside the printed
Cases, are a Copy of the Record (if not stated at length in the
Case), and Notes of the arguments of Counsel, and of the
opinions of the Judges in the Court below, if any have been
taken. The hearing follows; but there are no papers or
evidence to be produced, other than the Record which is
before the House; and the Judgment is affirmed or reversed,
with or without Costs, according to the discretion of the House
and the circumstances of the Case. Their Lordships always
fix the amount, for there is no Officer of the House by whom Costs can be taxed on Writs of Error, any more than on Appeals.

What is stated above, is said on the supposition that the Cause is meant to be argued, and that the Writ of Error is not brought for delay. When the latter is the fact, one Counsel is sufficient, who is paid a Fee of Ten Guineas, without any Retainer, and no Consultation is held. When the Cause is called on, Counsel is merely asked what his Client's Costs amount to, upon which he is desired to withdraw, and the Judgment is affirmed with Costs, of which the Defendant in Error's Solicitor should have a Bill ready. The Costs are from £100 to £150, according to the length of the Pleadings. This Proceeding usually occupies about five minutes.

The Case for this purpose may be as follows:

**House of Lords.**

A. B. .......... Plaintiff, 
and 
C. D. .......... Defendant, 

} In Error.  

On a Writ of Error from a Judgment of the Court of King's Bench.

The Case of the Defendant in Error.

In the Term the Defendant in Error brought his Action against the Plaintiff in His Majesty's Court of King's Bench, and the Declaration stated (here shortly state the Declaration).

The Plaintiff in Error filed a dilatory Plea, but ultimately suffered Judgment to go by default, and in Term the Defendant in Error obtained Judgment for the sum of £ Damages and Costs.

The Defendant in Error thereupon, in order to avoid payment, brought a Writ of Error returnable in the Exchequer Chamber, where in Term last the Judgment was affirmed, without any argument.

For the sole purpose of further delay, the Plaintiff in Error has brought a Writ of Error returnable in Parliament, and has
IN THE HOUSE OF LORDS.

assigned the common Errors, to which the Defendant has pleaded in nullo est Erratum, but it is understood does not mean to argue the pretended Errors. The Defendant in Error therefore humbly hopes that the Judgment of the Courts below will be affirmed with Costs.

Because the Writ of Error is manifestly groundless and vexatious, the sole object of bringing it being to delay the payment of a just debt and to harass the Defendant in Error. J. George.

This Case will of course be varied according to the facts of the proceedings.

By withdrawing the Writ of Error before the Cases are printed, the Plaintiff in Error may save considerably in Costs.

OF THE HEARING AND JUDGMENT.

The Judges are generally summoned to attend the Hearing of Writs of Error, though seldom on Appeals; and those learned persons usually take some days to give their opinion.

The Judgment, having been given, is afterwards (generally on the next day) read in the House; and when it is finally pronounced, the Transcript of the Record is sent back to the Court below, in order to have Judgment entered up there, which is done at the foot of the Judgment Roll; and if Judgment be affirmed, the Plaintiff in Error, according to Mr. Urquhart, is liable to double Costs in the Court below beyond the Costs awarded by the House of Lords; but this certainly is a mistake, for the Court of King's Bench lately refused to allow the Defendant in Error his Costs on a Judgment affirmed in the House of Lords without giving Costs, 2 Maul. & Sel. 249; and besides, double Costs are only given by the Statute of 19 Car. 2 on Affirmances after Verdict, and not in all Cases.

Standing Orders relating to Writs of Error.

In Addition to the standing Orders of December, 1661, and February, 1717, above stated, which relate to Writs of Error exclusively, the following, which are contained in the Appendix to the Practice of Appeals, pa. 89 to 100, are applicable as well to Writs of Error as to Appeals:
Order of 14th Feb., 1694, relating to re-hearing Causes.
19th April, 1696, directing printed Cases to be signed by Counsel.
22nd Dec. 1703, requiring two days' notice to be given of Applications to postpone Hearings.
12th Jan., 1724, ordering the delivery of Cases to the Lords four days before the Hearing.—now fourteen.
2d March, 1727, regulating the manner in which Counsel are to proceed on Hearings.
8th June, 1749, ordering Appeals to be heard in course every Session, and fixing the days of Hearing. Although this Order only mentions Appeals, it has been always understood to relate also to Writs of Error, so far as it regulates the days and the mode of Hearing.
12th July, 1811, containing a new regulation for lodging printed Cases, viz. that on Writs of Error the prints of Cases on both sides shall be delivered in within a fortnight after the time limited for assigning Errors, unless an earlier day shall be specially appointed.
24th Feb., 1813, directing the Cases to contain the proofs, with references, &c. Although Writs of Error are mentioned in this Order, it is conceived to be applicable only to Appeals, because on Writs of Error there are no other Proofs than are contained in the Record which is before the House, and on which alone their Lordships are to judge.
OF REMITTING THE TRANSCRIPT AND JUDGMENT OF THE LORDS TO THE COURT BELOW.

After Judgment is given by their Lordships, a difference commences between the subsequent proceedings on Appeals and Writs of Error. In the former the Judgment completes the Business in the House of Lords: there is no Record or Transcript to be remitted to the inferior Court; but on Writs of Error it is otherwise. In addition to the Order of the House, which is delivered out, Judgment, or what is called the Tenor of Judgment, is written at the foot of the Transcript before it is remitted to the Court below; where it is entered on the Roll of that Court.

The following are the forms of some of such Entries:—

Tenor of a Judgment of NON PROS in the House of Lords on a Writ of Error from the King's Bench and REMITTITUR to that Court.

At the End of the Transcript of the Judgment of the Court below, the Entry is as follows:—

Afterwards, to wit, on the day of (the date of the Writ of Error) in the year of the Reign of the Lord George the fourth King of the United Kingdom of Great Britain and Ireland, &c. the said Lord the King sent to his right trusty and well beloved Charles Lord Tenterden, his Majesty's Chief Justice assigned to hold pleas before the King himself, his Writ closed in these words, to wit, George the fourth, &c. (here copy the Writ of Error, and proceed as follows.) By virtue of which Writ the said Chief Justice with his proper hands brought the Record and Proceedings whereof mention is made in the said Writ, with all things touching the same, to the said Lord the King in Parliament in a certain Record to the said Writ annexed, according to the command of that Writ.

Afterwards, to wit, on the day of in the year of our Lord 18*, before our said Lord the King, and the

* This Date is sufficient, being that used in the Journals of the House.
Lords spiritual and temporal in this present Parliament at Westminster assembled, comes the said A. B. in his proper person, and prays that the said C. D. may assign Errors in the Record and Proceedings aforesaid. Therefore a day is given to the said C. D. before the said Lord the King in Parliament to assign Errors in the Record and Proceedings aforesaid, until the day of instant (eight days after the Transcript is brought in) at which day before the said Lord the King in his Parliament comes A. B. in his proper person, and the said C. D. although solemnly called comes not, but makes default, nor doth he further prosecute the said Writ for correcting Errors against the said A. B. Therefore it is considered by the said Court of the said Lord the King in his Parliament that the said C. D. take nothing by his said Writ of Error, but that he be in mercy, &c. And that the said A. B. do go thereof without day, &c. It is also considered by the said Court of the said Lord the King in his Parliament, that the said A. B. recover against the said C. D. £ by the Court of the said Lord the King in his Parliament adjudged to the said A. B. and with his Assent, for his Damages, Costs, and Charges which he hath sustained and expended by reason of the delay of Execution of the Judgment aforesaid, on pretence of prosecuting the said Writ of Error; and that the Record and Proceedings aforesaid be remitted from the Court of Parliament aforesaid to the Court of the said Lord the King before the King himself, to the end that Execution may be had thereupon, &c.

G. R. Clerk of the Parliaments.

For the Judgment entered up in the King's Bench pursuant to the Remittitur, see Tidd's Pract. Forms, 539.

Affirmance in the House of Lords of a Judgment of the King's Bench, with REMITTITUR.

(As in the foregoing until) Afterwards, to wit, on the day of in the year of our Lord 18 and in the year of our said Lord the King, before our said Lord the King and
the Lords spiritual and temporal in this present Parliament assembled, comes the said C. D. in his proper person (or by E. F. his Attorney) and says that in the Record and Proceedings aforesaid (here follow the Assignment of Errors and Joinder.) But because the Court of our Lord the King in his Parliament are not yet advised what Judgment to give of and upon the premises, a day is therefore given to the parties aforesaid before our said Lord the King in his Parliament, until the day of next ensuing wheresoever, &c. to hear their Judgment of and upon the premises, because the Court of our Lord the King in his Parliament here are not yet advised thereof, &c. At which day before our said Lord the King in his Parliament come as well the said C. D. as the said A. B. in their proper persons; whereupon all and singular the premises being seen, and by the Court of Parliament aforesaid now here, fully understood, and as well the Record and Proceedings aforesaid and the Judgment thereon given, as the Matters above assigned for Error, being diligently examined and inspected, and mature deliberation being thereupon had, it seems to the said Court of Parliament now here that there is no Error either in the Record and Proceedings aforesaid, or in giving the Judgment aforesaid, and that the said Record is in nowise vicious or defective. Therefore it is considered by the same Court of Parliament that the Judgment aforesaid in form aforesaid given, be in all things affirmed, and stand in full force and effect; the said Matters by the said C. D. above for Error assigned in any wise notwithstanding. (If Costs are given then add “And it is further considered by the same Court of Parliament now here, that the said A. B. do recover against the said C. D. £ by the same Court of Parliament adjudged to the said A. B., and with his Assent, according to the form of the Statute in that Case made and provided,* for his Damages, Costs, and Charges, which he hath sustained and expended by reason of the delay of Execution of the Judgment aforesaid.”)

* Query, if the Words in Italics are necessary? They are omitted in some Precedents.—See Tidd. P. F. pa. 538.
And thereupon the Record aforesaid, and also the Proceedings aforesaid in the same Court of Parliament had in the premises, are remitted by the same Court of Parliament to the Court of our said Lord the King before the King himself, wheresoever, &c.


At which day before the same Court of Parliament at Westminster, comes as well the said A. B. as the said C. D. in their own proper persons; whereupon all and singular the premises being seen, and by the Court of Parliament aforesaid now here fully understood, and as well the Record and Proceedings, and the Judgment thereon given, as the matters above assigned for Error, being diligently examined and inspected, and mature deliberation being thereupon had, it seems to the Court of Parliament aforesaid now here, that there is manifest Error in the Record and Proceedings aforesaid, and in giving the Judgment aforesaid. Therefore it is considered by the same Court of Parliament that the Judgment aforesaid (adding if the Judgment has been affirmed in the Exchequer Chamber, "And also the Affirmance of the same Judgment") for the Errors aforesaid, and other Errors in the said Record and Proceedings, be reversed, annulled, and altogether held for nothing. And it is also considered that the said A. B. ought to recover against the said C. D. his Damages on occasion of the premises. But because it is unknown to the said Court of Parliament now here, what Damages the said A. B. hath sustained by reason of the premises, the Record and Proceedings aforesaid are hereupon remitted from the same Court of Parliament to the Court of our said Lord the King before the King himself, in order that the said Damages may be ascertained, and that the said A. B. may have Judgment for the same, and Execution thereupon, &c.
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If the Action be in Debt, instead of the words in Italic, say "his said Debt, and also his Damages which he hath sustained, as well by the detention of the said Debt, as for his Costs and Charges by him about his Suit in that behalf expended."

Affirmance in Parliament of a Judgment of the King's Bench affirmed in the Exchequer Chamber, with several Continuances.

(As before to) "But because the Court of the Lord the King in Parliament now here, are not yet advised to give their Judgment of and upon the premises, a day therefore is given to the parties aforesaid, before the said Lord the King in his Parliament, until Friday, the 23d day of January next ensuing, at Westminster, in the County of Middlesex aforesaid, to hear their Judgment of and upon the premises, because the Court of the said Lord the King here in his Parliament are not yet advised, &c.; on which day, before the same Court of Parliament at Westminster, comes, as well the said T. S. as the said E. P. in their proper persons; but because the Court of the said Lord the King in Parliament aforesaid now here are not yet advised to give their Judgment of and upon the premises, day therefore is given to the parties aforesaid, before the same Court of Parliament, until Saturday the 17th day of March next ensuing, wheresoever, &c. to hear their Judgment thereon, because the Court of Parliament aforesaid are not yet advised thereof, &c.; on which day, before the same Court of Parliament at Westminster aforesaid, comes as well the said T. S. as the said E. P. in their proper persons, whereupon all and singular the premises being seen, and by the Court of Parliament aforesaid now here more fully understood, and as well the Record and Proceedings aforesaid and the Judgment thereon given, as the said causes and matters by the said Thomas Smith above for Error assigned, being diligently examined and inspected, and mature deliberation being thereon had, it seems to the Court of Parliament aforesaid now here that there is no Error, either in the Record and Proceedings aforesaid,
or in giving the Judgment aforesaid, or in the Affirmance of the same Judgment, and that the said Record is in no wise vicious or defective. Therefore it is considered by the Court of Parliament aforesaid, that the Judgment aforesaid, and also the Affirmance of the same Judgment, be in all things affirmed, and stand in their full force and effect, the said causes and matters by the said Thomas Smith above for Error assigned in any wise notwithstanding. And it is further considered by the same Court of Parliament now here, that the said Edward Phelipps do recover against the said Thomas Smith £5, to him the said Edward with his assent, by the Court of Parliament aforesaid, according to the form of the Statute thereof made and provided, adjudged for his damages, costs, and charges, which he hath had by reason of the delay of the Execution of the Judgment aforesaid, by pretense of prosecuting the said Writ of Error; and thereupon the Record aforesaid, as also the Proceedings aforesaid in the same Court of Parliament, had in the premises, by the same Court of Parliament to the Court of the said Lord the King, before the King himself wheresoever, &c. are remitted, &c."—Lil. Ent. 263, 266.

William Cowper, Cl. Parl.

Reversal in Parliament of a Judgment of the King's Bench, given for the Plaintiff below, after Affirmance in the Exchequer Chamber.

(As before until) "It seems to the Court of Parliament aforesaid now here, that in the Record and Proceedings aforesaid, and in giving the Judgment aforesaid, there is manifest Error; therefore it is considered by the same Court of Parliament, that the Judgment aforesaid (and the Affirmance thereof, if it has been affirmed in the Exchequer Chamber) for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, be reversed, annulled, and altogether held for nothing; and that the said A. B. be restored to all that he hath lost by occasion of the said Judgment (and the Affirmance thereof), and that he the said A, B. go thereof without day, &c.
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Judgment affirming a Reversal in a Criminal Case.

(After the Joinder in Error) "But because the Court of Parliament now here are not yet advised to give their Judgment of and upon the premises, day is therefore given as well to the said T. T., Knight, who prosecutes, &c. as to the said J. W. before the said Lord the King, in the same Court of Parliament now here, until Friday, the 29th day of January next ensuing, at Westminster aforesaid, to hear the Judgment thereof, because, &c.; on which day, before the Lord the King, and the Lords Spiritual and Temporal, in the same Court of Parliament now here at Westminster assembled, comes as well the said T. T., Knight, Attorney General of the said Lord the King, who prosecutes, &c. as the said J. W. in his proper person, whereupon all and singular the premises being seen, and by the same Court of Parliament now here fully understood, and mature deliberation being thereon had; because it seems to the Court of Parliament here, that neither in the Record and Proceedings aforesaid on the said former Writ of Error, nor in the giving of the Judgment of Reversal of the Judgment on the Indictment aforesaid, there is any Error, and that that Record is in nothing vicious or defective in Law; it is considered by the same Court of Parliament now here, that the Judgment of Reversal of the Judgment aforesaid, be in all things affirmed, and remain in full force and effect; the matter above assigned for Error in any wise notwithstanding. Which Record, and the Proceedings before the Lord the King and the Lords in Parliament, so had by the same Court of Parliament before the said Lord the King, into the Court of the said Lord the King, before the King himself wheresoever, &c. are remitted."—Lil. Ent. 243.

Judgment of Reversal for Want of a Joinder in Error.

(After stating the Writ of Error and Return, and the Assignment of Errors) "Whereupon all and singular the premises being seen, and by the Court of our said Lord the King in
Parliament now here, fully understood; for that no one cometh on behalf of our said Lord the King further to inform the Court here in the premises, or to join in Error with the said A. B., it is therefore considered and adjudged by the same Court of Parliament here, that the Record and Proceedings aforesaid, and the Judgment thereon given, for the Errors assigned and other Errors appearing on the said Record and Proceedings, be reversed and annulled, and that the said A. B. be restored to all that he hath lost on occasion of the said Judgment, and that he depart hence without day in this behalf."—2 Gode's Crown. Prac. 211.

The Transcript, with the Judgment of the House of Lords, being remitted to the Court below, or as is now usual, delivered to the successful party, this concludes the Procedure of the House of Lords. What remains to be done is completed in the inferior Court, the Proceedings in which it is unnecessary to detail here. The requisite Forms of Writs of Execution, &c. will be found in the King's Bench Practice, and also in the excellent work of Mr. Tidd.—See Practical Forms, 551, &c.

PROCEEDINGS ON WRITS OF ERROR TO THE HOUSE OF LORDS FROM JUDGMENTS OF THE COURT OF EXCHEQUER, AFTER AFFIRMANCE OR REVERSAL IN THE COUNCIL CHAMBER.

A Writ of Error of a Judgment of the Law side of the Court of Exchequer, usually called The Exchequer of Pleas, must, as before observed, be brought in the first instance, in the Council Chamber; afterwards a Writ of Error lies to the House of Lords, but there are not many instances of such Writs. The Writ is obtained in the same manner as a Writ of Error from the King's Bench, by making out a Precipe, and applying at the Cursitor's Office.

A Writ of Error directed to the Barons, and not to the Treasurer and Barons, was abated, for the Treasurer is joined with the Barons in keeping the Records—1 Barton's Exeq. 322, 2 Bac. Abr. 482,—although judicial Proceedings on the Law
side are before the Barons, and not before the Treasurer and Barons.—4 Inst. 112.

ENGLAND.—Writ of Error in Parliament of a Judgment in the Exchequer of Pleas, where a Writ of Error, returnable in the Council Chamber, was non prossed.

George, &c. To our Treasurer and Barons of our Exchequer Greeting. Forasmuch as in the Record and Process, as also in the giving of Judgment, in a Plaint which was in our Court before you, our said Barons in our Exchequer aforesaid, by Bill between Sir John Barnard, Knight, and Sir Robert Godschall, Knight, our Debtors, and Thomas Heath, of a Debt of £2000, which the said Sir John and Sir Robert demand of the said Thomas (or of a Plea of Trespass on the Case, as the fact may be), which Record and Process, by reason of Error intervening, We caused to come before the Lord Chancellor of Great Britain, and you the said Treasurer and Barons into the Chamber of Council, called the Council Chamber of the said Exchequer, in which Chamber of Council our Writ of Error was non prossed, as it is said, manifest Error hath intervened, to the great damage of the said Thomas, as by his complaint we are informed; We willing that the said Error (if any be) be duly amended, and full and speedy justice done to the said parties in this behalf, do command you, that if Judgment be given thereupon, and our aforesaid Writ of Error be non prossed, then you send to us distinctly and plainly into our Parliament at the next Sessions, to be held on Thursday, the 27th day of this instant July, the Record and Process of the said Plaint, with all things touching the same, and this Writ; that inspecting the Record and Process aforesaid, we may cause further to be done thereupon, by assent of the Lords Spiritual and Temporal in the same Parliament assembled, for amending the said Error, as of right and according to the Law and Custom of England shall be meet to be done. Witness ourself at Westminster, the 24th day of July, in the 12th year of your reign.

Putland.

By our Lord the King.—Allowed the 26th July, 1728.

J. Comyns.
Writ of Error in Parliament on a Judgment on a scire facias in the Exchequer at the Suit of the Crown, where the Judgment was affirmed.

George the Fourth, &c. To our Treasurer and Barons of our Exchequer Greeting. Whereas in the Record and Proceedings, and also in the giving of the Judgment against one E. Y., Esquire, upon a certain Writ of Scire facias out of our Court of Exchequer, on a certain Writing Obligatory, in which the said E. Y., together with Sir M. K., is bound to us in the sum of £40,000. against him issued at our Suit, before you the said Barons in our said Court of our Exchequer, which Record and Proceedings, by reason of Error intervening, We caused to come before the Lord Chancellor of Great Britain, and you the said Treasurer and Barons into the Chamber of Council, called the Council Chamber of the said Exchequer, and Judgment thereupon before the said Lord Chancellor, and you the said Barons, is affirmed, as it is said, a manifest Error hath happened, to the great damage of him the said E., as by his complaint we have understood; We willing that the said Error (if any there be) be duly corrected, and full and speedy justice done to the said parties in this behalf, do command you, that if Judgment be thereupon given and affirmed, then you send, &c. as in the foregoing.

In a qui tam Action, the Writ of Error runs thus: Forasmuch as in the Record and Process, and also in giving Judgment upon a certain Information which was in our said Court of Exchequer, before you the said Barons, against C. D. at the Suit of A. B. who prosecutes as well for us as for himself. For that, &c.

The Writ is taken to the Lord Chief Baron's Clerk to obtain his Lordship's allowance, for which is paid 19s. 4d., and the Note or Certificate of Allowance is to be served on the Defendant in Error's Attorney, or Clerk in Court.

Where Bail is requisite, it must be put in within four days after the Allowance; and if excepted to, it must, if in Term time, be justified in four days after the exception, or the De-
fendant in Error may proceed to Execution. But when the Exception is in Vacation time, the Bail must be perfected on the first day of the subsequent Term, unless the Defendant's Attorney consents to a Justification before a Baron, and then the Bail must so justify in four days. If no Exception be taken within 20 days, the Bail become absolute.

The Recognizance is engrossed on Parchment, and each of the Bail becomes bound in double the sum recovered, except on a Bond, and then in the penalty of the Bond, and also except in Ejectment, in which Case the Bail are bound in double the yearly value of the property recovered.

The Recognizance is acknowledged and subscribed before the Lord Chief Baron (or it is presumed before any Baron), and in case Execution has issued, his Lordship adds at the foot of the Recognizance his Fiat, viz. Let there be a Supersedeas.

The Writ of Supersedeas is directed to the Sheriff. The Clause "et habeas ibi hoc breve," inserted in all other Writs, is omitted, because the Sheriff keeps it as his authority for not executing the Writ superseded. But if that Writ has been executed, the Sheriff may return a prior execution.

It is said that on a Writ of Error to the Lords, if the Record is not transcribed in fourteen days, it is no longer a Supersedeas.—Bunb. 64. But the present practice is, that if the Plaintiff in Error neglects to transcribe, the Defendant in Error may, during the Sitting of Parliament, move the Court of Exchequer, that unless the Plaintiff in Error transcribes the Record, and assigns Errors within eight days, the Defendant in Error may be at liberty to sue out Execution on his Judgment, which is an Order of course.

If the Plaintiff in Error transcribes the Record, the Transcript, which is to be made on plain paper, fairly written, with a large margin, is taken to the Deputy Clerk of the Pleas in the Exchequer, who examines the Copy with the Record, and the Solicitor then takes it to the Chief Baron's, who endorses the Return on the Writ of Error, and appoints a day for carrying the Record and Transcript to the House of Lords. The Return is as follows:—
"The Answer of the within-mentioned Treasurer and Barons of His Majesty's Exchequer.

"The Record and Process of the Plaint within mentioned, with all things touching the same, we send into the present Parliament of the Lord the King, in a certain Schedule to this Writ annexed, as we are within commanded." T. Parker.

The Deputy Clerk of the Pleas attends, at the time fixed, to meet the Lord Chief Baron at the House of Lords, with the Record and Transcript, which his Lordship on his arrival takes and delivers at the Table of the House. The Record itself is afterwards brought back.—1 Burt. Ex. Pr. 335, 340, 2 do. 222, 231.

The Clerk of the Pleas has £1. for the Attendance, and 6s. 8d. for each Roll contained in the Transcript.

The Assignment of Errors and Joinder are as follows:

General Assignment of Errors of a Judgment of the Court of Exchequer, where the Writ of Error in the Council Chamber was non-prossed.

Heath against Barnard, Knight, and another.

Afterwards, to wit, on Saturday, the ninth day of May, in the year of our Lord , before our Lord the King in this present Parliament at Westminster, comes the aforesaid Thomas Heath, and saith that in the Record and Proceedings aforesaid, and also in the giving of the Judgment aforesaid in the said Court of Exchequer, and likewise in giving the Judgment of Nonsuit aforesaid in the said Council Chamber, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment aforesaid in the said Court of Exchequer, was given for the aforesaid Sir John Barnard and Sir Robert Godschall against the aforesaid Thomas Heath, whereas by the Law of the Land, that Judgment ought to have been given for the aforesaid Thomas Heath against the aforesaid Sir J. B. and Sir-R. G.; therefore in that there is manifest Error; and the said Thomas Heath prays that the said Judgment, for that and other Errors in the Record and Proceedings
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aforesaid, may be reversed, annulled, and altogether taken for
nothing, and that the said Thomas Heath may be restored to
all things which he hath lost by reason of giving the Judgment
aforesaid; and that the aforesaid Sir John Barnard and Sir
Robert Godschall may rejoin to these Errors.

John Hodgson.

General Assignment of Errors on a Judgment of the Exchequer
on a SCIRE FACIAS at the Suit of the Crown, affirmed in
the Council Chamber.

E. Y. against The King in Error.

Afterwards, to wit, on the ______ day of ______ in the year of
our Lord ______ before the Lord the King in the present Par-
liament, comes E. Y. in his proper person (or by A. B. his
Attorney), and says that in the Record and Proceedings, and
also in giving the Judgment aforesaid, there is manifest Error
in this, to wit, that the Judgment aforesaid is given for the said
Lord the King against him the said E. Y., when by Law the
Judgment aforesaid ought to have been given for the said E. Y.
against the said Lord the King; therefore in that it is mani-
festly erroneous. There is also Error in this, that it appears
by the Record and Proceedings aforesaid, that the Judgment
aforesaid was affirmed before the said Lord Chancellor and
Treasurer and Barons aforesaid, whereas the said Judgment
ought to have been reversed; therefore in that there is manifest
Error: and the said E. Y. prays that the said Judgment, and
the Affirmance thereof aforesaid, for the Errors aforesaid, and
others in the Record and Proceedings aforesaid, may be re-
versed, annulled, and held as entirely void; and that he may be
restored to all things which he hath lost by occasion of the
said Judgment and Affirmance, &c.

Joinder in Error in Parliament, where the Judgment of the
Exchequer was NON PROSSED in the Council Chamber.

Friday, the ______ day of ______ in the 13th year of
the Reign of King George the 2d.

And the said Sir J. B. and Sir R. G. in their proper per-
sons likewise come before our said Lord the King, and the
Lords Spiritual and Temporal in this present Parliament assembled, and say that neither in the Record and Proceedings aforesaid, nor in the giving of the Judgment aforesaid in the said Court of Exchequer, nor in giving the said Judgment of nonsuit in the said Council Chamber at Westminster aforesaid, is there any Error; and they pray that the said Court of Parliament here may proceed to the examination as well of the Record and Proceedings aforesaid, as of the matters above assigned for Error, and that the said Judgment of the said Court of Exchequer, and the said Nonsuit in the Council Chamber aforesaid, may be in all things affirmed; but because, &c.

W. Whitaker.

Joinder in Error in Parliament, where the Judgment was affirmed in the Council Chamber.

And R. R., Knight, Attorney General of the said Lord the King, says that in the Record and Proceedings aforesaid, and in giving and affirming the Judgment aforesaid, there is no Error; and he prays for the said Lord the King, that the Court of the Lord the King here in Parliament may proceed to the examination as well of the Record and Proceedings aforesaid, as of the Matter above assigned for Error, and that the said Judgment may be in all things affirmed, &c.; but because, &c.

The subsequent proceedings in the House up to the Hearing, are in all respects the same as on a Writ of Error from the King's Bench to the Lords.

Form of Judgment and Remittitur on the Affirmance of a Judgment of the Exchequer of Pleas affirmed in the Council Chamber.

(After the Entry of the Judgment of the Court below in the Transcript) Afterwards, to wit, on the day of in the year of the Reign of our Lord the now King, our said Lord the King sent to the Treasurer and Barons of his Exchequer his Writ closed in these words (here follows the Writ). By virtue of which Writ, the Chief Baron of our:
IN THE HOUSE OF LORDS.

Exchequer with his own proper hands brought the Record and Proceedings in the said Writ mentioned, with all things touching the same, to our said Lord the King in Parliament in a certain schedule to the said Writ annexed, according to the command of the said Writ.

Afterwards, to wit, on the day, &c. before the said Lord the King and the Lords spiritual and temporal in Parliament assembled, comes as well the said A. B. as the said C. D., in their proper persons (or by their respective Attorneys) and all and singular the premises being seen, and as well the Record and Proceedings aforesaid, as the matter by the said C. D. above assigned for Error, being examined and fully understood by the Court of the said Lord the King in Parliament now here, and mature deliberation being thereupon had, It appears to the same Court of Parliament here that there is no Error either in the Record and Proceedings aforesaid, or in giving the Judgment aforesaid; Therefore it is considered that the Judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect, the several matters above for Error assigned in any wise notwithstanding; (if Costs are given, then add, And it is further considered that the said A. B. do recover against the said C. D. &c. by the Court of the Lord the King in Parliament adjudged to the said A. B. at his request, according to the form of the statute in such case made and provided,* for his Damages, Costs, and Charges, which he hath sustained and expended by reason of the delay of the Execution of the Judgment aforesaid, on pretence of the prosecution of the said Writ of Error) And that the Record and Process be remitted from the Court of Parliament aforesaid into the said Exchequer, to make thereof Execution, &c.

* Query, if the words in Italics are necessary? See Note, pa. 229.
OF WRITS OF ERROR FROM THE COURT OF EXCHEQUER IN SCOTLAND TO THE HOUSE OF LORDS.

By the Stat. 6 Anne, cap. 26, sec. 12, establishing the Court of Exchequer in Scotland, it was enacted that it should be lawful for any Person or Persons, Bodies Politic or Corporate, parties to any Judgment which should be given in that Court, their Heirs, &c. or other persons who should be privy to, and affected by such Judgments, and who by Law should be intitled to bring Writs of Error thereupon, to sue out of the Court of Chancery in England Writs of Error upon any such Judgments, returnable in the Parliament of Great Britain, and the like securities and method of proceeding should be had thereupon, as were or might be used upon Writs of Error returnable in Parliament, upon Judgments in the Courts in England, and upon or relating to the affirmance or reversal of such Judgments in like cases.

It is clear from this Act, that the Barons of the Court of Exchequer in Scotland are possessed of a mixed jurisdiction, legal and equitable, as in England, and that parties, feeling themselves aggrieved by Judgments of that Court on the Law side, may bring Writs of Error in Parliament, as those who conceive themselves injured by its Decrees or Order on the Equity side, may seek a remedy by Appeal.

The Jurisdiction of the Scotch Court of Exchequer embraces the Revenues of Excise and Customs, Debts, Duties, royal Hereditaments, Rents, Casualties, Forfeitures, &c. accruing to the Crown in Scotland, and from its Judgments upon any of these Subjects, Writs of Error may be brought to the House of Lords; but they do not often occur.

In order to obtain this Writ, it is necessary to have a Certificate of Counsel in the Cause, that in their Opinion Error hath intervened, which is laid before the Attorney General, who thereupon grants his Fiat that a Writ of Error may issue. The Agent in London of the Plaintiff in Error lodges this Fiat in the Cursitor's Office, with a præcipe made out on a slip of paper as follows:
IN THE HOUSE OF LORDS.


Solicitor's Name and Date. Returnable the first day of next Session.

Form of Writ of Error in Parliament from the Court of Exchequer in Scotland.

George the 4th, &c. To our Treasurer of Great Britain, and to the Barons of our Court of Exchequer in Scotland, Greeting. Whereas in the Record and Proceedings, and also in the giving of Judgment upon a certain Information filed in our said Court of Exchequer in Scotland, before you our Barons of the said Court, wherein A. B. our Advocate General was Informant, and C. D. of was Defendant, touching and concerning our Revenue, as it is said, manifest Error hath intervened, to the great damage of the said C. D. as by his Complaint we are informed; And whereas by the Statute made in the Parliament holden at Westminster in the 6th year of the Reign of the Lady Anne, late Queen of Great Britain, intitled An Act for settling and establishing a Court of Exchequer in the north part of Great Britain, called Scotland, It was, among other things, enacted that it should and might be lawful for any person or persons, party or parties to any Judgment, which should be given in the said Court of Exchequer in Scotland, his, her, or their Heirs, Executors, or Administrators, or such other Persons who should be privy to or affected by such Judgment, and who by Law was or were entitled to bring a Writ or Writs of Error thereupon, to sue out or prosecute out of the Court of Chancery in England, a Writ or Writs of Error, to be made in the usual manner upon any such Judgment, returnable in the Parliament of Great Britain, and such and the like securities, way and method of proceeding, should and might be had thereupon, as had been or might be used and practised upon or concerning Writs of Error returnable in Parliament, on any Judgment in the Courts in England, and upon or relating to the
affirmance or reversal of such Judgments in like Cases, as by
the said Statute will more fully appear; We, therefore, willing
that the said Error, if any there be, should be duly corrected,
and full and speedy Justice done to the parties aforesaid in this
behalf, Do command you, that if Judgment be thereupon given,
then without delay you distinctly and plainly send under your
Seal the Record and Proceedings aforesaid, with all things
touching the same, to us in our present Parliament, at the
next Session, to be held at Westminster, the day of
18 , and this Writ; that the Record and Proceedings
aforesaid being inspected, we may cause to be done, with the
Assent of the Lords Spiritual and Temporal in the same Par-
liament, for correcting that Error what of right and according
to Law ought to be done. Witness ourself, &c.

The Writ is prepared by the Cursitor, and indorsed by the
Attorney General, and having passed the Great Seal, is deli-
vered to the party bespeaking it; and upon its being received in
Scotland and presented to the Barons by the Scottish Agent,
the Record, certified by one of the Clerks in the King's
Remembrancer's Office, is attached to it, and an endorsement
to the following Effect is made on the Writ.

"The Answer of the Barons within mentioned.

"The Record and process of the Information within men-
tioned, with all things touching the same, to our Lord the King
in the present Parliament we send in a certain Record to this
Writ annexed, as we are within commanded."

(Signed by the Barons.)

The Record and Writ thus indorsed are then sealed up,
and delivered by one of the Barons, to the person who is to
take it to London, and who must personally deliver it at the
Bar of the House of Lords, upon Oath that it is in the same
state in which he received it.

Copies of the Record are made for both parties, and taken
by the respective Agents.
IN THE HOUSE OF LORDS.

By the standing Order of the 13th Dec. 1661, the Plaintiff in Error must assign his Errors within eight days after the bringing in of the Writ and Record, as in other Cases, upon pain of losing his Writ. No other part of that Order is considered to apply to Scotch or Irish Writs of Error. Errors are generally assigned as follows:—

Form of an Assignment of Errors on a Judgment of the Exchequer in Scotland.

House of Lords.

C. D. ..................... Plaintiff in Error,

and


Afterwards, to wit, on the day of in the year of our Lord 18 , before our said Lord the King and the Lords spiritual and temporal in this present Parliament assembled, comes the said C. D., and says that in the Record and Proceedings aforesaid, and in the giving of Judgment by the said Court of Exchequer of our said Lord the King in Scotland, there is manifest Error in this, that by the Record and Proceedings aforesaid, it appears that the Judgment was given in the said Court of Exchequer for the said A. B. the Advocate General of our Lord the King, whereas by the Law of the Land such Judgment ought to have been given for the said C. D. against the said Advocate General; and for this and other Errors in the Proceedings aforesaid, the said C. D. prays that the Judgment so as aforesaid given in favor of the said Advocate General may be reversed, annulled, and held entirely void, and that he, the said C. D. may be restored to all things which he has lost by reason of the said Judgment, &c. And that the said Advocate General may rejoin to the Errors aforesaid.

Counsel's Name.

The assignment of Errors is written on plain paper, signed by one of the Plaintiff's Counsel* (though that is conceived to

* Counsel should be retained as on Appeals.
be unnecessary) and given in to the Clerk of the Journals, who thereupon acquaints the opposite Solicitor that Errors have been assigned. The Defendant then puts in his plea of Rejoinder, which also is written upon paper, and is as follows:

**Form of Joinder in Error.**

House of Lords.

C. D. ................. Plaintiff in Error,

A. B., Advocate General... Defendant in Error.

And the said A. B., Advocate General of our Lord the King, in his proper person comes before our Sovereign Lord the King in his said Parliament, and says that neither in the Record or Process aforesaid, nor in the giving of the Judgment aforesaid, is there any Error as alleged by the said C. D., and he prays that the Court of our said Lord the King in his Parliament here may proceed to the examination as well of the Record and Proceedings aforesaid, as of the matters aforesaid assigned for Error, and that the Judgment aforesaid may be affirmed; but because, &c.

(Signed by the Defendant’s Agent.)

The Cause is then set down. Cases, containing a Copy, or the purport of the Record, with Reasons, are prepared by both parties and printed, Counsel are instructed, and the Cause is heard in like manner as on Appeals. And after the House gives Judgment, the Record and Judgment are remitted to the Court of Exchequer in Scotland, to proceed further as the order of the House directs.

The Act of 6 Anne, giving the Scotch Writ of Error, directs the like Securities to be given, as on Writs of Error returnable in Parliament from the Courts in England. Upon English Writs of Error, the Security, viz. Bail, is given in the Courts below, and not by Recognizance at the Parliament office. Whatever security, therefore, is entered into by the Party suing out a Writ of Error from Scotland, must be given in the Court below.

* There is no time limited for putting in this plea, but if it is delayed, the Plaintiff may petition to get it lodged.
OF WRITS OF ERROR FROM THE COURT OF EXCHEQUER CHAMBER IN IRELAND TO THE HOUSE OF LORDS.

In the Introductory part of this Work, pa. lvi. it has been stated, that anciently Writs of Error were brought from the Irish Courts to those in England. Of this, Lord Hale gives the following instance, so long ago as the time of Edward 1.

A Judgment given in Ireland before the Chief Justice and several of the Council, between Vesey and Fitz Thomas, was brought into the Parliament of England, viz. the House of Lords, 23 Edward 1.—1 Hale's Juris. 40.

But upon Writs of Error from Ireland, the Courts in England felt themselves bound to determine according to the law of Ireland, when the laws of the two countries differed. Thus when it was assigned as Error, that the Declaration was for 100 acres of Bog, which would be erroneous in England where that description of land was not known, it was adjudged no Error.—Cro. Car. 511, and see 1 Salk. 262.*

By the articles of Union with Ireland (39th and 40th George 3, c. 67, art. 8) it is enacted, that all Writs of Error and Appeals then depending, or which should thereafter be brought, and which might be finally decided by the House of Lords of either Kingdom, should thenceforth be finally decided by the House of Lords of the United Kingdom, except Appeals from the Instance Court† of Admiralty in Ireland.

By an Act of the Irish Parliament (now no more), made in the 40th George 3, cap. 39, being that immediately following the Irish Act of Union, cap. 38, reciting that the then course of correcting erroneous Judgments in the superior Courts was inconvenient, and that it would tend to the ease of the Suitor if one Court, composed of the twelve Judges, were created, to which Writs of Error should lie from the four superior Courts, and from whose Judgment Writs of Error might be brought before the King in Parliament, it is enacted, sec. 1. That it should not be lawful, after the passing of that Act, to sue forth

* See Note 25. † See Note 26.
any Writ of Error to the Court of King's Bench, to reverse any
Judgment of the Court of Common Pleas, or to sue forth any
Writ of Error to the Court then holden before the Chancellor
or Treasurer, commonly called the Exchequer Chamber, to
reverse any Judgment of the Court of Exchequer, or to sue out
any Writ of Error returnable directly to Parliament to reverse
any Judgment of the King's Bench.

Sec. 2. And that where Judgment had been given, for the
reversal whereof a Writ of Error might then be brought, and
where Judgment should be given in any of the said Courts of
King's Bench, of Law before the King in Chancery, of Common
Pleas, and of Exchequer respectively, Writs of Error might be
sued forth of the Chancery, commanding Transcripts of the
Records* of such Judgments to be brought before the Chief
Justice of the King's Bench, the Chief Justice of the Common
Pleas, the Chief Baron of the Exchequer, and the other
Justices of the King's Bench and Common Pleas, and the
other Barons of the Exchequer, into a Chamber to be ap-
pointed by the Chief Governors of Ireland, and called the
Exchequer Chamber; and that the said Chief Justices, Chief
Baron, and other Judges, or any nine of them, should have
power to examine such Judgments, and to reverse or affirm the
same, or to award such Judgments as to law and justice should
pertain, and to send Writs to the Courts from which such
Transcripts should be brought, directing them to cause exe-
cution to be done, as if the Judgment had been originally
awarded therein; and further, that the said Chief Justices, &c.
should and might award such Costs, moderate, reasonable, or
exemplary, as to them should appear just.

Sec. 3. That Writs of Error might be sued in the High
Court of Parliament by any party aggrieved by any Judgment
of the said Chief Justices, &c. for the further and due examina-
tion thereof. Provided that it should be lawful for the Court
of King's Bench, and the said Court, called the Exchequer
Chamber, to proceed to Judgment in all cases then depending

* These are the words of the Act.
before them upon Writs of Error; and that all Judgments thereon might be removed by Writ of Error to Parliament, in the same manner as if that Act had not passed; provided that nothing therein contained should give a right to any person to sue forth a Writ to reverse a Judgment in which the King is a party, other than as by law the same was then established.

The object of this last clause is presumed to be, that Writs of Error, where the Crown is concerned, shall not be sued out without the Fiat of the Attorney General of Ireland.

The Writ of Error given by the foregoing Act is made out in Ireland.

**Form of Writ of Error in Parliament on a Judgment of the Exchequer Chamber in Ireland.**

George the Fourth, &c. To our Justices assigned to hold Pleas before us in our Court of Exchequer Chamber in Ireland Greeting. Because in the Record and Proceedings, and also in rendering of the Judgment in a Plea of Trespass and Ejectment of a Farm (or as the case is) which was brought in or as of Michaelmas Term, 1810, before the Barons of our Exchequer in Ireland, in the name of J. L., Lessee, &c. (here state the names of the parties), which said Record and Proceedings, and the Judgment thereupon as aforesaid, by reason of Error happening, We caused to be brought into our said Court of Exchequer Chamber, wherein the Judgment so given as aforesaid, is affirmed, as it is said, and because in the Affirmance of the Judgment aforesaid in our said Court of Exchequer Chamber manifest Error hath happened, to the great damage of the said J. L., as by his complaint we are informed; We willing that the Error (if any hath been) should be duly corrected, and that full and speedy justice be done to the said J. L. in this behalf, Do command you that if Judgment thereon be given and affirmed as aforesaid, then the Record, Proceedings, and Judgment aforesaid, with all things touching the same, to us in our present Parliament, now holden at Westminster, in the County of Middlesex, in that part of our United Kingdom called Great Britain, immediately after sight or receipt
hereof, you distinctly and plainly send under your Seal, and this Writ, that the Record, Proceedings, and Judgment aforesaid being inspected, we may further cause to be done therein, by the assent of the Lords Spiritual and Temporal in the said Parliament assembled, for amending the said Error what of right, and according to the Law and Custom of this Realm, shall be meet to be done. Witness Charles Duke of Richmond, our Lieutenant General and General Governour of that part of our United Kingdom called Ireland, at Dublin, the day of in the year of our Reign.

Prendergast.

Allowed, W. Downes (Chief Justice K. B.).

I humbly send to the most serene Lord the King, in the within Writ named, the Record and Process in the within Writ specified, with all things relative thereto, as by the within Writ I am commanded.

W. Downes.

It is observable that the Writ is allowed, and the Return made, by the Chief Justice of the King's Bench in Ireland.

The following is the form of the Writ of Error, removing a Judgment into the Exchequer Chamber in Ireland.

George, &c. To the Treasurer and Barons of our Exchequer in Ireland Greeting. Because in the Record and Proceedings, and also in giving Judgment of the Plea which was before you, our aforesaid Barons of our Exchequer, by Bill between John Long, Lessee, &c. (here state the names of the parties), in a Plea of Trespass and Ejectment of a Farm, as it is said, manifest Error hath intervened, to the great damage of him the said J. L., as by his complaint we are informed; and whereas by a Statute in our Parliament holden at Dublin, in the 40th year of our reign, it was among other things enacted, that from the passing of the said Act, it should not be lawful to sue forth any Writ of Error to the Exchequer Chamber to reverse any Judgment of the Court of Exchequer, and that where Judgment hath

* The Direction of other parts of the Writ are of course varied according to the style of the Court whose Judgment is to be reviewed.
been given, for the reversal whereof a Writ of Error might then by law be brought, and that where Judgment should be given in any of the Courts of King's Bench, of Law in Chancery, of Common Pleas, and of Exchequer respectively, Writs of Error may be sued forth of the Chancery, commanding Transcripts of the Records of such Judgments respectively, to be brought before the Chief Justice of the Court of King's Bench, the Chief Justice of the Court of Common Pleas, the Chief Baron of the Court of Exchequer, and the other Justices and Barons of the said Courts, into a Chamber to be appointed by the Chief Governor or Governors of Ireland for that purpose, and to be called the Exchequer Chamber; and that the Justices and Barons, or any nine of them, should have power to examine such Judgments, and to reverse or affirm the same, or to award such Judgments as to Law and Justice should pertain, and to send Writs, as the case might require, to the Courts from which such Transcripts should be brought, directing such Courts to cause Execution to be done, as if the Judgment had been originally awarded therein; we, therefore, willing that such Errors (if any there be) should be corrected according to the form of the Statute aforesaid, and that full and speedy justice be done in the premises, Do command you, that if Judgment be thereupon given, then the Record* and Process aforesaid, with all things relating thereto, before our said Justices and Barons in the said Exchequer Chamber, on the morrow of All Souls next ensuing, you cause to come, that the said Justices and Barons, or any nine of them, having seen and examined the Record and Process aforesaid, further in this behalf may cause to be done what of right and Justice, according to the form of the Statute aforesaid, ought to be done. Witness Charles Duke of Richmond, our Lieutenant General and General Governor of Ireland, at the King's Court, Dublin, the... day of... in the... year of our Reign... Prendergast.

Allowed, S. O'Grady.

In obedience to the within Writ to the Treasurer and to us directed, we send to the Chief Justices, Chief Baron, and the

* The Act mentions a Transcript.
other Justices and Barons within mentioned, the Record and Process within specified, together with all things thereto relating, as by the within Writ we are commanded.

Barons’ Names.

The Transcript was formerly delivered by the Chief Justice of the King's Bench in Ireland to a person coming to London (and sometimes to the Plaintiff in Error), by whom it was given in, upon oath, at the Bar of the House of Lords, and it was then lodged at the Parliament Office; but some delay and irregularities having happened in the delivery of the Transcript, it has of late years been sent through the post office, by the Clerk of the Errors in Ireland, to the Clerk of the Parliaments.

Copies of the Transcript are taken by both parties, and Errors are then assigned as follows.


House of Lords.

(Title of the cause.)

Afterwards, that is to say, on the day of in the year of our Lord, 18 before our said Lord the King, and the Lords Spiritual and Temporal in this present Parliament assembled, comes the said A. B., by E. F. his Attorney, and says, that in the Record and Proceedings aforesaid, and also in the Reversal of the Judgment in form aforesaid given in the said Court of our said Lord the King, before the Barons of his Exchequer aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the said last-mentioned Judgment was reversed in and by the said Court of our said Lord the King in the Exchequer Chamber aforesaid, whereas by the Law of the Land, the said last-mentioned Judgment ought to have been affirmed in the same Court; therefore in that there is manifest Error; and the said A. B. prays, that the said last-mentioned Judgment may be affirmed, and that the Reversal thereof in the said Exchequer Chamber may, for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, be reversed, annulled, and altogether
IN THE HOUSE OF LORDS.

held for nothing, and that he may be restored to all that he hath lost by reason of the reversal of the said last-mentioned Judgment, and that the said C. D. may rejoin to these Errors, &c.

Counsel's Name.*

Assignment of Errors in Parliament on a Judgment of the Common Pleas in Ireland, affirmed in the Exchequer Chamber there, in an Action in which Judgment was given for the Defendant.

House of Lords.

Jameson, surviving Assignee, against Echlin, in Error.

Afterwards, that is to say, on the day of in the year of our Lord, 18 before our said Lord the King, and the Lords spiritual and temporal in this Parliament assembled, comes the said Thomas Jameson, surviving Assignee as aforesaid, by W. B. his Attorney, and says, that in the Record and Proceedings aforesaid, and also in the giving and affirming of the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid it appears, that the Judgment given in the said Court of our said Lord the King, before John Lord Norbury and others, his brethren, Justices of our said Lord the King of his Common Bench of Ireland, was given that the said Richard and Thomas should take nothing by their Writ, and that the said Daniel Moore Echlin should recover against the said Richard and Thomas the sum of money therein mentioned, for his Costs and Charges laid out by him about his defence in that behalf, whereas by the Law of the Land Judgment ought to have been given for the said Richard and Thomas against the said Daniel Moore, to recover against him the said Daniel Moore their Damages by them sustained, by reason of the non-performance of the said promises of the said Daniel Moore, together with their Costs by them in their Suit expended; and for that it appears, that Judgment was given against the said Richard and Thomas, whereas by the Law of the Land, Judgment ought to have been given against the said

* Counsel should be retained as upon Appeals.
Daniel Moore; therefore in that there is manifest Error; and the said Thomas Jameson, surviving Assignee as aforesaid, further saith, that there is also Error in affirming the said Judgment, because he says that the said Judgment was affirmed in and by the said Court of our said Lord the King in the Exchequer Chamber in Ireland, whereas by the Law of the Land no such Affirmance ought to have been given, but the said last-mentioned Judgment ought to have been reversed in the same Court; therefore in that there is manifest Error; and the said Thomas prays that the Judgment aforesaid, for the above and other Errors in the Record and Proceedings aforesaid, may be reversed, and that the Affirmance thereof may also be reversed, annulled, and altogether held for nothing, and that the said Thomas, surviving Assignee as aforesaid, may be restored to all things which he has lost on occasion of the said Judgment and the Affirmance thereof aforesaid, and that the said Daniel Moore may rejoin to the Errors above assigned, &c.

N. C. Tindal.

If the Writ of Error is brought on a Judgment of the King's Bench in Ireland, then instead of the Words in Italics, say, "by the Court of our Lord the King before the King himself at the King's Courts in Ireland."

The Joinder is the same as in English Writs of Error.

The rest of the Proceedings are similar to those before described on Writs of Error from the Courts at Westminster; and when Judgment is given, the Transcript is remitted to Ireland, that the Judgment may be carried into Execution.

Tenor of Judgment of the House of Lords, affording a Judgment of the Exchequer Chamber in Ireland, given in Affirmance of one of the Court of Exchequer there.

Attorney General of Ireland against Irwine, in Error.

At which day, before the Lord the King in the same Court of Parliament at Westminster, come the said William Saurin, his Majesty's Attorney General for Ireland, who prosecutes for his said Majesty in this behalf, and the said Thomas Irwine, in their own proper persons, whereupon all and singular the
IN THE HOUSE OF LORDS.

premises being seen, and by the Court of Parliament aforesaid now here, fully understood; and as well the Record and Proceedings aforesaid and the Judgment thereon given, as the said causes and matters by the said W. S. above for Error assigned being diligently examined and inspected, and mature deliberation being thereupon had, it seems to the Court of Parliament aforesaid now here, that neither in the Record and Proceedings aforesaid, nor in the giving of the Judgment aforesaid in the Court of Exchequer Chamber in Ireland, affirming the said Judgment of the Court of Exchequer in Ireland, is there any Error, and that the said Record is in nowise vicious or defective. Therefore it is considered by the same Court of Parliament that the Judgment aforesaid so given in the Court of Exchequer Chamber in Ireland, affirming the said Judgment of the Court of Exchequer in Ireland, be in all things affirmed, and stand in full force and effect; the said causes and matters by the said W. S. above for Error assigned in anywise notwithstanding. And thereupon the Record aforesaid, and also the Proceedings in the same Court of Parliament had in the premises, are remitted by the same Court of Parliament to the said Exchequer Chamber in Ireland, to the end that Execution may be done thereupon.

W. Agar.

A Counsel's name, though usual, is not necessary.

It may not be improper to add some Notice of certain incidental Matters, which occasionally occur on Writs of Error, and which could not before be conveniently introduced.

OF THE DEATH OF PARTIES.

If a Party dies pending a Writ of Error in Parliament, after Errors have been assigned, as happened in the Irish Case of Jameson v. Echlin, Session 1822, in which the Defendant in Error died, it will be necessary to present a Petition to bring the Representatives before the House, which may be in the form following:—
Petition on the death of a Defendant in Error, that his Representatives may appear and rejoin.

House of Lords.

Between Thomas Jameson, surviving Assignee of Henry Waring White, Plaintiff in Error, a Bankrupt, and Daniel Moore Echlin, Gentlemen, Defendant in Error.

To the Right Honourable, &c.

The Humble Petition of the Plaintiff in Error,

Sheweth,

That your Petitioner lately brought his Writ of Error against the above named Defendant, returnable before the King in Parliament, to reverse a Judgment of the Court of Exchequer Chamber in Ireland, in favour of the above named Defendant, and that your Petitioner in due time filed his Assignment of Errors thereon.

That the said Defendant in Error departed this life in or about the month of March, 1821, having duly made his will, and thereof appointed John Parsons and James Bessonnet, Esquires, and his wife, Anne Phibs Echlin, Executrix, and that the said Anne Phibs Echlin alone proved the said Will, and obtained probate thereof in the Court of Prerogative in Ireland, the said John Parsons and James Bessonnet having renounced Probate.

That your Petitioner is advised that in consequence of the death of the said Defendant in Error, it is necessary for your Petitioner to obtain an Order of this Right Honourable House that the said Anne Phibs Echlin, the Executrix of the said Defendant in Error, may be present, if she shall think fit, to hear the Errors assigned upon the said Writ of Error, and to plead or rejoin thereto;

Your Petitioner therefore humbly prays your Lordships to order that the said Anne Phibs Echlin
may, by a certain day to be appointed by your
Lordships, be and appear before your Lordships,
to hear as well the Record and Proceedings in
this Cause, as the Errors assigned, and to rejoin
thereto if she shall think fit, or make such other
Order as to your Lordships shall seem proper.

And your Petitioner will ever pray, &c.

W. B., Agent for the Plaintiff in Error.

The House having made an Order in conformity with this
Petition, the following Suggestion and fresh Assignment of
Errors were lodged:—

Suggestion on the Death of the Defendant in Error.

Jameson, surviving Assignee, &c. v. Echlin, in Error.

Afterwards, that is to say, on the day of
in the year of the reign of the Lord George the Fourth, now
King, &c. and in the year of our Lord 18 , comes the said
Thomas by his Attorney aforesaid (or in his proper person),
and humbly suggests, and gives to the Lords spiritual and tem-
poral here in Parliament assembled, to understand and be
informed, that the said Daniel Moore Echlin, the Defendant
in Error, lately departed this life, to wit, on or about the 29th
day of March, in the year of our Lord 1821, having duly made
his last Will and Testament in writing, and thereof appointed
J. P. and J. B. and his wife Anne Phebs Echlin, Executors;
and that the said Anne Phebs alone proved the said Will, and
obtained Probate thereof in His Majesty's Court of Preroga-
tive in Ireland, the said J. P. and J. B. having renounced
Probate; and therefore the said Plaintiff in Error humbly
prays, that their Lordships may order that the said Anne
Phebs, by a certain day to be appointed by their Lordships, be
and appear before their Lordships, to hear as well the said
Record and Proceedings, as the Errors assigned, and to rejoin
thereto if she shall think fit; or make such other Order as to
them shall seem proper in this behalf; and thereupon after-
wards, to wit, on the 18th day of March, in the year of our
Lord 1823, It is ordered by the Lords spiritual and temporal
here in Parliament assembled, that the said Cause be revived against the said Anne Phebs; and that she be and appear before their Lordships, to hear as well the Record and Proceedings in the said House, as the Errors assigned, and rejoin thereto.

Afterwards, that is to say, on the day of in the year of our Lord 18 before the said Lords spiritual and temporal in Parliament assembled, comes the said Thomas Jameson by his Attorney aforesaid (or in his own proper person), and the said Anne Phebs by G. H. her Attorney likewise comes, and the said Thomas Jameson as before says, that in the Record and Proceedings aforesaid, and also in giving and affirming the Judgment aforesaid, there is manifest Error in this; to wit (here repeat the first Assignment of Errors to the end); and the said Thomas prays, that the said Anne Phebs may rejoin to the aforesaid Errors.

V. Lawes.

And the said Anne Phebs, by the said G. H. her Attorney (here follows the Joinder).

If a Plaintiff in Error dies after the Record is removed, and before Errors have been assigned, by which the Writ of Error as to him abates, it is conceived it may be revived at the instance of the Deceased's Representatives, by Order of the House, and that they would be allowed to assign Errors, and the Defendant in Error be directed to appear and plead; for the Record being already before the House, a new Writ would be improper and nugatory with respect to the Lords, though one may be sued out in the inferior Courts on an Abatement. For instance, on the Death of a Plaintiff in a Writ of Error from the Common Pleas to the King's Bench, another Writ is issued to the latter Court, stating the removal of the Record (which is said to remain before that Court), and the Plaintiff's Death, and commanding the Error, if any, to be corrected.—Lil. Ext. 231. But no such Writ could be directed to the House of Lords; so that either the Record must be remitted to the Court below, only to be again brought back, or that course pursued which is above suggested.
IN THE HOUSE OF LORDS.

It has happened that a Plaintiff in Error, having obtained the Transcript of a Record in an Irish Case, thought proper, in order to delay the Proceedings, to keep it in his possession, instead of delivering it into the House.* This took place a few years ago, and upon that occasion the following Petition was presented to the House by the Defendant in Error:—

Petition of Defendant in Error, stating that Plaintiff in Error delayed lodging the Transcript, and praying that he may be ordered to prosecute his Writ.

House of Lords.

Between T. B. ............... Plaintiff, and
                   R. D. ............... Defendant, } In Error.

To the Right Honourable, &c.

The humble Petition of the Defendant in Error

Sheweth,

That in or about Michaelmas Term last, the said T. B. sued out his Writ of Error, returnable before your Lordships, to reverse a Judgment of His Majesty's Court of Common Pleas in Ireland, which was affirmed upon a Writ of Error to the twelve Judges there.

That your Petitioner is informed that the said Plaintiff in Error received the Transcript of the Record of the said Judgment, from the proper Officer in Ireland, several weeks since, and has been in London for a fortnight with the said Transcript in his possession; whereas your Petitioner is advised that the said Plaintiff in Error ought immediately, or with all convenient speed, to have delivered the same into this Right Honourable House.

That the determination of this Cause is delayed by such the conduct of the said Plaintiff in Error, and your Petitioner verily believes that delay is the Chief object of the said T. B. in bringing the said Writ of Error.

* A Case of this sort is not likely to occur again, as the Transcript is now sent directly by the Clerk of the Errors in Ireland, through the Post Office, to the Clerk of the Parliaments.
Your Petitioner therefore humbly prays, that your Lordships will be pleased to make an Order that the said Plaintiff shall forthwith prosecute his said Writ of Error, or to grant to your Petitioner such relief in the premises as to your Lordships shall seem meet.

And your Petitioner will ever pray, &c.

J. P. Agent for the Defendant in Error.

An Order having been made pursuant to the said Petition, it had the desired effect. The Record was brought in, and the Plaintiff in Error soon after petitioned for leave to withdraw the Writ of Error, to which the Defendant in Error consented, without requiring payment of Costs, and an Order was made accordingly. The following is the form of the Petition:

Petition to withdraw Writ of Error.
House of Lords.

Between T. B. ................. Plaintiff, and
          R. D. ................. Defendant,
                    In Error.

To the Right Honourable the Lords, &c.

The humble Petition of T. B. the Plaintiff in Error
Sheweth,

That your Petitioner some time ago brought a Writ of Error, returnable before your Lordships, to reverse a Judgment of His Majesty’s Court of Common Pleas in Ireland, which had been affirmed in the Exchequer Chamber there.

That your Petitioner having been advised to withdraw the said Writ of Error, and the Defendant in Error having consented thereto,

Your Petitioner therefore humbly prays your Lordships that he may have leave to withdraw his said Writ of Error, and all Proceedings thereon.

And your Petitioner will ever pray, &c.

(To be signed by the Petitioner or his Agent.)

I consent to the prayer of this Petition.

J. P. Agent for the Defendant in Error.
If a Plaintiff in Error does not assign Errors within eight days, the Defendant may petition the House as follows:

Form of Petition to NON PROS a Writ of Error from Ireland, the Plaintiff not having assigned Error.

To the Right Honourable the Lords, &c.

The humble Petition of C. D. Defendant in a Writ of Error, wherein E. F. and others, are Plaintiffs,

Sheweth,

That the said Plaintiff having brought a Writ of Error, returnable before your Lordships in Parliament, to reverse a Judgment of his Majesty's Court of Common Pleas in Ireland, which has been affirmed by the Court of Exchequer Chamber there, and the Record having been transcribed, the same was, together with the said Writ of Error, brought into your Lordships' House, on the day of last.

That the said Plaintiff in Error hath not assigned any Errors within the time limited by your Lordships' standing Order.

Your Petitioner therefore humble prays, that your Lordships will be pleased to Order a non pros to be entered on the said Writ of Error, with such Costs as your Lordships shall think fit.

And your Petitioner will ever pray, &c.

J. P. Agent for the Defendant in Error.

With respect to obtaining Licences for King's Counsel to plead against the Crown; to petitioning for an Order to sue or defend as a pauper; and for personal protection while attending the Hearing of a Cause, see the instructions on these subjects in the Practice of Appeals, pa. 83 to 86. The Form of a License not having been before it given, it here follows.

Licence for a King's Counsel to plead for a Defendant where the Crown is concerned.

Whereas A. B. of, &c. hath by his Petition humbly represented to us, that (here set forth the purport of the Petition). And the Petitioner hath therefore humbly prayed us that (here
follows the prayer). We being graciously pleased to condescend to his request, do accordingly, by these Presents dispense with the said J. M., and grant him our Royal Licence to be of Counsel for the said Petitioner in the said Cause, as often as there shall be occasion. Given at our Court at St. James's, the day of in the year of our reign.

By His Majesty's Command,
The Secretary of State's Signature.

This Petition being left at the Secretary of State's Office, and the Fee paid, a Certificate may be obtained that the Licence has been granted, which Certificate will be deemed sufficient authority to plead without having the Licence itself.—Gude, 391.

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OF SOLICITORS' BILLS OF COSTS ON APPEALS AND WRITS OF ERROR.

It has been determined that a Solicitor's Bill, consisting wholly of Business done in the prosecution of an Appeal in the House of Lords, cannot be taxed.—4 Price 279, 3 Ves. and Bea. 21, Tidd. 329. The same Rule, it is conceived, would hold as to a Bill of Costs, solely relating to prosecuting or defending a Writ of Error in Parliament. Indeed Writs of Error and Appeals from Ireland have of late years been conducted by persons who were never admitted in any Court in Westminster Hall, and who consequently would not be amenable to those Courts. On this subject the Editor has already offered some remarks, which need not be here repeated.—See pa. 87.
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Fees paid on Writs of Error by Order of the House of Lords.

To the Clerk of the Parliaments for examining the Transcript, and reading the same in the House - - - - - 1 6 8
To the Door-keepers - - - - 0 15 4
For the Certificate of Diminution - - - 0 6 8
Upon the Order of non pros - - - 0 15 0
Upon the Remittitur - - - 0 16 0
For filing the Assignment - - - 0 5 0
For a Copy of same - - - 0 16 0
For filing the Rejoinder - - - 0 5 0
For a Copy of ditto - - - 0 16 0
Order on making Report upon a Petition referred to the Appeal Committee - - - 1 1 0

When the Writ of Error is brought to a Hearing:—

From each party to the Clerk of the Parliaments 1 6 8
From ditto to the Door-keepers - - 0 15 4
From ditto to the Clerk Assistant on lodging printed Cases - - - 2 2 0
From ditto to the Copying Clerk for a Cause List 1 1 0
For the tenor of Judgment - - 0 16 0
To the Clerk of the Parliaments and Clerk Assistant, between them, for entering the Judgment on a Writ of Error, remitting the same, and every thing relating thereto, and for making a Copy thereof to be preserved in the Parliament Office 2 10 0

In addition to the Fees mentioned above, the following are paid:

On leaving Transcript at the Parliament Office 4 4 0
Office Copy Transcript, 1s. per folio of 72 words, to be paid by each party in case Errors are assigned. If they are not, then only by the Defendant. And an additional Fee of 1 1 0
Bar Fee on the Hearing, whether the Cause takes up one or more days in the same Session 3 10 0
Door-keepers 4 4 0

Fees on Writs of Certiorari.

For Certifying private Bills, or other Matters of Record concerning private Persons, into Chancery, upon a Writ of Certiorari out of that Court.

To the Clerk of the Parliaments for the first Skin 1 6 8
For every other 0 13 4
To the Clerk Assistant for the first Skin 0 13 4
For every other 0 6 8

The following Fees relate to the Criminal Proceedings of the House.

Fees on the Attachment and Discharge of a Delinquent.

To the Gentleman Usher his Attachment Fee 5 0 0
To the same for the Discharge 5 0 0
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For every day a person is in Custody - - - 1 6 3
To the Yeoman Usher Attachment Fee - - - 2 0 0
To the same for the Discharge - - - 2 0 0
To the Clerk of the Parliament for the Order releasing a Delinquent - - - 6 13 4
To the Clerk Assistant thereon - - - 2 0 0

The Serjeant at Arms is to take the like Fees as the Black Rod, from persons committed to him, and to be allowed 1s. for every mile he shall go out of town to attach any Delinquent.

The great eminence of the persons by whom the following Opinions were given, on points connected with this Treatise, will render needless any apology for publishing them.

Case.

In Hilary Term, 1786, William Dwyer brought his Action of Trespass, Assault, and Battery, in the Court of Exchequer in Ireland, against Denis O'Brien the elder, Meredith Monsell, Conner O'Brien, Denis O'Brien the younger, and Anthony Gordon.

To this Action, D. O'Brien the elder, being an Attorney, appeared and pleaded in person; Defendants Monsell, Conner O'Brien, and Gordon, appeared and pleaded by their respective Attorneys; and O'Brien the younger, appeared by Denis O'Brien the elder, his father, and pleaded by Isaac Stoney, another Attorney, though he, O'Brien the younger, was at the times of appearance and plea a minor, and will not attain the age of 21, until the 21st of Nov. 1787.

The Cause was tried at the Sittings after Trinity Term, 1787, in the Court of Exchequer in Ireland, when the Jury found Meredith Monsell and Anthony Gordon not guilty; and they found O'Brien the elder, O'Brien the younger, and Conner O'Brien, guilty, and gave the Plaintiff £1000. Damages, and 6d. Costs.
The appearance and pleading of O'Brien the younger, who was an Infant, by Attorney instead of his Guardian, is conceived to be clearly Error in Fact, for which the Judgment, being entire, must, it is presumed, be reversed as to all the Defendants.—See Jenk. 301, Style 218, 1 Rol. Abr. 776, Pl. 9, Cro. Ja. 303, 1 Lev. 294. But a doubt has occurred whether a Nolle Prosequi may not be entered by the Plaintiff, as to the Infant Defendant, so that then the Error could not appear, or though it did, that this would cure it.—See Jenk. 309, Hob. 70, 180, Salk. 455, Lord Raym. 597, 3 Keble 136, 1 Wils. 90, 306.

Your Opinion therefore is requested:

1st. Whether the pleading of O'Brien the younger by Attorney, is not Error in Fact, for which the Judgment must be reversed; and whether this Error be curable by a Nolle Prosequi as to the Infant after Judgment entered up, or whether it can be otherwise amended?

2nd. In what Court must the Writ of Error be made returnable?—See Stat. 31 Edward 3, Bunb. Rep. 282. And please to point out where the form of such a Writ of Error is to be found.

Opinion of Mr. Serjeant Hill.

1st. If Judgment be entered against all the three who are found guilty, I think it will be erroneous against all of them, and not aided by the English Stat. 21st Jac. 1, c. 13, s. 6, to which I suppose there is a similar Act in Ireland.—Jenk. 301, Style 218. Nor by any other Statute of Jeofails; and after Judgment I think the Error cannot be cured by a Nolle Prosequi, as to the Infant.—Jenk. 309 and Hob. 70. And the opinion of Holt, Salk. 455, though Hob. 70, as to another point, has been denied, but not as to this.

2nd. A Writ of Error does not lie on 27th Eliz. c. 8, for Error in Fact.—Comy. Rep. 597. And the reasons of that determination seem applicable to the Stat. E. 3; for which reason, and for the want of a precedent of such a Writ, I think
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the Note in Bunb. is right, that it will not lie. As to the form of a Writ of Error in the Exchequer, for Error in Fact in that Court, I think it may be settled, mutatis mutandis, from the like form of a Writ of Error in B. R. for Error in Fact in that Court; but I have not been able, consistently with the desired dispatch, to make so full a search as I would otherwise have done, after precedents of Writs of Error in this Case.

G. Hill, Lincoln's Inn, January 21, 1788.

Dwyer v. O'Brien and Others.

Since you gave an Opinion on this Case a Writ of Error Corress Vobis has been brought by Denis O'Brien the elder, D. O'Brien the younger, and C. O'Brien, and the Defendant in Error obtained a Rule on the Plaintiffs in Error to assign Errors.

The minority of O'Brien, the younger, at the time both of appearing and pleading, hath been accordingly assigned, and the Defendant in Error, instead of joining in Error, has moved the Court for liberty to amend the Record, and for an Attachment against O'Brien the elder, as Attorney for O'Brien the younger, upon a suggestion that the appearance and plea were from the beginning thus contrived by O'Brien, sen. with a view to take advantage of it.

For this purpose, the Defendant in Error has made an Affidavit, stating that if O'Brien the younger was a Minor, O'Brien the elder must have known it. But he does not say that he even believed O'Brien the younger was a Minor, for if he had so stated, it would be evidence against him upon the trial of the Fact.

O'Brien the elder has answered the Affidavit, and denied any design in the appearing or pleading for the Son as a Minor, but does not state absolutely whether he was, or was not a Minor, apprehending that the Defendant in Error could not ground a motion for an amendment, or for an attachment, without his having stated that he believed there was minority,
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or without O'Brien's admitting it; so that the fact is neither charged nor admitted by the Affidavits.

The Court, without entering into the merits, granted, as usual in Ireland, a Conditional Order, and Cause is to be shewn in the ensuing Term.

1st. Is this Error amendable by motion, now after final Judgment made up, and Error assigned?

2nd. Was it a Contempt in O'Brien the elder to appear and plead for the Minor, as an Adult, even supposing that he did so knowingly, and with a view to avail himself of it?

3rd. Supposing that it was a Contempt to have so done with design; yet this being denied on Oath, is there upon those Affidavits ground for granting an Attachment, or for amendment? And if the Attachment should be granted, how can it be got rid of without waiving the matter of Error?

NOTE.—It appears by the Affidavits of Dwyer and O'Brien, that the latter, before final Judgment, avowed his intention to bring Error for the minority; and Dwyer admits by his Affidavit, that he had notice of such intention the day after Verdict; so that he might have made an application to the Court before final Judgment.

Second Opinion of Serjeant Hill.

1st. I think, under the circumstance of this Case, the Error is amendable by motion, even now after final Judgment made up, and Error assigned.

2nd. I think it a Contempt in the Case supposed by this Query.

3rd. The power of the Court in these Cases is discretionary, and cannot be reviewed by Writ of Error, or questioned otherwise than by a criminal proceeding against the Barons (the Judges); and this Case is not strong enough for that; and as they have made the Rule, and the circumstances of the Case are untoward, and there is no Affidavit to oppose to the Rule, but only that of the Defendant O'Brien the elder, and there might have been an Affidavit to confirm some parts of the
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Defendant’s Affidavit, I think the Court will grant and continue the Attachment, unless the matter of Error is waived, and the Amendment made.

As the intention was not avowed to the Plaintiff till after Verdict, I think it will not vary the Case. If it had been before appearance, the Plaintiff might have been considered as guilty of a Default, by not moving the Court to appoint a Guardian for the Infant, as he ought.—1 Rol. Abr. 287 a, Pl. 2, Sty. 369. And then I think that would have been a material circumstance against making the Rule absolute; but the avowal of the Defendant is, I think, a circumstance against him, as it affords a presumption that his intention was the same originally, in case he should dislike the Verdict.

G. Hill, October 23, 1788.

The Case having been again laid before the Serjeant, with a request that he would point out in what respect an Affidavit by the other Defendants, in support of that of O’Brien the elder, might better the Case on shewing Cause against an Attachment, he gave the following opinion:—

Third Opinion of Serjeant Hill.

If the Defence can be supported, I think it can only be by procuring an Affidavit to confirm such part of Mr. O’Brien the father’s Affidavit as lies in the knowledge of other persons. He frequently refers to Mr. Stoney, to whom in particular I meant to refer, when I said there might be an Affidavit to confirm some parts of Mr. O’Brien the father’s. Where an Attorney, knowing his Client to be an Infant, has appeared, or (which is precisely the same) caused an appearance to be entered for him by Attorney, there are very old authorities that the Court may punish him if they please.—Lil. Prac. Reg. Title Appearance, near the beginning (cited truly in 3 Vin. 280, Pl. 16). And in Str. 33, the Court held that Infancy in a Defendant ought not to be allowed to be assigned for Error in an Ejectment, that it was an abuse upon the Court, and that the Attorney ought to be committed; but this first part seems in-
consistent with the Stat. 21st James 1, c. 13, by which the Error of an Infant's appearing by Attorney in Ejectment, is only aided after Verdict for him, and is contrary to the Case of Seacombe v. Fitzgerald; therefore that Act has in all other Cases implicitly allowed it to be assigned for Error; and the Case in Stra. 33, seems to have been disapproved by the Court as a general Rule.—Str. 445. And if the Plaintiff knew the Defendant was an Infant, he ought not to have proceeded upon an appearance by Attorney, but ought to have moved the Court that an appearance might be entered by Guardian.—Sty. 369, 2 Barnes 326, 2 Wils. 50, Str. 1076. Therefore if any Defence be made, I think it can only be, if at all, by supporting the Affidavit of Mr. O'Brien the father, throughout if possible, but particularly as to that part of it which is calculated to shew that Dwyer had notice of the Infancy of Mr. O'Brien the son, before the appearance, and that none of the Attorneys concerned in the Cause for the Defendants, had any apprehension or notice till after the Verdict, of Error in that respect, but that it was discovered after the Verdict, in the manner set forth in the Affidavit of Mr. O'Brien the father.

There are many scandalous reflections in the Affidavit, which may possibly occasion some censure upon it by the Court.

As the above cited Case of Seacombe v. Fitzgerald, is not in print, and I have a Note of it copied from the MS. Reports of the late Mr. Ford, I think it may be of use in answer to the Case in Str. 33, if that should be cited. I have sent a Copy of it on the other side.

G. Hill, Lincoln's Inn, April 22, 1789.

Seacombe and another, Executrixes of A. B. against Fitzgerald.

Michaelmas, 13th George 2, B. R.

The Defendant had a Judgment against A. B. the Testator, and to a Sci. fa. upon that Judgment, brought against his Representatives, they all appeared by Attorney in the Common Pleas, and there being Judgment against them on the Sci. fa., they brought a Writ of Error in this Court, and assigned for
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Error that one of the Executrixes was an Infant, and ought to have appeared by Guardian. It was admitted on all hands that this was Error, and the Case of Kynaston v. Friseobald, Hils. G, 2 B. R. was cited as an authority to that purpose. Upon which it was now moved, that the Plaintiffs in Error might shew cause why they should not procure their Attorney to rectify the appearance of the Infant Executrix, and the Case of Stratton v. Burgess, Mich. 5 G. B. R. was mentioned to that purpose, where an Action being brought here against an Infant, he appeared by Attorney, and Judgment being given against him, he brought Error Coram Vobis, and assigned the Infancy as an Error in Fact. But the Court, upon motion, ordered the Attorney to amend the appearance, and make it by Guardian; and but that the Attorney swore that he did not know of the Infancy till after issue joined, the Court declared they would have laid him by the heels. But resolved, that whatever might be done by the Court where the Action was commenced, yet this Court, who had the Proceedings before them only by Writ of Error, could not make any such Order; and it was observed, that if Courts had a power to direct such amendments, no Judgment could ever have been reversed for that objection. Chapple said that if an Attorney should knowingly enter an appearance for an Infant by Attorney, he thought such practice would be a Contempt of the Court where the Action was brought, being a contrivance to defeat the Judgment of it. But in the present Case the motion was denied.

A Copy of the Record having been laid before Mr. Law (afterwards Lord Ellenborough), he gave the following opinion:—

Mr. Law's First Opinion.

1st. I cannot discover any Error upon the face of the Record, and the Verdict is properly found for Damages against the three Defendants jointly. The Postea, when drawn, will take notice of the appearance of the parties. If no proper minute was taken by the associate from which the Postea can be regularly drawn out, it may indeed be the subject of a motion, but is foreign to any question of Error on the Record.
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2nd. I am of opinion that the appearance and pleading by Attorney, of O'Brien the younger, is Error in Fact, assignable as Error in the Court of Exchequer, where the Judgment was given, and where the Record at present remains. No new appearance can be made as to this Record; but upon reversal of the Judgment for this Cause, the Plaintiff will be at liberty to bring a fresh Action. The Judgment being entire, must be reversed for this cause as to all, and not as to the Infant only. This matter may be assigned for Error, either before or after O'Brien the younger shall attain his age. Trial by inspection can only be whilst the Infancy continues; but in any case where the Infancy was not likely to appear with sufficient certainty upon the view, the Court will try this question, like any other, by witnesses before a Jury.

Infancy being Error in Fact, is assignable in that Court only in which Judgment is given. Error in Fact and Law cannot be assigned together. If after assigning Error in Fact in that Court, the issue taken upon the question of Infancy should be found against the Defendants, they might afterwards bring a Writ of Error returnable in the Court from which Error lies from the Exchequer, and there assign for Error any matter appearing upon the Record; but I have already said I do not find any Error of this sort.

I am of opinion that this Error in Fact will be cured by entering a Nolle Prosequi as to the Defendant who is an Infant, at any time before final Judgment entered.

Edward Law, Inner Temple, Nov. 6, 1787.

Dwyer against O'Brien and Others.

Mr. Law is requested to peruse his former opinion in this Cause and to advise,—

1st. Whether the Error can be amended or cured by a Nolle Prosequi after Judgment is entered on the Posted?

2nd. In what Court is a Writ of Error in Fact of a Judgment of the Court of Exchequer to be made returnable; and

* This seems to be said too generally, as Error in Fact certainly may be brought from the Common Pleas to the King's Bench.
Mr. Law is requested to mention where the form of such a Writ is to be found? V. Bunb. Rep. 282, which so far as relates to this point, seems to be only Obit. Dict. An Audita Querela as there mentioned, would not aid the Defendant. It does not hold universally, that a Writ of Error in Fact lies only in the Court in which the Judgment was given, for it may be made returnable in the King's Bench for Error in Fact in the Common Pleas.

Second Opinion of Mr. Law.

1st. After final Judgment is regularly entered on the Roll, I am clearly of opinion, that the Error cannot be cured by a Nolle Prosequi. A Release, or any other discharge of this Judgment now given, as to one Defendant, will by operation of Law enure to the discharge of all.

2nd. I am of opinion, upon the best inquiry and fullest search I have been able to make, that Error in Fact can only be brought in the immediate Court in which Judgment is given, and not in the Court of Error constituted for matters in Law. Although I have not discovered any instance of such Writ of Error in Fact in the Court of Exchequer, yet upon principle I am of opinion that it may be as well brought there, as Error in Fact in K. B. can be brought in that Court. It has been decided, that it cannot be brought in the Court of Exchequer Chamber, and pari ratione, the Council Chamber. And if it cannot be brought in the original Court, a failure of Justice would ensue. As no particular Statute gives a Writ of Error in Fact in K. B., and as no particular reason appropriates such a Writ in K. B., this is, upon general principles, a reason for its being brought in every other superior Court.

Edward Law, Inner Temple, Jan. 22, 1788.

Note.—Mr. Law being asked to whom the Writ of Error should be directed,—whether to the Barons or the Treasurer, &c. he answered, "To the Barons."

Mr. Law told the Writer of this that he had not only given the utmost attention to this Case, but consulted the highest authority upon it.
The following are the Forms of the Writ of Error and Assignment in the foregoing Case:—

Writ of Error Coram Vobis in the Court of Exchequer, in an Action of Trespass brought by three of five Defendants, two having been acquitted.

George the Third, &c. To the Barons of our Exchequer of our Kingdom of Ireland Greeting. Because in the Record and Process, and also in giving Judgment of a Plea which was before you our said Barons of our Exchequer by Bill, between W. D. our Debtor, Plaintiff, and D. O'B., C. O'B., and D. O'B. the younger, A. G. and M. M. Defendants, in a Plea of Trespass, Assault, and Battery, as is said manifest Error hath intervened, to the great damage of them the said D. O'B. C. O'B., and D. O'B. the younger, as by their complaint we are informed; and we being willing that the said Error (if any there be) should be in due manner corrected, and that full and speedy Justice be done in the premises, Do command you the said Barons, that inspecting the Record and Proceedings aforesaid, which now remain before you as it is said (if Judgment be thereupon given), you further cause to be done therein for correcting the said Error what of right, and according to the Law and Custom of our Realm of Ireland ought to be done. Witness George Marquis of Buckingham, our Lieutenant General and General Governor of our said Kingdom of Ireland, at the King's Courts, the 28th day of January, in the 28th year of our reign.

Stoney, Attorney. Hewitt.

This was settled by Mr. Downes, afterwards Chief Justice of the King's Bench in Ireland.

Assignment of Error in Fact in the Exchequer, the Error being that one of several Defendants, who was an Infant, appeared and pleaded by Attorney.

O'Brien and Others against Dwyer, in Error.

And upon this, the said D. O'B. the elder, C. O'B., and D. O'B. the younger say, that in the Record and Proceedings
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aforesaid, and also in the giving of the Judgment aforesaid, there is manifest Error in this, to wit, that by the Record aforesaid, in the Court here now remaining, it appears, that the said D. O'B. the younger, one of the Defendants in the Plea aforesaid, appeared in the Plea aforesaid by his Attorney; and by the said Record it also appears, that in Hilary Term, in the 27th year of the reign of our Lord the now King, the said D. O'B. the younger pleaded to issue in the Plea aforesaid by his Attorney; nevertheless the said D. O'B. the younger, at the time when he the said D. the younger by his Attorney in form aforesaid pleaded, was under the age of 21 years, to wit, of the age of 20 years and 55 days, and no more, to wit, at the Parish and Ward of Saint Michael the Archangel, in the County of the City of Dublin aforesaid, in which Case the said D. the younger could not, by the Law of this Realm, constitute an Attorney to appear, defend, or plead for him at the Suit of the said W. D. in the Plea aforesaid, but the said D. the younger, ought to have appeared, pleaded, and defended in the same Plea by his Guardian, and not by his Attorney; and therefore in that there is manifest Error, and this they the said D. O'B. the elder, C. O'B., and D. O'B. the younger are ready to verify. Wherefore the same D. O'B. the elder, C. O'B., and D. O'B. the younger pray that the Judgment aforesaid may be reversed, annulled, and held as entirely void, and that they may be restored to all things which they have lost by reason of the said Judgment, and that the said W. D. to the Errors aforesaid may rejoin.—(Lil. Ent. 490.)

W. Downes.
ADDENDA TO TREATISE ON APPEALS.

It is said that in 1581, Appeals to the House of Lords from the Court of Chancery were first introduced, in which year there are Entries respecting them in the Journals. There is a long memorandum of a Cause between the Marquis of Winchester, his Lady, and a Mr. Oughtred, which at last was referred to a Committee of Lords, chosen by the parties themselves.—4 Parl. Hist. 235, 2 Madd. Chan. Prac. 573.

Sir William Blackstone, 3 Com. 57, observes, that upon Appeals to the House of Lords, their Lordships give directions to the Court below to rectify its own Decree; but notwithstanding the learned Judge's general accuracy, this is a mistake (though of little importance); for the Lords reverse or vary erroneous Decrees by their own Order. It is true they may, and do give directions to the inferior Court as to future Proceedings.

An Appeal lies from the decision of the Vice Chancellor of Lancaster to the Chancellor of the Duchy Court at Westminster.—5 Ves. 725, see 1 Vern. 442.

On the 23d of March, 1715, a Counsel was reprimanded on his knees by the House of Lords, for disobeying the Order of 3d March, 1697, made to prevent the bringing of frivolous Appeals.
ADDENDA TO TREATISE ON WRITS OF ERROR.

After a Judgment in favour of a Traverser, he may enter if he can, notwithstanding a Writ of Error be pending, for though the hands of the Court are tied by this Writ, the rights of the parties remain unaltered.—3 Salk. 145.

Before the Petition in Parliament in 21st Edward 3, the decisions of the Court of Exchequer were not subject to Revision out of the Exchequer itself, unless the Barons chose to adjourn the Plea into Parliament. And Writs of Error brought to obtain a Revocation of a Judgment for Error in Fact, or in the Process, must still be brought before the same Judges who pronounced the Judgment.—Hans. Ent. 139, Cro. Eliz. 261, 2, 2 Wms. Saund. 101, Manning's Excheq. 128, 9.

Writs of Error to reverse Judgments in the King's Remembrancer's Office for Errors in Law, are brought in the Court of Council Chamber, established by 31st Edward 3, Stat. 1, c. 12. Error does not lie from that Office to the Lords per saltum.—2 Salk. 511.

In some Cases a dependent Inquisition or other matter of Record is defeated ipso jure, by a reversal of the original Proceeding, without a Writ of Error; but a subsisting Judgment can not be impugned in an Action for a malicious prosecution.—Manning's Excheq. 129.

Although Cross Appeals are not uncommon, no such thing as a Cross Writ of Error, it is believed, was formerly known. In a modern Case in the Exchequer, where upon an extent there was a Special Verdict, and Judgment against the Crown as to some issues, and that the Defendant should go without
day as to the rest, the Crown brought a Writ of Error, and the
Defendant brought a Cross Writ of Error. Upon the first the
Judgment was affirmed; but it does not appear what became of
the other.—Hughes on Extents, 239, 244., Manning, 161.

RESTITUTION.

When a Judgment for the Crown is reversed, the Plaintiff in
Error is restored to the property claimed. So he is to Rents
received by the Sheriff, and not paid over; and if the Sheriff
have committed waste, he is liable to treble damages. But
money which has reached the King's hands can only be
recovered by Petition. And it is said a Crown Lease extended,
cannot be restored, as it was extinguished by the Judgment.—
Manning 130.

Where an Advowson is extended, and the King presents,
the Presentation is defeated, though the Judgment for the
Crown should, upon Traverse, be reversed.—ib.
PROCEDINGS ON

CLAIMS OF PEERAGE.

OF ENGLISH DIGNITIES.

BEFORE shewing the Practice in Proceedings on Claims of Peerage, it may be proper to say something of the Origin of the Dignities or Titles of our Nobility, and their different degrees.

The distinction of rank and honour, as Sir William Blackstone observes, is necessary in every well governed State, as a reward for eminent public services, as an incitement to laudable ambition, and an encouragement to generous emulation. A body of Nobility is also more peculiarly essential in our mixed Constitution, in order to support as well the rights of the Crown as those of the people, by forming a barrier to withstand the encroachments of either.—1 Bl. Com. 157, 8.

The King is the fountain of Political honour and dignity, and consequently the sole Creator of the Peerage; but after such creation, the Crown cannot revoke the grant, nor can the possessor be legally deprived of it but by Forfeiture, for an offence against the State.

The hereditary Nobility of this Kingdom consist of five Degrees; namely, Dukes, Marquisses, Earls, Viscounts, and Barons. Originally the Peerage, which from the Conquest to
the reign of King Edward 3, was composed of *Earls* and *Barons* only, was either wholly territorial, that is, attached to the possession of the Land, or territorial and official. But the notion of Territorial Dignity, or Titles by Tenure, has been long worn out, and a Patent or Creation of Peerage now imports a mere personal Dignity, without relation either to Estate or Office.—1 Bl. Com. 400, Dalrymple on Feudal Property, c. 8. The Earldom of Arundel, and a few other instances, have been supposed to be exceptions to the position that no Dignities by Tenure now exist, but the opinion in support of these Cases has been questioned. See the late Reports of the Lords' Committees, touching the Dignity of a Peer of the Realm, and Mr. Nicolas's useful work, entitled "A Synopsis of the Peerage of England."

Although *Dukes* and *Marquisses* rank before an *Earl*, yet *Earls* and *Barons* are by much the most ancient Titles in the Peerage; for until the time of Edward 3, as before mentioned, there were but two Titles of Nobility: viz. Earls and Barons. But the King can institute any new Title, and with what precedence he thinks fit; nor is His Majesty restricted as to the number he may create, though in the last century a Bill was brought into Parliament for this purpose, in consequence of the extraordinary number of twelve Peers having been created at one time, in the reign of Queen Anne, in order to serve a political purpose; but the Bill did not pass.

*Duke* (*Dux*) is the first Title of Dignity after the Royal Family. Among the Saxons the Latin name Duces (*Dukes*) signified, as it did with the Romans, the Leaders of their Armies. And according to Selden, the Title of Duke, as well as that of Marquiss, was originally synonymous with the Title of Earl. Edward the Black Prince is said to have been the first Duke of English creation, having been created Duke of Cornwall, 11th Edward 3 (1337). In the reign of Queen Elizabeth (1573) the whole Order became extinct, (Spel. Gloss. 191) and so continued until about fifty years afterwards, when King James 1 created George Villiers Duke of Buckingham.—1 Bl. Com. 397, Henry's Hist. of England, vol. 8, 135.
A Marquiss (Marchio) is the next Title in Dignity. The word is supposed to be derived from the German March or Marche. Marquisses were originally appointed to guard the Marches* or Frontiers of Wales and Scotland, and were called Lords Marchers; but the Title became an ensign of honour long before the office was abolished by the Act of 27th Henry 8, c. 7, Robert Vere, Earl of Oxford, having been created Marquis of Dublin 8th Richard, 2 (1385).—2 Inst. 5, 1 Bl. Com. 397.

An Earl (Comes) is by some said to be a Title so ancient, that its origin cannot be traced. Among the Saxons, Earls were called Ealdermen, quasi oldermen, signifying the same as Senior or Senator among the Romans. By the Danes they were called Earles, meaning the same thing. The Germans call them Graves, as Landgrave, Margrave, &c. In Latin they are called Comites, from being the King's Attendants. After the Conquest they were called Counts or Countees, whence the Shires which they then governed are still called Counties. But the name Earl is now become a mere Title, as Earls have nothing to do with the Government of the Counties, which has devolved on the Sheriff, the Earls' Deputy, or Vice Comes.—1 Bl. Dom. 397.

The Title of Viscount (from Vice Comes) is the most modern in our Peerage. The word at first denoted a Sheriff (Shire-revee), as Viscounts were originally the Deputies of the Earls or Comites (who were, as said above, the Governors of Shires or Counties); and though the Dignity had been long previously known in France, it was not introduced as a Title of honour in England till the time of Henry 6, who in the 18th year of his reign (1440) created John Beaumont Viscount Beaumont, which is said to have been the first instance of the kind.—2 Inst. 5, 1 Bl. Com. 398.

Baron (Baro) is the same as Thane among the Saxons (Cowell), and is the most general Title of Nobility; and formerly every Peer of superior rank held a Barony annexed to

* In Letters of Marque and Reprisal, the word Marque (Marche) is used, because they give power to pass the Marches or Boundaries of the Enemy. —2 Browne's Civil and Admiralty Law, 337.
his other Titles.—2 Inst. 5, 6. Barons are supposed to have been originally Lords of Manors, to which the name of Court Baron affords probability. It appears from King John's Magna Charta, c. 14, that all Lords of Manors, or Barons, holding in Capite or in Chief (i.e. holding immediately of the King) were entitled, and bound to attend the King's Court, and accordingly sat in the great Council or Parliament (as it was afterwards denominated) until the latter part of that King's reign, when they became so numerous that he was obliged to divide them, and summon only the greater Barons* in person, leaving the smaller ones, or a certain number of them, as Representatives of the whole Body, to be summoned by the Sheriffs, to wit, in another House, which is said to have given occasion to the separation of the two Houses of Parliament.—Gilb. Hist. Exch. C. 3, Seld. Tit. Hon. C. 2, 5, 21, 1 Bl. Com. 396, 9.

Thus the Title came to be confined to the greater Barons or Lords, who were summoned to Parliament by Writ, in respect of their Lands or Baronies, until the time of Richard 1, when Tenure begun to be disregarded, and persons who held no Lands of the King were summoned to Parliament by Writ. This continued to be the case till the 11th of Richard 2, when John De Beauchamp was created by Patent, Lord Beauchamp of Kidderminster.—1 Inst. Seld. Jan. Angl. 2, S. 66, 1 Bl. Com. 399, Mr. Christian's Note.

The Editor's late excellent friend, Mr. Cruise, in his luminous and very learned Treatise on Dignities, which should form part of the Library of every Lawyer and Man of Letters, and from which the Editor has derived much information, observes, that all the existing Titles of honour in England originated in the Feudal System, and were introduced here after the Norman Conquest.

Where Lands were granted by a Sovereign Prince to be held of himself by military or other honourable services, with a

* It does not appear, says Mr. Christian, to have ever been ascertained what constituted a greater Baron.—1 Bl. Com. 399, Note. But see Sullivan's Lectures, and Cruise on Dignities.
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Jurisdiction, or power to administer Justice, it conferred Nobility, and was termed a *feudum nobile*; and when to this was added a Title of honour, it was called a *feudum dignitatis*.

It appears that all feudal Dignities were annexed to Lands, and were transferable with them; so that if an Estate that had been erected into a Duchy or Marquisate, was sold with the consent of the superior Lord, the Purchaser acquired the Title with the Estate.

The Titles of *Barons* and *Counts* (Earls) were known from an early period in Normandy and other parts of the Continent. The word Baro (Baron) was originally synonymous with Homo. Hence the Kings of France, instead of *Hombres*, gave their vassals the appellation of *Barons*, and the body of Nobility that of *Baronage*.

*Count* was a well known Title in the Lower Empire, and was merely officiary. After the Germans settled in the southern parts of Europe, the Governors of Cities were called Counts; and when a Count became possessed of a City and the Territories annexed, as a Fief held of the Sovereign, with the usual Jurisdiction and privileges of administering Justice, his Estate was called a *Comte*, which gave him a superior rank to a Baron.

When the Normans settled here, the Conqueror conferred the Estates of those Saxon Thanes who fell at Hastings, on his principal followers, as Feuds, to be held of himself by Fealty, Homage, and Military Services. These were *Feuda nobilia*, and the Grantees became English Nobles.

It was a principle of the Feudal Polity, that the Lord should hold a Court for the administration of Justice to his Vassals, and for the Government of the *Seigneurie*, composed of himself and his Tenants in Chief, who were bound to attend and assist him. Accordingly the first Kings of the Norman Line held a Great Court in their Palaces at Christmas, Easter, and Whitsuntide, which was called the *Curia Regis*, where Coronations, Royal Marriages, &c. were celebrated, the Court for administering Justice by the King or his High Justiciar was held, and the affairs of the Revenue were managed; and there the Nobility
and Prelates assembled. Of this Court the Baronage made a considerable part. Besides these regular Meetings, if the King wanted to consult his Barons at any other time, they were specially summoned.

The feudal Sovereigns were only entitled to those services reserved on the Investiture of the Feud, and could not levy money, except the three feudal aids, 1. to make the Lord's (i.e. the King's) eldest Son a Knight. 2. To marry the Lord's eldest Daughter. 3. To ransom the Lord's person when taken Prisoner. Hence the practice of summoning them to the Lord's Court to procure their consent to any new measure, and particularly for levying a new Tax; which gave rise to those general Assemblies in the northern Kingdoms, called States General, and in England, Parliaments. Thus the great Council of each Nation, whether called a Parliament, a Diet, the Cortes, or States General, was composed of such Barons and dignified Ecclesiastics as held immediately of the Crown.

The *Curia Regis* was therefore the origin of the English Parliament, though in time the general Meetings of the Barons when summoned, acquired the names of the *Magnum Consilium*, and *Commune Consilium Regni*; and the appellation of *Curia Regis* was only given to the permanent Court, composed of the great Officers of State, which was held in the Royal Palace for administering Justice and managing the Revenue.

The Duty of attending the *Curia Regis* conferred a Dignity, and those who attended it were considered as a superior class, and called Peers, from *Pares*, which denoted, in the feudal Law, persons holding from the same Lord under the same Tenure; for in that system the Tenants of every Lord who met in his Court were called *Pares Curiae*.

Those who held Territories under the King were said to hold them *in Capite*, the King being *Caput Regni*, and they were called *Capitanci Regni*, or *Barones Regis*, and having all the Lands among them, excepting what the King reserved to himself, they were also termed *Pares Regni*; and as the King's Counsellors and Advisers, they were called also *Magnum Consilium Regni*. 
Accordingly, from William 1 to Henry 3, the Parliament consisted of not only the great Ecclesiastics and temporal Nobility, possessing Earldoms and Baronies, but also of those who held in Capite, by Knight's service. The persons who held Lands under the Conqueror, and who are mentioned in Domesday Book, did not exceed 700.

The German Nations settled all important matters in general Assemblies, a practice which was followed by their descendants, the Saxons; who, before the arrival of the Normans, had their Assemblies called Wittenagemotes, or Meetings of wise men; and as these Meetings existed long before the Feuds became general, which was not till the 10th Century, it has been inferred that they could not be derived from feudal principles. These Meetings ceased with the Saxon Dynasty, and were succeeded by feudal Parliaments or Councils, which by some writers have been styled the Court Baron of the Kingdom.

In the Reign of John a great alteration took place, for only the principal Barons, or Barones Majores, were summoned by particular Writs to attend Parliament, the rest, or Barones Minores, being convened by one General Summons from the Sheriffs, which practice was recognized by King John's Magna Charta (A. D. 1215). For several Baronies having been forfeited and granted out by the Crown, and many Barons having become decayed and unable to support their rank, the ancient Barons who retained their possessions, in order that their Dignity might not be diminished, procured a Law to be enacted prior to the Great Charter, that they only should in future be styled Barons, and the others, Tenants in Chief, or Knights, who, because their ancient name could not be wholly taken away, were called Barones Minores, while the former had the addition of Majores.
SEPARATION OF THE GREATER BARONS FROM THE SMALLER.

After this time the right of sitting in Parliament was confined to the Great Barons. But in the reign of Henry 3, a greater change took place; for instead of every Tenant in Capite being entitled to be summoned, either by Writ or by the Sheriff to Parliament, a new Law is supposed to have been made, directing that no person should come to Parliament without being particularly summoned by Writ. Hence the practice of summoning the minor Barons by the Sheriff ceased, as appears from the Great Charta of 9th Henry 3 (A. D. 1225), in which the Chapter relative to summoning the Tenants in Capite in John's Charter is omitted.

From this period the Dignity of a Baron of Parliament was limited to those summoned by the Crown, as appears from the Writ by which the King certifies a person to be a Peer. But the King had not the Prerogative of omitting to summon the Great Nobles to Parliament pursuant to Magna Charta; for Henry 3 having, in 1225, called a Parliament, to which several Peers had not been summoned, the Barons who attended, refused to answer the King's proposals for that reason.

It has been observed, that the oldest Orders of Nobility in England are those of Baron and Earl, though it appears that the Titles of Duke and Marquis were known on the Continent long before the Conquest. Lord Coke says, that anciently the Barons included all the Nobility of England, because all Noblemen were Barons, though they had a higher Title, and were comprehended under the name of the Council de Baronage. In consequence of sub-infeudation, the great Lords, particularly the Earls Palatine, called their immediate Tenants, Barons. Thus the Earls of Chester and Bishop of Durham had their Barons; the City of London and the Cinque Ports had their Barons.

None of the ancient Grants of Lands from William I and his Sons to their followers being in existence, no instance can be produced of the Crown's erecting an Earldom or Barony;
but that such was the early practice, and that those Dignities, with the right of Sitting in Parliament, continued to be annexed to feudal Lordships long after the Conquest, is admitted by our most eminent Antiquaries.

Origin of Manors.

Those Lordships were held of the Crown by Homage, Fealty, and Military, or other Honourable Services. The usual services reserved on the Grants were those of a certain number of Knights; and the Grantees, to enable them to perform their Services, parcelled out portions of the Lands by Sub-infeudation to their followers, to be held of themselves by Knight Service, reserving a Tract of Land round their Castles or Mansions for their own occupation, which were called Manors; in old French Manoir, à Manendo.

To every Grant of a Feudum Nobile was, as before mentioned, annexed a Jurisdiction civil and criminal, to be exercised by the Lord over his Tenants. And the Court in which it was administered was called Curia Baronis, the Court Baron. The persons to whom the Great Lords thus granted Lands were called Vavasores, (Vavasors) a word no longer heard. And those again granted out Lands to be held of them in Socage, and created inferior Manors, so that there were Vavasores Majores and Minores, the Baron or King's Tenant being the Lord Paramount.

For the first Century after the Conquest, every Lord of a Manor that was held of the Crown, was deemed a Baron, and his Manor a Barony, and he was a Member of the Curia Regis and the Magnum Consilium; but when the Barons were divided into Majores and Minores, it is supposed that those who possessed Maneria Capitalia were the Barones Majores, and those holding the inferior Manors the Barones Minores; and the Crown having ceased to summon them by particular Writs about the time of Henry 3, they lost the appellation of Baron, becoming mere Lords of Manors. They possessed Jurisdiction both civil and criminal; and Spelman thought that criminal
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Jurisdiction, which has long ceased, constituted the difference between the Barones Majores and Minores.

Every Barony had a capital Mansion, in which the Lord resided. This was often a Castle, which could not be erected without the King's Licence, and was called the Caput Baroniae; and where there was a Castle, the whole Manor was so called.

It is remarkable, that the nature of the Tenure by which Baronies were held has been but little understood. It has been investigated with much research by Mr. Cruise, who observes, that it did not consist in Knight Service alone, as all Manors were held by Knight Service in Capite, many of which were not Baronies; for though every Barony was a Tenure in Capite, yet every Tenure in Capite was not a Barony. Something more, therefore, than Knight Service must have been necessary to constitute a Barony: viz. the Reservation of particular Services of a superior kind, which are implied in the terms tenere per Baroniam. And Mr. Cruise concludes, that Barons held by Grand Serjeanty, which is explained to mean attending the King in his Court on the three great Festivals, and at other times, when summoned. This, it may be observed, somewhat differs from the definition of Grand Serjeanty, or Magnum Servitium, given by Blackstone, vol. 2, pa. 73. By this Service, Bishops and great Abbots held, and it was only by holding per Baroniam that they were obliged to attend Parliament, which in those days was sometimes considered a burthen. The Husbands of Women who held Baronies by Tenure, were also liable to perform the Services annexed to them, and were summoned to Parliament.

With respect to the number of Knight's Fees of which a Barony consisted, some opinions make it to consist of thirteen and a quarter; but as the more ancient Baronies were greater than those created after Henry 1, the Baronies of the Old Feoffment contained more Knight's Fees than those of the new. And in time, partly owing to alienations, and partly to negligence of the Constable and Marshal, a smaller number of Knight's Fees was accepted than was due. It is probable,
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says Mr. Cruise, that none of the ancient Baronies consisted originally of less than 20 Knight’s Fees; but there were instances of some held by the Service of 50 and 100 Knights.

As to the number of ancient Baronies it is said, that in the time of Henry 8, they were reckoned at 150; but this is supposed to apply only to the greater Barons.

OF DIGNITIES CALLED HONOURS.

In Normandy there were Fiefs called Honours, in imitation of which many Honours were created in England; and an Honour, it appears, was similar to a Great Barony. Mention is made in old Records of the Honours of De Tracey, and Bardestaple in Devonshire, of Warringford in Berkshire, of Clare in Suffolk, &c. And in the time of Henry 8 certain Manors belonging to the Crown were created Honours by Act of Parliament, such as Hampton Court, Ampthill and Grafton. Those Honours do not seem to have conferred any Privileges distinguishable from those of Barons, and they have long been disused.

OF PARLIAMENTARY DIGNITIES.

All Proprietors of Baronial Estates sat in the Magnum Consitutum till the Reign of Henry 3; but after that time all Tenants per Baroniam were not Parliamentary Barons, those only being so who were summoned; and Lord Coke says, “If the King grant Land to one and his heirs, to hold of the King per Servitium Baroniae, he is no Lord of Parliament till called thither by Writ. But there were some Estates to which was annexed the Dignity of Baron, with the right to be summoned to Parliament. Such was the Manor or Barony of Kingston Lisle in Berkshire, as appears from Letters Patent, made with the assent of Parliament, 22d Henry 6. The Castle and Honour of Berkeley, and the Barony of Abergavenny, have also been generally considered of the same description, as likewise the Earldom of Arundel.
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After the Conquest, the Bishops and Abbots, who previously held their Lands free from secular Services, were charged with Military Service, and in consequence became Tenants in Capite per Baroniam, and were bound to attend the Curia Regis, then a burthensome service. The Bishop of Sodor and Man is the only one who does not sit in Parliament; the reason assigned for which is, that he holds of the Lord of Man, and not of the King. But unless an Abbot or Prior held his possessions per Baroniam, he could not regularly be summoned to, nor had he a Voice in Parliament. This Doctrine was established in the Cases of the Abbot of St. James, Northampton, in the time of Edward 2, and of the Abbot of Leicester in that of Edward 3.

Hence it is said, that the right of Bishops to sit in Parliament is not derived from their Ecclesiastical Dignities, but from Tenure; and they are not styled Peers, but Lords of Parliament. Yet this should seem to be a reason why they ought to be styled Peers of the Realm.

The Dignity of Earl, which has been shortly spoken of already, was originally of three kinds. The first was where the Earldom was annexed to the possession of a whole County, with Jura Regalia, by which the County became Palatine, and the Earl, having Royal Jurisdiction, had all the like high Courts and Officers of Justice as the King, with all other Royalties. In short, it was a feudal Kingdom in itself; but held of a superior Lord. And thus was the County of Chester granted by William 1 to Hugh D’Arranche, who created eight Barons. The County of Pembroke was another ancient County Palatine, and was granted to Lord Hastings by Edward 3. And the Bishops of Durham since the Conquest had Jura Regalia within that County; but the criminal Jurisdiction of the Earls Palatine was restrained by Stat. 27th Henry 8, c. 24.

The second kind of Earldom was where a person was created Earl of a County, without granting him Seisin of the County itself, or any of the Franchises of an Earl Palatine, but only one third of the profits arising from Pleas of the County Court.
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The third sort of Earldom was created by Grant of a Tract of Land to a person *per Servitium Unius Comitatus*; and where an Earldom consisted of a particular Tract of Land, it was like a Barony or feudal Lordship, and held of the Crown *in Capite*.

These Earldoms had always Jurisdiction civil and criminal annexed to them: and Earldoms and Baronies were subject to what is called *Relief*, viz. contribution of Arms or Horses, or an equivalent in Money.

The possessions of both Earls and Barons were often called Honours, as the Earldom of Richmond is still called the Honour of Richmond, and the Earldom of Arundel was called the Honour of Arundel. Possession of an Earldom formerly conferred a right to be summoned to Parliament as an Earl, which has long ceased to be the case, though the particular time when, is uncertain. But the Honour of Arundel retained that Quality as late as the reign of Charles 1, when a private Act of Parliament was obtained for annexing the Castle and Honour of Arundel to the Title and name of the Earl of Arundel, and for entailing the same.

The Dignity of Duke was originally annexed to the possession of Lands; for when Edward 3 created the Black Prince Duke of Cornwall, he granted him by Charter (inter alia) several Manors and Franchises in Cornwall, which were erected into a Duchy.

Edward 3 also created Henry Earl of Lancaster, Duke of Lancaster for Life, in Parliament; and the County of Lancaster, similar to that of Chester, was given to him as his Duchy. And on his death, King Edward 3 conferred the Duchy on his Son John, for Life, with Royal Jurisdiction. These are the only Dukedoms by Tenure which were created in England, and both still exist; the latter in the hands of the Crown, and that of Cornwall in the Prince of Wales, when there is one, it being so settled as to vest in the King's eldest Son for the time being, who becomes Duke of Cornwall without any creation.
The following Extracts, taken from a very able and learned Work, nearly agree with what has been stated by Mr. Cruise:

Lords of Parliament are commonly called Peers, though that word properly signifies Co-vassals to the same Lord, every Vassal of a Baron being a Peer of that Barony. The accurate description of those great personages (Lords) is Pares Regni. Of these there were anciently two ranks only, Earls and Barons.

The word Baron, of itself originally did not, more than Peer, signify an immediate Vassal to the King; for Earls Palatine had their Barons, that is, their immediate Tenants. And in old Records, the Citizens of London are styled Barons, and so are the Representatives of the Cinque Ports* called to this day. Baron, therefore, at first signified only the immediate Tenant of that superior whose Baron he is said to be; but by length of time it became restrained to those who, properly and exactly speaking, were Barones Regis et Regni, and even not to all of these, but to such only as had Manors and Courts therein. For though, by the principles of the feudal Constitution, every immediate Military Tenant of the Crown, however small his holding, was obliged to assist the King with his advice, and entitled likewise to give or refuse his assent to any new Law or Subsidy, that is, to attend in Parliament, this attendance was too heavy and burthensome upon such as had only one or two Knight's Fees, and could not be rendered without their ruin. Hence arose the omission of issuing Writs to such, which being for their ease, they acquiesced in, attendance in Parliament being considered at that time as a burthen. Thus they lost that right they were entitled to by the nature of their Tenure, until the method was found out of admitting them by Representation. Hence arose the distinction between Tenants by Barony, and Tenants by Knight Service in Capite of the King. The former were such Military Tenants of the King as had Estates so considerable as qualified them, without inconvenience, to attend in Parliament, and who were therefore

* So likewise are the Judges of the Court of Exchequer, who were Barons and Peers of Parliament.—3 Bl. Com. 44.
entitled to be summoned. The quantum of this Estate was regularly thirteen Knight's Fees and one third, as that of a Count or Earl was twenty; that is, as a Knight's Fee was then reckoned at £20. per annum, the Baron's revenue was 400 merks or £266. 13s. 4d. And the Earl's £400, answering in value of money at present to about £2600. and £4000. yearly.*

Such was the nature of all the Baronies of England for about 200 years after the Conquest; and they are called Baronies by Tenure, because the Dignity and Privileges were annexed to the Lands they held; and if these were alienated with the consent of the King (for without that they could not), the Barony went over to the Allienee. The manner of creating these Barons was by investiture, that is, by arraying them with a Robe of State and a Cap of Honour, and girding on a Sword, as the symbols of their Dignity. Of these, Matthew Paris tells us, there were 250 (some copies have 160) in the time of Henry 3, and while they stood purely on this footing, it was not in the King's power to increase the number of the Baronies, though of Barons perhaps he might. For as William the Conqueror was obliged to gratify several of his great Officers, according to the number of men they brought, with two or more Baronies, whenever these fell into the hands of the Crown by escheat, either for want of heirs or by forfeiture, it was in the King's power, and was his interest to divide them into separate hands. The same thing likewise happened, when, by an intermarriage with an Heiress, more Baronies than one came into the hands of a Nobleman, and escheated to the Crown.

But the number of these feudal Baronies could not, strictly or properly speaking, be increased by the King; for they could be created only out of Lands, and there were no Lands vacant out of which to create new ones, for the King's demesnes were in those days unalienable. However, we find at the end of Henry 3d's reign, and even in John's, that the number of Baronies was actually increased, and a distinction made

* This having been written above half a Century ago, the sums here mentioned would now be equivalent to much greater amount.
between the *Barones Maiores* and *Minores*. The *Maiores* were those who stood upon the old footing of William, and had Lands sufficient in Law, namely, the number of Knight's Fees requisite. The *Minores* were such as held by part of a Barony, as when an old Barony descended to, and was divided among Sisters, in which case, the husband of the sister whom the King pleased to name, was the Baron of Parliament; or else were newly carved out of the old Baronies that had fallen in by escheat, as supposing the King had granted six Knight's Fees of an old Barony to one, to hold with all the burthens, and to do the service of an entire Barony, and the remaining seven and one third to another, on the same terms. But the attendance of these minor Barons also at length became too burthensome for their circumstances, and many of them were glad to be excused. The Kings took then the power of passing by such as they thought unable, by not sending them Writs of Summons; and John extended his Prerogative even to omit summoning such of the *Maiores* as he imagined were inclined to oppose him. This, however, at length he was obliged to give up; for in his *Magna Charta* it is said, *ad habendum commune consilium regni faciemus summoneris Archiepiscopos, Episcopos, abbates, commites et maiores barones regni sigillatim, per literas nostras.*

The *Barones Maiores* were then fully and plainly distinguished from the *Minores*, and I think it will not be doubted they were such as had the full complement of Knight's Fees that made up an ancient Barony; and accordingly, we find in 1255, when Henry 3 had neglected summoning some of these, the others refused to enter on any business, *quia omnes tunc temporis, non fuerunt, juxta tenorem Magnae Chartae sue, vocati, et ideo sine paribus suis, tunc absentibus, nullum voluerunt tunc responsum dare, vel auxilium concedere vel prestarum.* No King since ever omitted to summon all the greater Nobility, until Charles 1 was prevailed upon to forbid the sending a Writ to the Earl of Bristol, by Buckingham, who was afraid of being accused by that Nobleman; but on the application of the House of Lords, and their adjourning themselves from day to day, and
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doing no business, the Writ at last was issued.—Sullivan's Lect. 187 to 190.

From the Conquest, according to Selden, observes Professor Christian, the latter end of the Reign of King John, all who held Lands of the King had a right to be summoned to Parliament; and this right being then confined to the King's Tenants, all Peers of Parliament, during that period, sat by Tenure and Writ of Summons. From the end of King John's reign to the 11th of Richard 2, a very important distinction was introduced, which eventually produced the Lower House of Parliament; viz. a division of those Tenants into greater and less Barons.—See Bl. Mag. Cart. John. pa. 114. Mr. Christian here remarks, that it has not been ascertained what constituted a greater Baron,* and supposes it was left to the King's discretion to determine. In this second period Tenure began to be disregarded. Persons were summoned who had no Lands; and about the 11th of Richard 2 creations by Patent began, from which time Peerages have been created both by Writ and Patent, without any regard to Tenure or Estate.—1 Bl. Com. 399, Note.

So inseparable (says Mr. Watkins) was the Dignity from the Territory in these Cases, that whenever there was a transfer of the latter, the former was also transferred. As those Territories indeed, which were held per Baroniam, were of consequence held immediately of the King, his consent was indispensable to the alienation (See Madox's Baronia Angl. b. 1, c. 1, pa. 23, and Collins on Baronies 113, Sull. Lect. xx. pa. 188). An instance of such a transfer is given us by Lord Kaimes, (Brit. Antiq. Ess. iii. pa. 79, &c.), which occurred in Scotland in the fourteenth Century. Thomas Fleming, Earl of Wigtoun, granted that Earldom by his Charter to Archibald of Douglas, Knight, of Galloway. After the alienation (which was confirmed by King Robert), the Grantor was no more considered as an Earl, nor did he assume the Title; but the Grantee took upon himself the style of the Earl of Wigtoun. The circumstance of the Honour following the Lands is ludic-

* But see Sull. Lect. ante.
rously adverted to in an old Ballad given us by Percy (Reliques of Ancient Eng. Poetry, vol. 2, pa. 128), intitled the Heir of Linne. At this day, however, it should seem that a Peerage cannot be transferred (unless we consider the summoning of the eldest Son of a Peer by Writ, as a transfer of one of his Father’s Baronies.—See West on Peers, 49, &c.) without the concurrence of Parliament, at least in those Cases where the Noble Personage has no other Barony to remain in himself, as otherwise on the transfer he would himself be deprived of his Peerage, and be made ignoble by his own Act. The Earldom of Arundel is now settled by Act of Parliament in the Norfolk Family; and even if it were not, it might be questioned whether, under the supposition of no remaining Barony, such a one could now be otherwise conveyed, as it has been long settled that the whole nation is interested in each individual Peer, and that a Peer cannot be deprived of his Peerage but by Act of Parliament.—See Show P. C. 1, &c. Visc. Purbec’s Case, 12 Co. 108, 1 Bl. Com. 402, Mad. Baron Angl. b. 1, c. 1, pa. 25, Gilb. Tenures by Watkins, Note 11, pa. 360.

But according to a modern Author of great historical research, Territorial were not necessity Parliamentary Barons; and a hereditary right to a Writ of Summons was not always admitted by the Sovereign; for Edw. 1 summoned those of ancient Families to his Parliaments that were most wise, “but he omitted their sons after their death, if they were not answerable to their parents in understanding.”—Extracts from M. S. relative to English Hist., by the Rev. T. D. Fosbroke, in the Transactions of the Royal Society of Literature, vol. 1, part ii.

OF THE MODES OF CREATING DIGNITIES.

It appears that Dignities were originally created by Charter, containing a Grant of the Estate to which the Title was annexed; though many of the Charters have been lost. Dignities, merely personal, were also anciently conferred by Charter, as in the case of Lionel Duke of Clarence, and Edmund Earl of Cambridge, Sons of Edward 3. And Sir John Holland,
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brother of Richard 2, created by Charter, Earl of Huntingdon, and others. In those ancient Charters, there was generally a Clause of Investiture per Cincturam gladii. Accordingly it is related, that the King himself in full Parliament girded his Son John with a Sword, and set on his head a Cap of Fur, and a Circlet of Pearls and Gold, and delivered him his Charter or Patent of creation; and in like manner girded his Son Edmund with a Sword, &c. The Countess of Norfolk was at this time created a Duchess for Life.

Another mode of creating Dignities was by Writ of Summons. When the King wished to convene a Magnum Consilium, he required the attendance of his Nobles, by Writs addressed to each of them, which were sent only to the Barones Majores. This method is said to have been first used by Henry 3; and subsequently, when there was a deficiency of the ancient Nobility, many of whom were slain and ruined in the Baron’s Wars, the King summoned several persons not possessed of Baronies, who thereby became Barons and Peers of Parliament. Thus there came to be Barons by Writ and Tenure, and Barons by Writ only. Those Writs are of that description, called Writs close, Brevia clausa, because they were closed up and sealed. They passed under the Great Seal like many common Writs (but without receiving any visible impression), and are worded differently, according to the quality of the Lord to whom they are addressed. But a Writ of Summons does not confer a Dignity until the person summoned takes his Seat; for it has been determined, that if he died before he sat in Parliament he could not be a Peer. It is said a person summoned may take his Seat by Proxy.

Writs of Summons imply, that the person summoned is to be a Baron.

Although the Writs of Summons do not contain any words of Inheritance, yet when the person has taken his Seat he acquires the Dignity for himself, and his lineal descendants, male and female. This Doctrine was denied by Prynne and some others; and it certainly appears, that formerly something more than summoning was requisite to give a descen-
dible Title, such as Investiture with Robes, &c. But the point
was fully settled in the Case of the Barony of Clifton, in 1673,
and in that of the Barony of Willoughby de Broke, in 1694.

It has been an ancient practice to call up the eldest Sons of
Peers to the House, by Writs of Summons, by the Title of
a Barony vested in their fathers, in which cases they have
taken their places according to the antiquity of the Barony;
but this is said to be merely of courtesy, the real Honour being
still in the father; so that if the son were to commit Treason, no
Forfeiture would accrue to the issue not attainted. The first
person so summoned was the Son of the Earl of Arundel, 22d
Edward 4. The sons of Barons have been rarely thus called
up, there having been but two instances; one by James 1, and
the other by Charles 2.

It is presumed the Crown has the power of creating by Writ
higher Dignities than that of Baron, but it has been very rarely
done. There seems to have been but one instance of creating
an Earl by Writ, viz. Lord Dudley, eldest Son of the Duke of
Northumberland, 7th Edward 6, by the .Title of Earl of
Warwick.

In the time of Richard 2, it became a Practice to create
Dignities by Letters Patent, which are in effect Charters; the
first instance of which was the creation of Lord Beauchamp,
Baron of Kidderminster, 11th Richard 2, A.D. 1368, as before
mentioned, but he never sat. Afterwards creations by Patent
were often by consent of Parliament; whence some have con-
tended that such consent was necessary, but this has been long
overruled, the King being the sole Fountain of Honour.

Formerly, Patents of Peerage contained a Clause of Invest-
titure, but this is dispensed with in modern Patents by express
words.

Peers, then, we see, were created either by Writ of Summons,
Charter, or Patent, for those who claim by Prescription must sup-
pose one or the other made to their Ancestors, though now lost
by length of time. As the Writ of Summons, though the more
ancient, does not ennoble a man unless he actually takes his
Seat, the safest and most usual way is to grant the Dignity by
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Patent, which is complete as soon as the Great Seal is affixed to it, and by which may be conferred any degree of the Peerage, which will enure to a man and his heirs according to the limitation, though he should never sit.—1 Bl. Com. 400. But the Creation by Writ has this advantage over a Patent, that it gives an Estate in tail general, without any words to that effect; whereas a Patent must contain words to direct the Inheritance, otherwise the dignity will be only for Life.—id. 401. The limitation by Patent is generally to the Heirs male, but to this there are Exceptions.

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PEERAGES CONSIDERED AS REAL PROPERTY AND DESCENDABLE TO HEIRS.

Dignities, though now personal Honours, are considered as real, incorporeal, property, and formerly must have been created of a certain place, so as to become an Hereditament; but this is no longer necessary; many Titles being conferred by the proper name, as Marquiss Townshend, Earl Poulett, Viscount Courtenay, Lord Petre, &c. A Dignity is only inheritable by the lineal heirs or descendants of the person first ennobled, in which respect it differs from landed property held in the simple.

The King may create a person Noble for life, as was done by Richard 2, in the Case of Robert de Vere, Marquiss of Dublin, and many others; but a Peerage cannot be granted for years, as it might go to Executors or Administrators.

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OF TITLES BY CURTESY.*

The Husband of a Peeress was formerly bound to attend Parliament during the Wife's life; and when they had issue he was Tenant by the Curtesy of the Title for his life. But Henry 8 resolved, that for the future no person should use the Wife's Title, except such as were Tenants by the Curtesy of her possessions. This claim by Curtesy to a Dignity has since also been altogether discontinued, none appearing to have been allowed since Lord Coke's time. The question does not indeed appear to have received a direct Judgment; but there

* For the derivation of this Word, see 2 Bl. Com. 126, and Note 4.—2 Woodd, 18.
have been instances of persons sitting in Parliament as Heirs to their Mother's Dignities, in their Father's life time, whence it is to be inferred, that the Father had no right by the Curtesy.

OF ALIENATING AND SURRENDERING DIGNITIES.

Dignities by Tenure were formerly alienable with the consent of the Crown. But the power of Alienation ceased before the time of Henry 6; and it was declared by the House of Lords in the Case of the Barony of Grey of Ruthen, that no person, having an Honour as a Peer, can alien or transfer it.

Formerly also a Dignity might have been surrendered to the King; and this was done as late as the time of Charles 1, in the Case of the Barony of Stafford. But such Surrenders have since been declared void. Nor is a Barony created by Writ, extinguished by the acceptance of a new Barony by Writ, though of the same name.

Neither does the Grant of an Earldom to a person having a Barony by Writ (which is descendible to Heirs general), so attract the Barony as to unite the Descent of both, or prevent the former from going to the Heirs general. So that there are many instances of the Barony having descended in a different course from the Earldom, instead of merging in it.

OF FORFEITING DIGNITIES.

Dignities, whether held in fee, in tail, or for life, may be forfeited for High Treason, both by the Common Law and the Statute of 26th Henry 8, c. 13. But if a Dignity is granted to a person in Tail male, with remainder in Tail male to another, though the Dignity is forfeited by Attainer of High Treason as to the Grantee and his issue male, upon failure of issue male of him, the Dignity vests in the Remainder man, or his male descendant. And where the Issue are born abroad, and incapable of inheriting, this is considered as dying without Issue.

A dignity created by Writ, descendible to Heirs general, is also forfeited by Attainer for Felony of the possessor. But an entailed Peerage is not forfeited by Felony, except during
the life of the person attained. The Attainder of the Heir Apparent of a Dignity created by Writ destroys it, as no Title can be derived through him, and it becomes vested in the Crown and merged; as when the eldest son of a person, possessed of a Barony by Writ, was attainted of high Treason, and died in the life-time of his Father, leaving issue, the Barony became extinct. But in the Case of the Duke of Atholl, it was held that the Attainder of the Father or other Ancestor, lineal or collateral, who was never possessed of a Dignity, will not prevent the Descent to the Issue; and accordingly Mr. Murray, whose Father was attainted of High Treason, and died in the life time of his Brother, James Duke of Atholl, Duke James having died without male Issue, Mr. Murray, his Nephew, claimed and was allowed the Dukedom.

But where an attainted person, who would otherwise be entitled to a Peerage, survived the Ancestor in whom the Title was vested at the time of the Attainder, it was held that the Dignity was lost, and would not descend to the Issue. And in all Cases when a person has been attainted of Treason or Felony, the corruption of Blood can only be removed by Act of Parliament.

By the Statute of 54th George 3, c. 145, Corruption of Blood only extends to Treason, Petit Treason, and Murder.

OF LOSING DIGNITIES BY POVERTY.

Formerly, Dignities might be lost by Poverty; for Nobility having been originally annexed to Land, no person could be a Noble who had not sufficient Estate to support the Title, which Estate he could not dispose of but by consent of the Crown. This has been assigned as a reason why a Peer could not be Arrested for Debt, it being presumed he had sufficient Lands on which to distrain. Therefore if a Nobleman had not an Estate to support his rank, he was not entitled to be summoned to Parliament. And there have been instances in which Peers asked for, and obtained dispensations from attending Parliament: but Sir Edw. Coke held them to be illegal.—4 Inst. 49.
Lord Say and Sele having mortgaged his Estate, the Barony became extinct. In the 17th Year of Edward 4, an Act passed to make void the Dignity of George Neville, Duke of Bedford, for want of an inheritance or livelihood to support it. This is the only instance of the kind. Afterwards, in Lord Shrewsbury’s Case, the Judges declared that a Title could not be taken away without an Act of Parliament.

OF NON-CLAIM, ADVERSE POSSESSION, AND ABEYANCE.

The Statute of Limitations does not apply to Dignities, which can not be lost by negligence, any more than they can be aliened, surrendered, or extinguished, by the possessors of them. The Barony of Fitzwalter was allowed in 1669, after having been dormant 400 years. And an adverse possession for 80 years has been held no Bar against the real Owner of a Title, as in the Case of Lord Willoughby of Barham.

Where a Title has been in Abeyance, which is the Case when it devolves on females, the Crown has the Prerogative of determining it by naming one of the Co-heirs to it; but the Crown cannot grant it to a Stranger.

For much of what is contained in several of the preceding pages, authorities will be found in Cruise on Dignities.

INCIDENTAL AND MISCELLANEOUS REMARKS.

A woman who is married to a Peer becomes entitled to the same Dignity and Privileges of exemption from Arrest, &c. as her husband; and if accused of Treason or Felony is tried by the Peers. But if not Noble by birth, she loses her Dignity by marrying a Commoner; otherwise if Noble by birth or descent. If a woman, Noble by marriage, elopes from her husband, it has been said, she loses her Dignity; but this wants confirmation.

It is in the King’s power to confer Nobility on a Denizen. But there have been contradictory decisions of the House of Lords as to the right of the Crown to create Scotch Nobility Peers of Great Britain, so as to enable them to sit in Parliament. But it has at length been solemnly decided, that this can be done, as will be shown.
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With respect to the Age at which Peers may take their Seats, it is now settled that Minors, viz., such as are under twenty-one years, cannot sit in the House of Lords, any more than Members can in the House of Commons under that Age, though it is certain that formerly, notwithstanding the Opinion of Lord Coke, with whom agrees Sir William Blackstone (vol. 1, p. 162), many persons sat in both Houses who were under Age. Among others, the Poet Waller sat in the Commons when he was sixteen. And Lord Harrington, Son of the Duke of Albemarle, took part in the Debates in that House when he was only fourteen Years of Age. Indeed it is said that one time in the Reign of Ja. 1, there were above forty Gentlemen under twenty years old in the Commons.—Hatsell's Prec. vol. 2, p. 10.

In 1667, Lord Mulgrave was summoned to the House of Lords at the age of eighteen, which occasioned a Remonstrance from that House to the King. And their Lordships soon after referred it to the Judges to answer, whether a Minor could sit as a Judge in any Court of Justice and give Judgment? to which the Judges gave it as their unanimous Opinion, that in the ordinary Courts of Justice a Minor could not sit as a Judge.—Ibid.

In 1685, the Lords ordered that no Lord under the Age of twenty-one should be permitted to sit in the House, which is made a standing Order, and it is only by Virtue of this Order that Minors are now prevented from sitting as English Peers in the House of Lords. By the Act of Union with Scotland (5 Anne, c. 8, art. 25), the sixteen Peers to represent Scotland must be twenty-one; and by the Irish Act of Union (39 and 40 Geo. 3, c. 67), there is a similar Enactment as to the Irish Representative Peers. As to the Commons, by the 7 and 8 W. 3, c. 25, the Election of any person under twenty-one years is declared void.

Of Aliens.—By 12th and 13th William 3, c. 2, after the Limitation therein mentioned, viz. the death of King William and the Princess, afterwards Queen Anne, without issue, it was enacted, "that no person born out of the Kingdom of England,
Scotland, or Ireland, or the Dominions thereto belonging (though naturalized), except those born of English parents, should be capable to be of the Privy Council, or a Member of either House of Parliament." The evident intention of this Act, the words of which are here exactly copied, was to exclude persons then, or thereafter to be born Aliens.

We are not aware that it has ever been determined, or that occasion has occurred to consider,—

1. Whether the Heir of an English Peer, who did no act to forfeit his Title, such Heir, and his Father and Grandfather, having been out of the Realm, would be deemed of English parents?

2. Whether, as the Act does not expressly disable the Crown from ennobling a Foreigner, if an Alien were to be created a Peer by Patent, his Heir, if born in England, could sit as a Peer?

General De Ginkell, a Dutchman, was created an Irish Peer (Earl of Athlone) by his Countryman, King William, before the Statute; and though we believe his Descendants have all been born, and lived abroad, the Title is continued in the Peerage List; but we do not know that any of them sat in the Irish House of Lords. Yet it is conceived they might have done so, as well because the Statute of William was passed after the Creation of the Title, as because that Act, it is believed, was never adopted by the Irish Parliament.

Some doubt has been entertained whether a person can refuse or decline a Dignity from the Crown. But Lord Coke thought he could not, being bound to serve the King for the public good. It was formerly supposed that an Infant, when of age, might refuse an Honour granted during his Infancy. But it appears, that by the Law of Scotland a person could not, on coming of age, decline or waive a Peerage granted during his Minority. This does not, however, conclude the question as to an English Peerage.

It is said that Earls and Barons were first styled Peers in the 14th of Edw. 2 (A. D. 1321).—Nicolas's Synopsis, lxxi.

No one is accounted a Peer of the Realm unless he be a
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Lord of Parliament.—9 Co. 117. All Dukes, Marquisses, &c. of other Nations are called Armigeri, if they be not Knights, and if Knights they are termed Mitles.—1 Inst. 16. 2 Inst. 667.

The Title of Dominus in the Writ of Summons to the Lords was anciently very rare, it being directed thus,—To William De Grey, Chevaler; and this was so in Common Law Writs, for the King did not write to any of his Subjects by the name of Lord. But in the time of Hen. 6 this was often altered.—Hale's Jurisd. 13.

A Duke is styled His Grace, and Most Noble, as the Most Noble Charles Duke of, &c.; and in Commissions and Public Instruments the King calls him, “Our right trusty and right entirely beloved Cousin;” and if of the Privy Council, the words “and Counsellor” are added. A Marquiss is styled His Lordship, and Most Honourable, and by the King, “Our right trusty and entirely beloved Cousin;” an Earl, “Our right trusty and right well beloved Cousin;” a Viscount, “Our right trusty and well beloved Cousin;” and a Baron, “Our right trusty and well beloved;” and each of the three latter is styled His Lordship and Right Honourable.

The Privileges of Peers have been pretty fully noticed in the Introduction to this Treatise.

OF THE PEERAGE OF SCOTLAND.

The Scottish Peerage, which originated under the Kings of Scotland, consists of the same titles or degrees as the English Peerage, and some of them are extremely ancient. The Earldom of Sutherland (1228) is the oldest Earldom in the United Kingdom: and though in the present Scots Peerage there are no Dukes whose Creation was prior to about the time of the Union of the Crowns, yet the Title was known in Scotland long before that period; for in the Scottish Acts may be found the following:—


The Titles of Marquess and Viscount in Scotland, are of comparatively modern date, having been created since the Union of the two Crowns, with the exceptions of the Marquisates of Huntley and Hamilton, both conferred in 1599, three or four years before James succeeded to the English Throne.

"Much," says a very well informed Gentleman,* in a Letter to the Author, "has been written on the subject of the Peerage of Scotland, but all conjectural. There is reason to think that all Dignities in Scotland were territorial anciently, and it was not till the Sixteenth Century that the Honours were conferred by Patent, independent of Territory; though to the last it was customary, when the King granted an Honour by Patent, at the same time to erect the estate of the person ennobled into a Barony or Earldom. And it appears from researches I made some years ago, that till a late period, a Patent alone was not deemed sufficient to vest the Dignity, unless the person dignified underwent the Ceremony called belting, by the Sovereign, or per Cincturum Gladii, as it was termed in England. Latterly the Patent contained a Dispensation with that Ceremony, and I have a notion it is the same in this Country at the present day."

From the Return made by the Lords of Session to the House of Lords in 1739, on the state of the Scots Peerage, it appears that prior to the time of James 6 (the 1st of England) Titles were created by erecting Lands into Earldoms and Lordships.

—Cruise, 22.

The Creation of Peers of Scotland ended with the Union, and no power having been reserved for creating new ones, the termination was a necessary consequence of that event; for there was no longer such a separate Kingdom, it being merged in that of Great Britain; and the Great Seal of Scotland was broken. It was for a long time even held that the King could not, after the Union, confer a British Peerage on a Scotch Peer. By the Articles of Union with Scotland, ratified by Stat. 5 Anne, c. 8 (which commenced the 1st of May, 1707) it is provided that Sixteen Peers should be chosen to represent the Scots Peerage in the House of Lords; and all

* James Chalmer, Esq. of Abingdon Street.
Peers of Scotland are to be Peers of Great Britain, and take rank next after those of the same Degree at that date, and before all Peers of the same rank created afterwards; and have all privileges of Peers, except those of sitting in the House, and the rights, depending thereon; and particularly the right of sitting on the Trial of a Peer. And by the Act of 6 Anne, c. 23, the Sixteen Peers are to be chosen at every new Parliament. In this respect the Union with Scotland differs from that with Ireland.

After the Union with Scotland, the following Orders were made by the House of Lords, respecting the Peerage of Scotland:—

Queen Anne, in the 7th year of her Reign, having created the Duke of Queensberry Duke of Dover, with remainder in tail to his second son, then Earl of Solway in Scotland, it was on the 21st of January, 1708-9, resolved by the Lords, "that a Peer of Scotland, claiming to sit in the House of Peers under a Patent passed under the Great Seal of Great Britain, and who now sits in the Parliament of Great Britain, has no right to vote in the Election of the Sixteen Peers who are to represent the Peers of Scotland."

The Duke of Hamilton having been created Duke of Brandon, it was resolved by the Lords on the 20th of Dec. 1711, "that no Patent of Honour granted to any Peer of Great Britain who was a Peer of Scotland at the time of the Union, should entitle him to sit in Parliament."

After the Duke of Dover died, the Earl of Solway petitioned the King for a Writ of Summons, as Duke of Dover, and the question having been argued on the 16th of Dec. 1719, the Claim was disallowed.—1 P. Wms. 582. These Decisions it must be allowed tended to abridge the royal prerogative. But in 1782, the Duke of Hamilton claimed to take his Seat as Duke of Brandon, and the question having been referred to the Judges, they were unanimously of Opinion that the Peers of Scotland are not disabled from receiving a Patent of Peerage of Great Britain, with all its privileges; upon which the Duke of Brandon's Claim was allowed, and he took his Seat as a British Peer.
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On the 13th of February, 1787, it was resolved, "that the Earl of Abercorn and the Duke of Queensberry, who had been chosen two of the sixteen Peers of Scotland, having been created Peers of Great Britain, thereby ceased to sit as Representatives of the Peerage." At the Election occasioned by this Resolution, the Dukes of Queensberry and Gordon gave their Votes as Scotch Peers, contrary to the Resolution of 1709, upon which the House resolved, 18th May, 1787, that a Copy of that Resolution should be transmitted to the Lord Register of Scotland, as a Guide for his Proceeding at future Elections.

At the following general Election, the Duke of Queensberry and the Marquis of Abercorn tendered their Votes, which were rejected; but on the 23d of May, 1793, it was resolved by the House, that they ought to have been counted.—See 1 Bl. Com. 97, note by the Editor.

With respect to the Election of Scots Representative Peers, if a Vote is given by a person who is conceived to have no Title, his Vote may be objected to by a Petition to the House of Lords, who refer it to the Committee of Privileges. Of this there are many instances in the Journals of 1791 and 1792. In such a Case it becomes a matter of necessity for the House to decide on the Claim, in order to determine the validity of the Election.

OF THE IRISH PEERAGE.

In Ireland, prior to its partial Subjection to England under Hen. 2, there were no hereditary Titles analogous to those of England. The principal Distinctions of persons were, 1, The Princes or Chieftains, among whom the Country was divided, and of whom one was nominally rather than actually Supreme, and their kindred. 2, The Clergy. 3, The Brehons, who were Lawyers and Judges. 4, The Bards, who were Poets, Musicians, and Historians, or Genealogists. These different Classes were held in higher estimation than the generality. 5, The Common People or Vassals, who were subject to their respective Toparchs, or petty Sovereigns, and served them in Peace.
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and War. In short, the Condition of ancient Ireland was a
good deal like that of the Highlands of Scotland at no very
remote period, the Inhabitants of both Countries being of one
Origin, and speaking the same Language.

The Irish Peerage, consequently, is all of English Creation,
and it contains the same Titles and Dignities as the British
Peerage; and, excepting the Dukedom,* is of very high anti-
quity; the Irish Titles of Marquess, Earl, Viscount, and Baron
being (with the exception of the Earldom of Sutherland) more
ancient than any of those of England or Scotland now extant.
The Barony of Kinsale is about 650 years old.

It is remarkable that among the present numerous Noble
Families of Ireland, the Descent of about half a dozen only
can be traced to the original Natives.

In Ireland, according to Sir William Betham, Ulster King
of Arms, the Tenure by Barony constituted the only Title to a
Seat in the Irish House of Peers so late as the year 1366; and
the summons to Parliament, and creation by Patent, were then
utterly unknown, because it was not then the Law or Custom
of Ireland, to summon any one to Parliament but those who
held by Baronial Service.—Sir W. Betham's Irish Antiquarian
Researches, p. 7. In the description of Lands in Ireland,
their Locality is generally denoted by the Barony in which
they are situate, instead of the Parish.

By the Articles of the Union with Ireland (39 and 40 Geo.
3, c. 67) which commenced the 1st of Jan. 1801, it is stipulated
that four Spiritual Lords by rotation each Session, and twenty-
eight Temporal Lords of Ireland, to be elected for Life, are to
represent the Lords Spiritual and Temporal of Ireland in the
House of Peers. And it is further provided that as often as
three of the Irish Peerage become extinct, the King may create
one Peer, and when the Irish Peers are reduced to 100, exclu-
sive of those who are Peers of Great Britain, the King may then
create one Peer for every Peerage that shall become extinct,
or as often as any of them is created a Peer of the United

* The Dukedom of Ormonde was a much older creation than that of
Leinster, the only existing Irish Dukedom, but it became extinct by the
Attainder of James, Duke of Ormonde, in 1714.
Kingdom, so as to keep up the number of 100 Irish Peers, above those who have hereditary seats in the House. And the Peers of Ireland are to have rank next after the Peers of Great Britain of the like rank at that period; and all Peerages of Ireland and the United Kingdom thereafter created, shall have precedence according to the Date of their Creation; and all Peers of Ireland, except those who are Members of the House of Commons, shall have the same Privileges as the Peers of Great Britain, except the right of sitting in the House of Lords, and those depending on it.

It is also provided, that all questions touching the Election of the Irish Peers, shall be decided by the House of Lords.

We are not aware that any Case of a contested Election of any of the twenty-eight Peers has yet formally come before the House, but should one occur, we presume it would be decided in like manner as the Elections of the Scots Peers.

It is beside the object and purpose of this Work to treat at large of the Law respecting Dignities, or the Evidence requisite to support dormant or disputed Titles. After such a Treatise as that of Mr. Cruise, it would be arrogance in the Editor of this to attempt a rival Publication, and highly unjust to transcribe that Gentleman's pages. This is the less necessary, because on all claims of Peerage it behoves the Solicitor or Agent to take the advice and assistance of experienced Counsel.

The Editor, therefore, preparatory to stating the mode and practice of Proceeding, in order to seek the Establishment of a Claim of Peerage, which is the main intention of this Tract, will now say something of the Jurisdiction on the subject.

**OF THE JURISDICTION FOR DECIDING ON DIGNITIES.**

All Dignities having been derived from the Crown, the King has always exercised Jurisdiction respecting the right to them, which was formerly delegated to the Constables and Marshals of England, who were assisted by Civilians or other learned persons conversant with Titles and Customs of Chivalry, for questions of this sort are not cognizable by the Common Law, or tried by a Jury. The Court of the High Constable lost much of its importance by the abolition of the former's Office, in the
OF DIGNITIES.

of King Henry 8, but retained its Jurisdiction in matters of Honour and Arms. Yet it appears, that so early as the reign of 11th Henry 6, a Claim to a Dignity was taken into consideration by the House of Peers.—Hale's Juris. 104.

In the time of Queen Elizabeth, a commission was issued to certain Peers to try a question of Title; and James 1 issued a commission to the then Earl Marshal to take cognizance of all Causes which were cognizable by the Court of Constable, &c. When the Office of Earl Marshal was in Commission, Claims of Dignities were referred to the Commissioners, though previously a Claim of Precedence had been referred by Queen Elizabeth to the House of Lords.

James 1 referred Peerage Claims sometimes to the Judges, sometimes to the Commissioners for martial Causes, and at others to the House of Peers.

In the time of Charles 1, the Claim to the Earldom of Oxford was referred to the House by a special reference, and the same King issued a Commission to inquire into the Claims to the Barony of Stafford; the Claimant to which afterwards levied a Fine of it to the King.

In the reign of Charles 2, the Claim to the Barony of Fitzwalter was referred to the House of Lords, but a Proclamation of Parliament having taken place before a decision, the Claim was heard at the Council Board, in presence of the King, and the Claim was admitted.

In later times, Claims of Peerage have been generally referred to the Attorney General; and whenever he has recommended a further examination of such a Claim, it has been referred to the House of Lords, without which reference the House has no authority to interfere.—See Hales' Juris. 104, Cruise 255. But Lord Coke says the Lords have a Jurisdiction in matters of Precedence.—Inst. 363.

Still it appears, the reference to the Lords is quite discretionary in the King, who might resume the old method of reference to the Earl Marshal, or grant a Writ of Summons without any reference, or refuse to make a reference, as was done in the Case of the Banbury Claim, on the advice of Sir Philip Yorke, afterwards Lord Hardwicke.—Cruise 257.
It has been said that if a party claims a Peerage by
descent or prescription, the question is triable by the Country
(i.e. by a Jury).—Rex v. Cooke, 2 Barn. and Cres. 874. It
is believed, that no instance can be found of a Title to a Peer-
age having been tried by Jury; but according to legal opinions
the question, if it were to arise incidentally, as on a Plea of
Mismaner, might be so tried.—See Com. Digest. Dignity, D.,
where it is laid down, that if there be a dispute whether a man
is a Peer of the Realm generally, it shall be tried by the
Record in Parliament, for which several authorities out of Co.
Lit., &c. are given; but where he claims by descent, it is said
that, though the Patent of Creation ought to be produced, it
shall be tried by the Country; and for this, the case of the
King v. Knollys, Skin. 520, is quoted, the Defendant, who
claimed to be Earl of Banbury, insisting that he ought to be tried
as a peer. It is probably on these Authorities, that the opinion
of Mr. Justice Bayley, in the Case in Barn. and Cres., was
founded. But it is conceived, that there is no direct mode of
raising the question for Trial by a Jury, and that the only
regular course of deciding a Claim to a Dignity is by a refer-
ence from the King. Indeed the Judgment of Lord Chief
Justice Holt, in The King v. Knollys, seems to have been one
of those bold Stretches of Opinion for which that celebrated
Judge was rather remarkable.

The Extracts which follow, respecting the Jurisdiction for
deciding Questions of Peerage, are taken from a much es-
teeemed and long established periodical Publication:—

“In the Case of the Barony of Stafford, King Charles 1st,
in Dec. 1637, directed that Roger Stafford, who was unmarried,
should make a resignation of all claim and title to that Barony,
for the King to dispose of as he should think fit; in obedience
to which Order the said Roger Stafford, by Deed enrolled 7th
Dec. 1639, surrendered the said Barony, and levied a Fine
thereof. And the King soon afterwards, by Letters Patent,
granted the same to Sir Wm. Howard and his Lady, and the
heirs male of their bodies. But it has been said that the
legality of this proceeding was questioned at the time, and that
in 1640, it was condemned in Parliament.

"By the Act of 16 Car. 1, c. 10 (1641), founded on the
Petition of Right, it is enacted, 'that neither his Majesty, nor
his Privy Council, have or ought to have any jurisdiction,
power, or authority, by English Bill, Petition, Articles, Libel,
or any other arbitrary way whatsoever, to examine, or draw
into question, determine, or dispose of the Lands, Tenements,
Hereditaments, Goods or Chattels of any the subjects of this
Kingdom; but that the same ought to be tried and determined
in the ordinary Courts of Justice, and by the ordinary course
of Law.'

"It is quite a different thing, when the King refers to his
Privy Council, or to his Peers, or to his Law Officers, for advice
whether to grant or refuse a Petition of right, without a legal Suit.

"All references, in cases of Claims of Peerage created by a
Common Law Conveyance, are merely of this nature, and not
in the nature of a legal Suit, whether they are made to the
Privy Council, to the Lords, or to the Law Officers. The
system of a reference to the Lords began about the time of
Charles 1st.* Before that, it was commonly made to two or
three State Officers, named by the Crown as Commissioners
for the special purpose. But the practice was so little uniform
so late as the Reign of Charles 2nd, that in 1669 the King
referred the Petition of Benjamin Mildmay, for the Barony of
Fitzwalter, to his Privy Council, and this notwithstanding the
claim had been previously referred to the Lords, and several
proceedings had upon it.

"It is worthy of remark, that this Act of Charles 1st passed
the very year after the King had taken on himself by his own
mere dictum to divest Roger Stafford of his Peerage. The
subsequent reference of the Fitzwalter Case to the Privy
Council is a decisive proof that it was a mere reference for
opinion, and not a judicial proceeding; for the Crown would
hardly have ventured at that time to act in opposition to that
memorable Statute. If it be contended that Cases of Peerage
did not come within this Statute, let it be shewn that an here-

* But see Note 27.
dictary Peerage is not an hereditament, or else that this species of hereditament is excepted by some subsequent Act."—Gent. Mag. for Sept. 1826, pa. 196 to 200.

It might be argued that the word *hereditament*, coming after the words *lands* and *tenements*, in the act above referred to, could not be there construed to mean, or to include a Peerage, had it not been laid down by Lord Coke that a Dignity was a tenement and hereditament; and a Dignity or Barony, though intailed, was comprised within the Statute 26 Henry 8, c. 17, by the words, *lands, tenements, and hereditaments*, and forfeitable for Treason.—1 Inst. 20, 7 Rep. 34, 12 Rep. 81, Cruise on Dignities, 95, 98.

With respect to these Authorities, it may be observed that there are many ancient decisions, which it is believed would not be made at this day, if the Questions arose now for the first time. And as to the Stat. of 16 Car. 1, c. 10, it is conceived that upon perusal of it, the Objects of the Legislature, in that part of the Act which is above quoted, will evidently appear to have been Lands, Goods, &c. in their common meaning, that is, landed and personal property, and that Titles and Dignities were not at all contemplated.* The writer of the foregoing Extract has not attempted to shew how a Claim of Peerage could be brought before, or "determined in the ordinary Courts of Justice," and certainly "the ordinary Course of Law" would not be applicable to it.

There seems to be but one or two Cases in which it would be competent even to the House of Lords to decide on a Question of Peerage without a Reference from the King, namely, where a Person, who had not been acknowledged as a Peer, complained of some Breach of Privilege, or claimed to be tried as a Peer, as happened in the instance of Mr. Knollys, who alleged his Right to the Earldom of Banbury.—Skin. 520. And yet there, the Court of King's Bench disallowed the Judgment of the Lords. But it is to be observed, that this Decision has been questioned by high Authority. See Lord Eldon's Argument in the Banbury Case.—Cruise on Dig. 295.

The Authority of the House to decide on contested Elections of Scots or Irish Peers must also be admitted.

* The disposition of those times was rather to subvert, than to support the peerage.
OF THE PRACTICE OR MODE OF PROCEEDING IN
THE HOUSE OF LORDS ON CLAIMS OF PEERAGE.

When the Possessor of a Title has died, without leaving a
Descendant of his Body, or a Relation of his Family, who is
clearly and indisputably intitled to succeed to the Dignity, the
person claiming the Honour states his Claim, and submits it to
the Crown. This is done by a Petition to His Majesty, setting
forth the original Creation of the Peerage, the exercise and
enjoyment of it, and by whom, the Petitioner's Pedigree and
Relationship to the Family of the Deceased, and that he is able
to prove his Right; and praying His Majesty that it may be
declared and adjudged to him.

This Petition, in the Case of English Peerages, is usually
referred to the Attorney General for his Opinion; before
whom the proof in support of it is laid; and according to his
Report His Majesty generally signifies his Pleasure. In some
Cases the Petition is referred immediately to the House of
Lords, who refer it to a Committee of Privileges. They make
their Report to the House, by whom it is commonly adopted,
and the opinion of the House is laid before His Majesty, who
in general acts upon it.

Form of the Petition to His Majesty claiming an English
Peerage.

To the King's most Excellent Majesty,

The humble Petition of Henry Willoughby, of, &c., Esq.-
Sheweth,
That by Letters Patent bearing date the day of
in the first year of the Reign of King Edward
the Sixth, the Title, Dignity and Peerage of Baron or Lord
Willoughby of Parham was created in the person of Sir W. W., Knight, to him and the heirs male of his Body.

That accordingly the said Sir W. and the heirs male of his body, in consequence of the said Letters Patent, sat in Parliament, and otherwise possessed, exercised and enjoyed the said Title, Dignity and Honour of Lord or Baron W. of P. down to the year 1680 (when that original or elder male line of the Family became extinct) and from that year down to 1765, the said Title, Dignity, and Honour, were enjoyed by the male Line (now extinct) of Sir T. W., youngest son of C. Lord W. of P., who were successively summoned to Parliament by Descent, in virtue of the Letters Patent above mentioned.

That notwithstanding the enjoyment had of the Peerage, by the said male line of the youngest son of the said C. Lord W. of P. as aforesaid, true it is, that the said Lord C. had a second son, Sir A. W., the elder Brother of the said T. W., and which Sir A. W. left a Son, and your Petitioner is the great grandson and Heir male of the body of such son, and consequently heir male of the body of the said Sir W. who, as aforesaid, was created Lord W. of P., the male line of the eldest son of the said C. Lord W. of P. having, as before stated, failed in or before the said year 1680.

Your Petitioner therefore humbly prays your Majesty, that the said Title, Dignity and Peerage or Honour of Lord W. of P. may be declared and adjudged to belong to your Petitioner.

And your Petitioner will ever pray, &c.

H. W.

This Claim was allowed.—See Cruise, 169.

As two Cases exactly similar are not likely to occur, the Framer of every Petition claiming a Peerage, will of course set forth the different Facts and Circumstances which belong to it. It may nevertheless be useful to give the form and style of a Petition respecting a Scotch Peerage, which is copied from one that was actually presented.
Form of a Petition claiming a Scotch Peerage.

To the King's Most Excellent Majesty,

The humble Petition of W. S. of R. Esq.

Sheweth,

That W. S. Earl of, &c. eldest son of R. Earl of, &c. by a Daughter of W. D. Lord W. and of a Princess, Daughter of King Robert the Second of Scotland, made a considerable Figure in the public affairs of Scotland during the Reigns of James the Second and James the Third, and in reward of his Services, or as some say, in consideration of his pretensions to another Lordship, obtained from King James the Second a Grant of the Earldom of C. But no Record or other Evidence of the original Creation is extant.

That this Earl W. married, first, Lady M., Daughter of A. the Earl of D., by whom he had one Son, Wm., whose Son N. and his Descendants enjoyed the Title and Dignity of Lord S. for several Ages, and many of his Descendants are yet existing.

That the said W. Earl of C. married, for his second Wife, M. S., of which Marriage he had several Sons; and having resigned the Earldom of C., he obtained a new Grant thereof from King James the Third, in favour of W. S. one of his Sons by the said Countess M., his second Wife.

That the said W., in consequence of the aforesaid resignation and Grant, enjoyed the Title and Dignity of Earl of C. with the other Honours pertaining to that Earldom, and was upon his decease succeeded by his Son J., the second Earl of C., who was succeeded by his Son G. the third Earl of C.

That this Earl G. resigned the Earldom of C. into the hands of Queen Mary, and obtained a new Grant thereof to J. S., commonly called J. Lord B., his eldest Son, et Heredibus suis Masculis et Assignatis tenend' in libero Comitatu et Domino. And which Charter bears date the 2nd of October, 1645.

That the said J. Lord B. had three Sons; his eldest Son G. afterwards the fourth Earl of C.; his second Son, Sir James
S. of M.; and his third Son, Sir John S. of G., afterwards denominated of R. The said G., the fourth Earl, had two Sons, W. Lord B., and F. W. Lord B. died before his Father, leaving one Son J., commonly called Master of B., who also died before his Grandfather G. the fourth Earl, leaving one Son G. who succeeded to his Great Grandfather G., and became the fifth Earl, but died without issue in 1676; and upon his death, G. S. the Son of F., who was the second Son of the above G. the fourth Earl, succeeded to the Dignity of Earl of C., as nearest lawful Heir Male to G. the fifth Earl. And the said G. the sixth Earl having died in 1698, without Issue Male, was succeeded in the Dignity and Peerage by J. S. of M., Grandson of the said J. S. of M., the second Son of the said Lord B., as nearest lawful Heir Male to the said G. the sixth Earl.

That J. the seventh Earl died in 1705, and was succeeded in the Dignity and Honour by A. his eldest Son, the eighth and last Earl; and he died in 1765, without Issue Male.

That all the lawful Male Descendants of the said G. the fourth Earl, the eldest Son of the said J. Lord B., did thus fail and become extinct, by the decease of G. the sixth Earl in 1698, and all the lawful Male Descendants of the said Sir J. S. of M., the second Son of the said J. Lord B., did also fail and become extinct, upon the decease of the said A. the eighth Earl in 1765.

That your Petitioner is the nearest Heir Male in a direct Line to the said Sir J. S. of G. and R., who was the third Son of the said J. Lord B., the eldest son of the said G. the third Earl of C. and having that character, purchased from Your Majesty's Chancery in Scotland a Brieve of Mort Ancestry; your Petitioner, during the Trial that ensued upon that Brieve, brought a clear and satisfactory proof of his Descent from the said Sir J. S. of R., the Great Grandfather of his Grandfather, and was upon the 28th Nov. 1768, served nearest lawful Heir Male of the said A. Earl of C., who died in 1765, and which service is recorded in Your Majesty's Chancery aforesaid; and your Petitioner being advised and humbly conceiving that
the right of succeeding to the Titles, Honours, and Dignities of Earl of C., Lord or Baron of B., and such other Honours and Dignities as belong to the Family, does in law and justice belong to your Petitioner, as the nearest Heir Male of the said J. Lord B. the eldest son of the said G., the third Earl of C., and being ready to make out and prove his said Pedigree and Descent.

Your Petitioner, therefore, humbly prays Your Majesty that it may be declared and adjudged, that your Petitioner is entitled to the said Honours and Dignities of Earl of C., Lord or Baron of B., and such other Honours and Dignities as are in the Family.

And your Petitioner will ever pray, &c.

G. U. Agent for the Petitioner.

The following is another Petition, taken from a real precedent, in the Case of the Dukedom of Atholl, where there was no doubt as to the Descent, the question being matter of Law, arising solely on the Effect of an Attainder:—

To the King's Most Excellent Majesty,

The humble Petition of John Murray

Sheweth,

That John Marquiss of Atholl, your Petitioner's Grandfather, was by Letters Patent under the Great Seal of Scotland, bearing date the 30th day of July, 1703, created Duke of Atholl, Marquiss of Tullibardine, Earl of Strathay and Strathardle, Viscount Balgudar, Glenalmond, and Glenlyon, Lord Murray, Balvenie, and Gask, to hold the same Titles, Honours, and Dignities to him and the Heirs Male of his Body.

That the said Duke of Atholl died about the year 1725, leaving James his Son, who succeeded to the Titles and Honours aforesaid, and also George Murray, his next Son, who was your Petitioner's Father, and other children.

That your Petitioner must with the greatest concern and grief state, that his said Father was by an Act of Parliament, made in the year 1745, attainted of High Treason, as appears by the said Act.
That your Petitioner's said Father died on or about the 11th day of October, 1780, leaving your Petitioner his eldest Son, and other Children.

That the said Duke of Atholl, your Petitioner's Uncle, died on the 8th day of January last, leaving no issue Male, and only one Daughter, now Lady Strange, married to your Petitioner.

That with a view to this event, your Petitioner consulted many Gentlemen learned in the law of England, particularly the Honourable Charles Yorke, Your Majesty's late Attorney General, Sir Fletcher Norton, Your Majesty's present Attorney General, and Mr. De Gray, Your Majesty's Solicitor General, whether the said Attainer, under the circumstances of this Case, could be any bar to your Petitioner's succeeding to the said Titles, Honours, and Dignities, upon the death of his said Uncle James, Duke of Atholl, without Heirs Male of his body; and the said Gentlemen were all unanimously of opinion, that as by the Law of England in a like Case, no objection could arise from the said Attainer, and that as by the said Act in the 7th year of the reign of Her late Majesty Queen Anne, all persons convicted or attainted of High Treason in Scotland, were to be subject and liable to the same corruption of blood, pains, penalties, and forfeitures, as persons convicted or attainted of High Treason in England, your Petitioner would be clearly entitled to succeed to the said Honours.

That your Petitioner also consulted many Gentlemen learned in the Law of Scotland, particularly Your Majesty's present Lord Advocate, who were all of opinion, so far as any opinion could be formed in a case so destitute of Judicial Authorities, that by the Law of Scotland before the Union, the said Attainer would have been no bar to your Petitioner's succession to the said Honours; but they were clear that since the said Act of the 7th of Queen Anne, the question must be decided by analogy to a like Case, under a like limitation of Honours in England.

That though your Petitioner apprehends there can not be a

* The Case and Opinions, of which the Editor many years ago obtained Copies, are inserted accurately in Mr. Cruise's Treatise on Dignities.
possibility of doubt upon his right, and that if your Petitioner
was intitled immediately to a Writ of Summons, the Great
Seal would issue the same of course, as was done in the case
of the present Viscount Bolingbroke, under circumstances in
some degree similar; yet your Petitioner thinks it decent to the
House of Peers, and more respectful to your Majesty, as the
said Attainder has so far raised the colour of a doubt, as to
occasion his taking the opinion of Lawyers, not to assume the
said Honours until they shall have been adjudged to him in
a due course of Law.

Your Petitioner, therefore, humbly prays that Your
Majesty would be most graciously pleased to
give the proper directions for having your Peti-
tioner's said right declared and established.

And your Petitioner shall ever pray, &c.


The Petition, fairly copied, and signed by the Petitioner, may
either be presented by the Claimant in person to his Majesty at
a Levee, or left at the Secretary of State's Office, for the Home
Department, to be laid before the King. These Petitions, it is
said, were anciently referred to the Lord High Constable and
the Earl Marshal, but for a long time they have been referred
either to the House of Lords, or to the Attorney General; which
latter course is now usually adopted, except in the Cases of
Scotts Titles, which it is not usual to refer to the Crown Counsel,
nor has any instance of it occurred of late years. In those
Cases the Claimant presents a Petition to the King, praying that
his Title may be allowed, and His Majesty, by the Secretary
of State for the Home Department, refers the Petition to the
House of Lords, who again refer it to the Committee of Privile-
gees, as after shewn.

OF A REFERENCE TO THE HOUSE OF PEERS IN
THE FIRST INSTANCE.

When the Claim is referred to the House of Lords in the
first instance, the Secretary of State, if a Peer, carries the

* This seems to be a mistake, as we believe Writs of Summons do not
issue in Scots Peerages. See p. 323.
Petition and Reference to the House, and moves it there. Should the Secretary not be a Peer, the Claimant's Solicitor receives the Petition and Reference from the Office, and takes them to the House, where he gets a Noble Lord to make the motion.

The Fee paid for the Reference is £2. 2s. 6d. whether it be to the House or the Attorney General.

The Petition of Mr. Murray, above mentioned, was referred to the House as follows:

"Whitehall, Feb. 2d. 1764.

"His Majesty being moved upon this Petition, is graciously pleased to refer the same to the Right Honourable the House of Peers, to examine the allegations thereof, as to what relates to the Petitioner's Titles therein mentioned, and to inform His Majesty how the same shall appear to their Lordships.

"Sandwich."

Die Jovis, 2 Februarii, 1764.

"The Earl of Sandwich (by His Majesty's Command) presented to the House a Petition of John Murray to His Majesty, claiming the Titles, Honours, and Dignities therein mentioned, with His Majesty's Reference thereof to this House.

"Which Petition and Reference were read by the Clerk, and are as follows, viz. (here follows Copy Petition and Reference.) Ordered that the said Petition and Reference be referred to the consideration of the Lords Committees for Privileges, to meet on Monday next, whose Lordships having considered thereof, and heard such persons concerning the same as they shall think fit, are to report their Opinion thereupon to the House.

"Ordered that Notice thereof be given to His Majesty's Attorney General, and His Majesty's Advocate for Scotland."

"Die Martis, 7 Febrarii, 1764.

"The Lord Willoughby of Parham reported from the Lords' Committees for Privileges, to whom was referred the consideration of the Petition of John Murray to His Majesty, claiming
the Titles, Honours, and Dignities therein mentioned, together with His Majesty's Reference thereof to this House, that the Committee have met, and considered the matter to them referred, and have heard Counsel for the Petitioner, and examined Witnesses upon Oath, to make out the Allegations of his Petition, and have also heard His Majesty's Attorney General on behalf of the Crown, and are of Opinion, that the Petitioner hath a right to the Titles, Honours, and Dignities claimed by his said Petition.

"Which Report being read twice by the Clerk, was agreed to by the House.

"Accordingly, resolved and adjudged by the Lords spiritual and temporal in Parliament assembled, that the Petitioner hath a right to the Titles, Honours, and Dignities of Duke of Atholl, Marquess of Tullibardine, Earl of Strathay and Strathardle, Viscount Balgudair, Glenalmond, and Glenlyon, Lord Murray, Balvenie, and Gask, claimed by his said Petition.

"Ordered that the said Resolution and Judgment be laid before His Majesty by the Lords with white Staves."—Lords' Journals, Vol. 30, Pages 446, 469.

The Dukedom of Atholl, and the other Titles claimed by Mr. Murray, being Scotch, and not English Titles, no Writ of Summons was issued in consequence of the above-mentioned determination. But it appears from the Lords' Journals, vol. 31, pa. 424, that the Duke of Atholl sat in the House of Lords in the Parliament which met on the 11th of Nov. 1766.

In the foregoing Case it will be observed, that the Proceedings did not occupy quite a week, the Petition having been presented to the King on the 1st.; the Reference to the House and by them to the Committee on the 2d.; and the Report and final decision made on the 7th of February, 1764. It is probable, therefore, that there was not on that occasion any Case printed and laid on the table, as is now done; but a few years afterwards the House made the standing Order after-mentioned, requiring that printed Cases should be delivered fourteen days before proceeding on a Claim of Peerage.
OF THE REFERENCE OF THE PETITION BY HIS MAJESTY TO THE ATTORNEY GENERAL.

When the Petition is referred to the Attorney General, the Reference is written on the Petition by the Secretary of State to this effect:—

March 18

His Majesty is graciously pleased to refer the consideration of this Petition to His Majesty's Attorney General.

R. Peel.

The Claimant's Agent should get a Meeting appointed at the Attorney General's to consider the matter, and in the mean time that Officer should be furnished with a Copy of the Petition, the pedigree, and a proper statement of Facts, subjoining to each statement the Evidence or Proofs. By applying to some of the Parliamentary Agents, printed Cases may be seen, which will shew in what manner these Cases are prepared and arranged.

It is also necessary that one of the King's Heralds should attend the Meetings before the Attorney General.

Where considerable doubt or difficulty is likely to arise, the Claimant may have the assistance of Counsel before the Attorney General.

In Scotch Claims of Peerage it is not usual, as before observed, to refer them to the Attorney General; but if there should be such a Reference, the Lord Advocate of Scotland would doubtless be joined in it.

The Claimant pays the Attorney General a Fee of £5. 6s. on each Meeting or Attendance, besides 10s. 6d. to his Clerk, and 2s. 6d. for each Summons; and the Attorney General makes certain charges (it is believed to the same amount), which are sent in to, and paid at, the Council Office. The retaining Fee to Counsel is £2 2s. The Fee to him for attending the Attorney General must depend on the length of the Instructions,—not less than £5. 5s.

Sometimes, especially when a Title has been long dormant, there are different Claimants to it. In that Case a second or
third Claimant, who finds that there has been a Reference to the Attorney General, should forthwith enter a Caveat with him, in order that such Claimant may be permitted to attend on the investigation. It is then usual with the Attorney General to give notice to the several Claimants, that they may be present, with their Agents and Counsel, if they think fit.

As soon as the subject has been fully considered by the Attorney General, that Officer makes his Report with his opinion, to His Majesty, stating the several Facts laid before him in Evidence, on which he forms his Judgment.

It is usually in the following Form:—


To the King's Most Excellent Majesty.

May it please your Majesty,

In obedience to Your Majesty's Commands, signified to me on the day by the Right Honourable

, one of Your Majesty's Secretary of State, referring to me the consideration of the Petition of H. F. H. Esq. claiming the Earldom of

and praying that Your Majesty will be graciously pleased to grant him a Writ of Summons as a Peer of Parliament, in respect to the same;

I have considered his Petition, and have been attended by his Solicitor, and by Francis Martin, Esq. Windsor Herald, and I have received Evidence in support of the Allegations in the said Petition contained.

The Petition states (here the substance of the Petition is set forth).

In support of his said Petition the Claimant has produced and exhibited before me the following Evidence:—

To prove that A. B. who is stated to have been the only son of the said C. B. and &c.

The Report then states the several Proofs and Documents, giving each Head or Matter proved in distinct paragraphs, as

It was proved before me, &c.

There was exhibited before me, &c.
The Report then concludes as follows:

Upon the whole of this Case I am humbly of opinion, that the Petitioner, F. H. has fully proved his right to the Title of Earl of , and that it will be advisable, if Your Majesty shall be graciously pleased so to do, to order a Writ of Summons to pass the Great Seal to summon the Petitioner to sit in Parliament, and there to enjoy the rank and privileges to the said Title belonging. Dated the day of

S. S.

Upon these References the expence is borne by the Petitioner, who pays a Fee of five Guineas to the Attorney General for every Meeting before him, as already mentioned; and if other Claimants attend, they pay a like Fee.

A very able and elaborate Report was made by Sir Samuel Shepherd, when Attorney General, on the remarkable Claim of Hans Francis Hastings to the Earldom of Huntingdon, which may be seen in a Publication of the late Mr. Bell, giving an account of the proceedings in that Case, which well deserves perusal.

**OF PROCEEDINGS CONSEQUENT ON THE ATTORNEY GENERAL'S REPORT.**

When, as in the preceding instance, the Attorney General is satisfied of the Claimant's Title, and reports accordingly, if the Lord Chancellor agrees with him in opinion, a Writ of Summons is thereupon issued to the Claimant. But should the Attorney General's Opinion be clearly adverse to the Claim, it still rests with His Majesty to make a Reference to the Lords, or not, according to his royal pleasure. Sometimes it is referred back to the Attorney General, as was done in the Case of the Anglesey Peerage in 1770; and though both Reports of the then Attorney General (De Grey) were in favour of the Claim, it was referred to the Lords, who ultimately reported against it.—Cruise 276.

If the Attorney General's Opinion should be doubtful, the usual course is to refer the Petition to the House of Lords, if desired by the Petitioner. But this is discretionary in the
IN THE HOUSE OF LORDS.

Crown, and was refused by the King in the Case of the Banbury Peerage in 1727; and without a Reference the House will not, nor can entertain the Claim.—Cruise 285.

After the Attorney General has made his Report, the Claimant may either solicit a Reference to the Lords, or relinquish his Claim altogether, as he thinks most prudent. But if he persists in it, and obtains a Reference to their Lordships, the Proceedings will be as follows.

OF HIS MAJESTY'S REFERENCE TO THE HOUSE OF LORDS AFTER THE ATTORNEY GENERAL'S REPORT.

This, which is endorsed on the Petition, is commonly in the following Form:—

15th Jan. 18 His Majesty is graciously pleased to refer this Petition, with the Report of the Attorney General, to the consideration of the Right Honourable the House of Lords, who are to inform His Majesty how the same shall appear to them.

Liverpool.

The distinction, says Mr. Urquhart, between the Cases where it may be proper for a Claimant to pray a Reference directly to the House of Lords, and where a previous one to the Attorney General, may be stated thus: Where the Peerage claimed has been long in Abeyance, and it is doubtful whether the Peerage has not become extinct, it may be expedient to pray a Reference to the Attorney General, previous to a Reference to the House of Lords. But where the Peer last in possession died lately, and by reputation, notoriety, or other circumstances, there is a probable ground for the Claim, then the Reference may probably be asked, and made directly to the House of Lords.

Now it does not appear to have been usual to pray for a Reference of either of the descriptions above mentioned, and it would seem to be very improper to do so, as it belongs entirely to the Crown to make such a Reference as may be thought fit, without any suggestion.
OF THE ORDER OF REFERENCE BY THE HOUSE OF LORDS TO THE COMMITTEE OF PRIVILEGES.

We have given one instance of this in the Case of the Duke of Atholl, ante p. 322, but as the practice appears to have since varied, it will be proper to state the present course.

When His Majesty's Reference is obtained to the House of Lords, the Order which the House make thereupon is commonly as follows:—

Die Martis 5th Februarii, 18

Upon reading the Petition of A. B. to His Majesty, claiming the Title and Dignity of with His Majesty's Reference thereof to this House, it is ordered by the Lords spiritual and temporal in Parliament assembled, that the said Petition and Reference be referred to the consideration of the Lords Committees for Privileges.

G. H. Rose,
Cler. Parliamentor.

OF PREPARING AND PRINTING THE CLAIMANT'S CASE, AND OF GETTING A DAY APPOINTED FOR THE HEARING.

The Reference being made, as above mentioned, to the Lords Committees for Privileges, the Claimant gets his Case drawn up to be printed, which should contain the pedigree and statement of the Evidence in support of it. It is usually settled and signed by two Counsel, though their Signature is not strictly requisite, and sometimes but one Counsel is employed. Counsel expect a Retainer of two Guineas each, and the like Fees as on Appeals.

The following is commonly the Form of the Case:—
IN THE HOUSE OF LORDS.

In the House of Lords.

BEFORE THE LORDS COMMITTEES OF PRIVILEGES.

ON THE BORTHWICK PEERAGE,

THE CASE OF

ARCHIBALD BORTHWICK, Esquire,

CLAIMING THE TITLE OF

LORD BORTHWICK.

The Case will be substantially the same as that made out before the Attorney General. It must contain a Pedigree and an Abstract of the proof and authorities on which the Claim is grounded, with the dates and references where they may be found.

When the Case is printed, and the Proof Sheets carefully examined, a sufficient number, usually 250, should be struck off, and endorsed as follows:—

House of Lords.

BORTHWICK PEERAGE,

THE CASE OF

ARCHIBALD BORTHWICK, Esquire,

CLAIMING THE TITLE OF

LORD BORTHWICK.

To be heard at the Bar of the House of Lords, on the
day of .

The Agents name at the bottom.

About fifty Cases should be sent to the Parliament Office to be distributed to the Lords.

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OF PETITIONING FOR A DAY TO PROCEED ON THE CLAIM.

Afterwards, as soon as may be, the Claimant applies to the House by Petition, as follows:—

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble Petition of A. B. Claimant of the Peerage of
Sheweth,

That your Petitioner's printed Case upon this his Claim of Peerage having been delivered and laid on your Lordships' table,

He therefore humbly prays your Lordships will be pleased to Order, that the Lords Committees for Privileges do meet to consider of this Claim, on Friday the day of next, or such other day as your Lordships shall please to appoint, and that notice thereof may be given to His Majesty's Attorney General (and if a Scotch Peerage, to the Lord Advocate for Scotland), on behalf of His Majesty.

And your Petitioner will ever pray, &c.

A. M. Agent for the Petitioner.

Upon this Petition being moved, an Order is made as prayed; but care should be taken to ask for a day at a distance of a fortnight at least, for in regard to this there is the following standing Order:—

Die Martis 24 Martii, 1767, (amended 6th April, 1824.)

"Ordered by the Lords spiritual and temporal in Parliament assembled, that this House, or any Committee thereof, do not proceed to the Hearing upon any Claim to a Title of Honour until fourteen days after printed Cases shall have been delivered, which shall contain a Pedigree, and also an Abstract of the Proofs and Authorities upon which such Claim may be founded, together with the dates thereof, and references where the same may be found."

The Order of the House, appointing the day of Hearing, is commonly as follows:—

Die Mercurii; 26 February, 18

Upon reading the Petition of A. B. Claimant of the Peerage of praying, in regard the Petitioner hath delivered his printed Cases, that the Lords Committees for Privileges may be ordered to meet to consider of the said Claim, on the day of next, or such other day as their
Lordships should please to appoint, it is ordered by the Lords spiritual and temporal in Parliament assembled, that the Committee of Privileges do meet to consider of the said Claim, on the day of next, and that notice be given to His Majesty's Attorney General, and (if a Scotch Peerage) the Lord Advocate of Scotland.

G. R. Cler. Parliamentor.

OF NOTICE TO BE GIVEN TO THE ATTORNEY GENERAL, OR TO HIM AND THE LORD ADVOCATE.

A Copy or Copies of the Order of the House should be made for the Attorney General, or for him and the Lord Advocate, and left at their Chambers or place of Abode, enclosed in a Letter from the Agent, directed as under, viz.—

To His Majesty's Attorney General.
To the Right Hon. the Lord Advocate for Scotland.

And it will be proper to send along with the Order a printed Case.

If the Claim is of an English Peerage, the Attorney General sends the Notice to the Solicitor concerned for the Crown in England; and if of a Scotch Peerage, the Lord Advocate will send to the Crown Solicitor for Scotland; in order that proper Instructions may be prepared and delivered on behalf of the Crown, containing any objections that may exist against the Claim, and to watch and see that the Proceedings are duly and regularly conducted. On such occasions, the fees paid to the King's Counsel, and other charges incurred to the King's Agent in this behalf, are paid by the Treasury.

OF CONSULTATION PREVIOUS TO THE HEARING.

A sufficient time before the day appointed for the Hearing, the Claimant's Solicitor should deliver his Case and Instructions to Counsel, who are paid the same Fees as on Appeals. He should then get a Meeting appointed for Consultation, in
order to consider the Case, and what is to be read in Evidence, or proved by Witnesses at the Bar of the House.

OF THE ATTENDANCE OF WITNESSES, AND GETTING THEM SWORN BEFORE THE DAY OF HEARING.

Scarcely any Case of Peerage can occur, in which Parol Evidence is not necessary, as the House now requires the originals of all Parish Registers to be produced before them.

The Claimant’s Solicitor therefore should, a day or two before the Hearing, get his Witnesses to attend at the House of Lords, to be sworn. This is done by writing on a slip of paper as follows,—

A. B. Claimant of the Peerage of
Witnesses to be sworn to give Evidence on this Claim,
C. D. of Esq.
E. F. of Gent.
G. H. of Widow.

This slip of paper being handed in to the Clerk Assistant while the House is sitting, the Clerk comes to the Bar, and calling over the names of the Witnesses, they severally answer and are sworn to give true Evidence on the Matter of the Claim. Care should be taken to get this done a day or two before the Meeting of the Committee, which always sit before the House meets, and no Witness can be sworn before a Committee, as an Oath can only be administered before the House when sitting.

OF THE USUAL MANNER OF PROCEEDING AT THE HEARING BEFORE THE COMMITTEE.*

The Claimants’ Counsel and Solicitor, with the Witnesses, being in Attendance at the House on the day appointed, and the Attorney General and Lord Advocate, or one of them, on

* Seven Lords make a Committee of Privileges, and they sit at ten o’clock in the morning.
behalf of the King, also attending, the Counsel are called in before the Committee, when the Senior Counsel for the Claimant states the Case and Evidence at length. Then the Evidence is read, and the Witnesses examined. The Claimant's Junior Counsel next makes observations on the Proofs, and urges such Arguments as occur to him for the Claimant. Then the Attorney General (or he and the Lord Advocate, if it be a Scotch Peerage) for the Crown states any objections that appear to lie against the Claim. Or if none do occur, and the Claim is clearly made out, he will candidly admit it. If any opposition is made, either by the Counsel for the King, or by any Member of the Committee, it will fall to the Senior Counsel for the Claimant to answer and reply on his behalf. Claims of Peerage usually occupy several days, and are often adjourned from one Session to another. It follows that Counsel are to be paid fresh Fees for each day's attendance, as on Appeals.

It is proper to notice that the Claimants' Agents should be prepared to prove to the Committee, that all parties interested, or likely to be affected by the inquiry, have had full notice of it, with copies of the Case and Evidence. Otherwise the Case may be adjourned, and much additional expense incurred.

If it should happen that any of the Witnesses are resident at a great distance, and unable through infirmity to attend in person, the House will appoint Commissioners to attend the Witness, and take his or her Examination. This was done in the Case of Lord Northland in the year 1819, and in that of Lord Dunsany in 1823, on which latter occasion an Order was made empowering three Judges of the Courts in Ireland, or any two of them, to attend a Lady in Dublin, who it appeared on Oath, was very old and infirm, and to take her Examination. Two Judges accordingly attended, and took the Examination, and their Report was delivered in at the Bar of the House on the 7th of May, 1823.*

* The Author was concerned in that Case. See the Proceedings in a subsequent part of this Treatise.
OF THE REPORT OF THE COMMITTEE, AND JUDGMENT OF THE HOUSE AFTER HEARING.

The Counsel having finished, some one or more Lords of the Committee deliver their Opinion, that the Claimant is, or is not entitled; and if the rest agree with that opinion, the Committee resolve accordingly; and as soon as the House is sitting, the Lord who was Chairman of the Committee makes his Report, whereupon the House give their Judgment, commonly in the Form following, when it is in favour of the Claimant.

Die Jovis, 7 Maii, 1772.

Upon Report from the Lords Committees for Privileges, to whom it was referred to consider of the Petition of A. B. of Esq. to his Majesty, claiming the Titles, Honours and Dignities of Earl of C., Lord or Baron of B., and such other Honours and Dignities as are in the Family, with his Majesty's Reference thereof to this House; it is resolved and adjudged, by the Lords Spiritual and Temporal in Parliament assembled that the Claimant A. B. of , Esq. hath a right to the Title, Honour, and Dignity of Earl of C. as Heir Male of the Body of W. who sat in Parliament in 1505.

A. C. Cler. Parliamentor.

The Bar Fee on Hearing is £3. 10s., and this is paid for each day the Committee of Privileges meet, and £1. 1s. for every Order. To the House Fees are to be added those of the Short-hand Writer to the House, viz. £2. 2s. for each day he attends, and 1s. per folio of 72 words for the Copy of his Notes.

Upon a Claimant's taking his Seat under the Writ of Summons, it will have the Effect of confirming the Dignity beyond all possible dispute, and give a Title absolute and indefeasible, and this even though mistake or misrepresentation should be subsequently discovered, at least for the Life of the Possessor. See the Case of Lord Willoughby of Parham.—Cruise on Dignities, 189.

The foregoing contains an account of the several steps in a plain claim of Peerage, from the Petition to the King, until the
final Judgment of the House of Lords. Particular Circumstances will doubtless occur in some Claims, and occasion a variety of Incidents, beside those above stated. But the general Method and Course of Proceeding being here pointed out, the intelligent Solicitor will readily be able to shape his proceedings according to the Exigency of the Case.

FURTHER OBSERVATIONS—DIFFERENT CLAIMANTS.

It sometimes happens, as before observed, that there are several Claimants to the same Title, which generally occasions much trouble and perplexity. In the Case of the Scotch Peerage of Cassillis, there were two. In that of Sutherland there were three. When there are two or more Claimants to compete, each Claimant prefers his Petition to his Majesty, and obtains a reference, and the House of Lords will refer each Petition to the Committee of Privileges. Each Claimant prepares and prints a Case, and the Claimant who has been most diligent and best prepared for the Hearing will obtain an Order appointing a day to be heard. In that Case, if the other Claimants are not ready, they must petition the House for further time, stating their reasons for desiring delay, which the House will grant, if no Inconvenience is likely to ensue from it. Upon Petitions of this sort there must be two days' previous notice given by the Petitioner's Solicitor to the Solicitor for every other Claimant.

When there are different Claimants, and the several Printed Cases are delivered, each Claimant is generally anxious to prepare and deliver an additional Case, which they may do, as there is no standing Order to prevent it, nor perhaps would it be fit that in a Claim of Peerage there should, it being of the nature of an Original Suit in a Court of Justice. Still, says Mr. Urquhart, the inconvenience occasioned by the circumstance of additional Cases, may be very great and glaring, as was evident in the Case of the Peerage of Sutherland, where the Female Claimant, in possession of the opulent Family
Estate, exhibited some of the longest and most voluminous additional Cases that ever appeared on a Claim of Peerage, which after all amounted to very little, only shewing that in Scotland divers Peers, at different early and obscure times, possessed Peerages on every kind of ground, according to their power, interest and influence, by family connections, without any settled or fixed rule of Law. And yet the other Claimants, and their Counsel, were obliged carefully to peruse and consider these voluminous Cases, which caused a very heavy additional expence, and great delay. Many of the Lords, too, felt it necessary to peruse these Cases, though to no useful purpose; and when the whole subject came to be properly understood, it was brought within a narrow compass in argument at the Bar, and the main question appeared to be a very short one, depending upon matter of Fact.

OF GETTING A NEW REFERENCE TO THE COMMITTEE OF PRIVILEGES WHEN THE REFERENCE IN A FORMER SESSION HAS EXPIRED.

If the consideration of a Claim of Peerage should, after being in part heard, be put off till a subsequent Session, or if the Session of Parliament should determine before the day appointed for the Hearing, as sometimes happens, then the Reference is at an end, and the Claimant must in the next Session of Parliament, apply by Petition to the House, as follows:—

To the Right Honourable, &c.

The humble Petition of A. B. Esq. Claimant of the Peerage of

Sheweth,

That your Petitioner's Claim was by an Order of your Lordships of last Session, referred to the Lords Committees for Privileges of that Session; but not having been heard or determined in that Session,

Your Petitioner therefore humbly prays that your Lordships will be pleased to order that his Claim may be and stand referred to the Lords' Committees of Privileges for the present Session:

And your Petitioner will ever pray, &c.

C. D. Agent for the Petitioner.
IN THE HOUSE OF LORDS.

The Order on this Petition is a matter of course, and it should be served on all parties concerned. The obtaining of this Order is not only requisite for the reason above mentioned, but proper on another account, viz., because otherwise it might be supposed that the Petitioner had abandoned his Claim, of which there have been instances, after parties had been put to much trouble and expense, for which it is believed there is no remedy.

The foregoing Petition and Order being founded on the Rule that the Proceedings in matters of Peerage end with the Session, it may perhaps be asked, what constitutes a Session? It is usually understood, and by Lord Coke stated to signify the period of time between the Meeting and Prorogation of Parliament. And he observes there is this difference between a Prorogation and an Adjournment, that after the former, all Bills and legislative Proceedings not completed, must begin de novo: but an Adjournment is only a continuance, and things remain in the same state they were in previously. See 4 Inst. 27. An Adjournment, says Sir W. Blackstone, is a continuance of the Session from one day to another; a Prorogation is the continuance of the Parliament from one Session to another.—1 Bl. Com. 186, and see Com. Dig. Tit. Parliament.*

There is this further obvious difference between an Adjournment and a Prorogation, that the one is the Act of either House separately; the latter is the act of the King, which includes both Houses at the same time.

OF PROCEEDINGS ON IRISH PEERAGES.

The mode of Proceeding to establish Claims to Irish Titles or Dignities is the same as that observed in English or Scotch Cases, with this difference, that instead of a Reference to the English Attorney General; on a Claim to an Irish Peerage the Claimant's Petition is referred to the Irish Attorney General. Before the Irish Union, we understand, the Course of Proceeding was, for the Claimant to petition the King; and the Petition

* See Note 28.
being transmitted to the Lord Lieutenant of Ireland, it was by him laid before the Irish House of Lords.

OF PROCEEDING TO ESTABLISH THE CLAIM OF AN IRISH PEER TO BE ADMITTED, ON THE DECEASE OF THE LAST POSSESSOR OF THE TITLE, TO VOTE AT THE ELECTION OF A REPRESENTATIVE PEER OF IRELAND.

In this Case it is not considered necessary to present a Petition to the King, the House of Lords only being petitioned.

Form of Petition.

To the Right Honorable the Lords Spiritual and Temporal in Parliament assembled.

The Petition of Edward Baron Dunsany

Sheweth,

That Randal Baron Dunsany, your Petitioner's late father, sat and voted in the House of Lords in Ireland, before the Union of that Kingdom with Great Britain, as Baron Dunsany of the Kingdom of Ireland.

That your Petitioner's said Father died on the fourth day of April, 1821.

That your Petitioner is the eldest Son and Heir of his said Father, and as such is Baron Dunsany, and claims a right to vote at the Election of Peers of Ireland, to sit in the Parliament of the United Kingdom.

Your Petitioner therefore prays that his said right may be admitted by your Lordships.

(Signed) Dunsany.

The Evidence adduced in support of the Claim was as follows:

Mr. Walmisley of the Parliament Office, who was sworn, produced the Irish Journals, in which the Entries appear of the late Lord's having sat in the Irish House of Lords on several occasions.

* This Petition, it is understood, may be signed by the Claimant's Agent.
The death of the late Lord Dunsany, which happened at Brussels in April, 1821, was proved by a servant, who saw his Lordship's corpse.

The Marriage of the late Lord having been solemnized in Dublin, in a private house, as was and is very customary in Ireland, the English Marriage Act never having been there adopted, it was proved by a Witness who made a search in the Parish Register of Dublin, that no Entry was to be found of the Marriage, and that the surviving Witness who was present at the Ceremony was a Lady very far advanced in years, and so infirm as to be unable to travel to London. It was therefore prayed that the House would make an Order authorizing certain of the Irish Judges to attend upon, and take the examination of the Lady upon Oath, as was done in the Case of Lord Viscount Northland in the year 1819.

An Order to that effect was accordingly made by the House on the 18th day of April, 1823, authorizing the Chief Justice of the Court of King's Bench in Ireland, and two other Judges, or any two of the three, to attend and take the Examination; in pursuance of which the Chief Justice and another Judge of that Court attended on the Witness, and took her Examination; and on the 7th day of May, 1823, the Judge's Report was delivered in at the Bar of the House, upon Oath, by a person who received it from one of them.

The Marriage of the Claimant's Parents was proved by the Examination above mentioned.

The Baptism of the Claimant was proved by an examined Copy of the Registry in Dublin, which was produced by the person who compared it.

That the Claimant was the eldest son of the late Lord was proved by the deposition of the Lady above mentioned, who was a Relation of the Family; and the Dowager Lady Dunsany, the Mother-in-law of the Claimant, proved that he was always treated and spoken of by his Father as his eldest son and heir to the Title, and was so considered by all the Members of the Family.

Upon the foregoing Evidence the Claim was allowed.
It is usual to produce the Patent of Creation, but the Patent creating the Title in this Case had been long lost. The defect, however, was supplied by the Journals.

After the Claim is admitted, the Clerk of the Parliaments sends the Order of the House allowing it, to the Clerk of the Crown in Ireland, which completes the Business.

The expense of the foregoing Proceeding, which extended from one Session to another, and was attended with unusual trouble, amounted to about 150 guineas, though no Counsel were employed. Of this sum 45 guineas were paid for a person's journey to Dublin, and 30 guineas for Fees at the House of Lords, and to the Short-hand Writer.
APPENDIX.

In page 330 has been given the standing Order of the House in matters of Peerage, relating to the delivery of printed Cases fourteen days before the day of hearing. And here follow the other standing Orders for ascertaining the descent of Peers, which have been ordered by the Lords to be printed and published.

Die Luna, 11 Maii, 1767.

"Upon Report from the Lords Committees, appointed to consider of the proper means effectually to ascertain the descents of the Peers of this Kingdom, so that the Crown, or this House, may not incur the risk of being imposed upon by any ill founded Claim of Peerage,—

"Ordered by the Lords spiritual and temporal in Parliament assembled, that the King's Heralds and Pursuivants of Arms do take exact accounts, and do preserve regular entries in their Books of Office, of the Peers and Peeresses of this part of the Kingdom, and descendants from them, so far as it may be in their power to procure authentic information thereof.

"Ordered by the Lords spiritual and temporal in Parliament assembled, that Garter King of Arms do officially attend this House upon the day and at the time of the first admission of every Peer, whether by creation or descent, and that he do then and there deliver in at the table a Pedigree of the Family of such Peer, fairly described on vellum, which Pedigree shall include the Father and Mother, the Brothers and Sisters, their Issue, the Wife or Wives of such Peer, the Children of such Peer, and their Issue, according to seniority, down to the day on which such Pedigree shall be so delivered in; together with
the Marriages, Births, Baptisms, Deaths and Burials, Names, Surnames, Ages, Titles, Qualities, Offices, and Employments (if any), Places of Abode, and descriptions of every person inserted in such Pedigree, so far as the Garter and the Officers of the College of Arms may have been able to obtain the knowledge thereof; and in the case where such Peer shall not succeed in the Honour to his Father or Mother, but to his Grandfather, Grandmother, Uncle or Aunt, being the next immediate preceding Peer or Peeress, after whom he shall take such Honour, then such Pedigree shall also further include such Grandfather and Grandmother, Uncle and Aunt, together with their descendants in like form and manner, and down to the same period as aforesaid; and such Pedigree so delivered in shall be then referred to the Committee of Privileges, who shall examine and report the same, as it shall appear to them verified, with the proofs, which Report being agreed to by the House, such Pedigree (signed and certified by every such Peer to be true, to the best of his knowledge, information, or belief, upon his Honour) shall be filed by the Clerk, and kept (together with the Proofs) amongst the Records of the House, and an authentic Copy thereof registered in the Office of Arms. Provided, nevertheless, that nothing therein contained shall be construed to bar the Claim or prejudice the Rights of any person who may be found at any time aggrieved by any omission of entry, or by any Defect or Error which may be proved by legal evidence to have happened in the construction of such Pedigree.

"Ordered by the Lords spiritual and temporal in Parliament assembled, that every Peer, and every Peeress in her own right, be at liberty to make proof of his or her Pedigree before the Committee of Privileges, and obtain the like entry thereof."

"Ordered by the Lords spiritual and temporal in Parliament assembled, that the Heralds may demand as a reasonable Fee, the sum of £20, for their care, expenses, trouble, and attendance, in collecting, preparing, delivering in, and assisting at the Proof of the Pedigree of each Peer and Peeress, and registering the same pursuant to the foregoing Resolutions, to be paid
APPENDIX.

by every Peer upon his first admission, or by any other Peer or Peeress who shall desire to make Proof of his or her Pedigree in like manner.

"Ordered that these Orders be printed and published, and affixed on the Doors of this House and Westminster Hall, to the end all persons that shall be therein concerned may the better take notice of the same."

By the foregoing Orders, ample Regulations are made for preserving Pedigrees and Evidence of the Descent of the Peers. But it is a remarkable circumstance, and was observed by the late Mr. Cruise, in a conversation with the Editor, as a matter of wonder, that the printed Cases touching Peerages, or Appeals to the House of Lords, are not recorded or preserved in any public repository; and the same Observation applies to Appeals to the Privy Council, usually termed the Cock-pit.

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**Dates of Creation of the several existing Premier Peers of**

<table>
<thead>
<tr>
<th>England</th>
<th>Scotland</th>
<th>Ireland</th>
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<tbody>
<tr>
<td><strong>Duke</strong></td>
<td>Norfolk, 1483</td>
<td>Hamilton, 1643</td>
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<tr>
<td><strong>Marquiss</strong></td>
<td>Winchester, 1551</td>
<td>Huntly, 1559</td>
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<td>Shrewsbury, 1442</td>
<td>Sutherland, 1298</td>
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<td><strong>Viscount</strong></td>
<td>Hereford, 1542</td>
<td>Falkland, 1620</td>
</tr>
<tr>
<td><strong>Baron</strong></td>
<td>De Ros, 1264</td>
<td>Somerville, 1430</td>
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As to the Expense attending the Creation of Peers, which is more or less according to the degree of the Dignity conferred, the Writer has not had an opportunity of learning its present amount; or whether, like most other things, it has of late years increased. But the following Document shews the Charges of conferring all the Titles in the Peerage on Princes of the Blood, in the early part of the Reign of King George the Second, about a Century ago. It also shews that the Official Fees were paid, though the parties were of the Royal Family.
Fees paid for a Patent creating His Highness Prince Frederick a Baron, Viscount, Earl, Marquiss and Duke of Great Britain, copied from an old Manuscript.

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<th>Description</th>
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<th>d</th>
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<td>0</td>
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<tr>
<td><strong>Total</strong></td>
<td>153</td>
<td>16</td>
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</tr>
<tr>
<td>Signet Office</td>
<td>50</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>Gratuity</td>
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<td>2</td>
<td>0</td>
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<tr>
<td><strong>Total</strong></td>
<td>52</td>
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<tr>
<td>Gratuity</td>
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<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Private Seal</td>
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<tr>
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<td><strong>Total</strong></td>
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<td>Lord Chancellor—Receipt</td>
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<tr>
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<tr>
<td><strong>Total</strong></td>
<td>33</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Hanaper Office—For a Baron</td>
<td>24</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Viscount</td>
<td>28</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Earl</td>
<td>34</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Marquiss</td>
<td>61</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Duke</td>
<td>61</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>For the 2d Skin</td>
<td>4</td>
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<tr>
<td>Deputy Clerk</td>
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<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Deputy Sealers and Chaff Wax</td>
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<td>0</td>
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<tr>
<td><strong>Total</strong></td>
<td>219</td>
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Crown Office—For Fees and Fees of Honour to King's Servants, for a Baron

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
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<td>Baron</td>
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<td>12</td>
<td>0</td>
</tr>
<tr>
<td>Viscount</td>
<td>177</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>Earl</td>
<td>219</td>
<td>16</td>
<td>8</td>
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APPENDIX.

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marquiss</td>
<td>-</td>
<td>-</td>
<td>300</td>
</tr>
<tr>
<td>Duke</td>
<td>-</td>
<td>-</td>
<td>393</td>
</tr>
<tr>
<td>Supporters and Homage</td>
<td>-</td>
<td>-</td>
<td>25</td>
</tr>
<tr>
<td>Gilt Skin</td>
<td>-</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Second Skin and engrossing</td>
<td>-</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>Docquet and Dividend Fees</td>
<td>-</td>
<td>-</td>
<td>3</td>
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**Brought over**

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<thead>
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<th>£</th>
<th>s</th>
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<tbody>
<tr>
<td>647</td>
<td>12</td>
<td>2</td>
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</tbody>
</table>

**Lord Chancellor's Gentleman—For the five Titles**

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sealers and Chaff Wax for ditto</td>
<td>-</td>
<td>-</td>
<td>30</td>
</tr>
<tr>
<td>King's Barber's Fee ditto</td>
<td>-</td>
<td>-</td>
<td>11</td>
</tr>
<tr>
<td>Patent Case and Box</td>
<td>-</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td>Deputy Clerk of the Crown</td>
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<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Engrossing Clerk</td>
<td>-</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>Private Seal</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Stamps</td>
<td>-</td>
<td>-</td>
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<td>Petty Expenses</td>
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</tr>
<tr>
<td>Passing the Patent</td>
<td>-</td>
<td>-</td>
<td>10</td>
</tr>
</tbody>
</table>

**Fees paid for Prince Frederick's Creations**

- 2008 | 8 | 0

**Paid for searching at the Rolls, and taking Copies of the Preambles to several Patents of Honour granted to the Princes of the Blood**

- 3 | 3 | 0

**Total**

- £2011 | 15 | 6

- £4023 | 6 | 6

It is presumed that the above name Frederick should be William, as the Original MS. is thus endorsed, "Account of Fees paid for Prince Frederick's Creation (Father of Geo. 3). The like Fees paid for Prince William." The difference of £3. 7s. 6d. between the two totals may have been owing to the Amendment, mentioned in the first article.

The Fees above specified, it will be observed, are for the Patent of Peerage. Besides these, there are Fees paid to the Officers of the House of Lords on the Peer's taking his Seat, and also to the Gentlemen of the Herald's College.
NOTES.

Note 1, p. i.

The necessity of an Appellate Jurisdiction is evident, were it only to preserve uniformity in judicial Decisions, without which the Law itself would speedily be changed. Even when Laws were few and simple, the want of a Supreme Court was strongly felt. The County Courts, as Mr. Reeves observes, though attended with some advantages, were pregnant with Evils. The determinations of so many independant Judges bred a variety in the Law, and produced different Customs in different places. Besides which, Suits were decided by party and passion, for which there was no regular mode of obtaining redress. This first led to applications for liberty to sue in the King's great Court, for which the Suitors paid a Fine; and it afterwards occasioned the appointment of itinerant Judges, or Justices in Eyre. —Reeves's Hist. Eng. Law, vol. 1, pa. 488. [This learned and worthy man died since the lines above were written, at an advanced age.]

There is this manifest advantage attending a Gradation in Courts of Judicature, that it affords an opportunity for repeated discussions and re-consideration, in so much that the final decision of the Court of Appeal would probably be often different from the determination of the same Court, supposing the Cause could have gone there per Saltem, or in the first instance.

By the Law of England, the subject cannot be deprived of the Right of Appeal by any words in a Grant from the Crown; still less, if the Grant be silent in that respect.—1 P. Wms. 339.

Note 2, p. i.

The Sovereign ought never to be the Judge. To suppose the King at once the Prosecutor and Judge, as he would be in a Criminal Case, would be absurd; and were he to be a Judge in any other Suit in the first instance, it would preclude an Appeal to him, if he could act as a Judge, in the Dernier resort. But, says Father Paul, Appeals are
necessary, as it would be Tyranny to subject any one to the opinion of a single Judge, who might oppress him at will. Princes, therefore, do not pass Sentence themselves, that the persons condemned may have the benefit of an Appeal.—F. Paul’s Rights of Sovereigns, c. 3; Montesq. Spir. L. B. 6, c. 5; Hawk. P. C. cap. 1.

Note 3, pa. i.

An opinion has prevailed, that the King formerly sat in person in the Court of King’s Bench, the style being coram ipso Regis.—3 Bl. Com. 41. But Mr. Christian (Note 4) quotes Dr. Henry’s History of England, to show that there is no instance of any of our Kings sitting in a Court of Justice before Ed. 4, who, in the second year of his reign, sat three days together in the King’s Bench; but it is not said that he interfered; and as he was then very young, it is probable his intention was only to learn how Justice was administered. We are also told that King James the 1st was pleased to honour the Court with his presence, but was informed by the Judges that he could not give any Opinion. This is said to have been the last instance of the Sovereign’s presence in the King’s Bench.—8 Bl. Com. 41. Though the King is by a fiction of Law supposed to sit in that Court, the Judges give the Judgment, and therefore a Writ of Error lies from it into Parliament. Yet this does not involve in it the absurdity of an Appeal from the King to the King himself, for it is still to the King in Parliament.—12 Rep. 64, 65. But that the King sat in the Curia Regis, and on Prosecutions in Parliament, see Reeves’s Hist. of Eng. Law, vol. 1, pa. 68, vol. 2, pa. 413.

Note 4, pa. ii.

The name Parliament (Parlement Fr) was first applied to general Assemblies of the States under Louis 7, in France, A. D. 1150, and was not used in England till the reign of Hen. 3d. The first mention of it in our Statutes is in the Preamble to Stat. Westminster 1, 3 Edw. 1, A. D. 1272; and when it is said that Parliament met before that time, it is by a License of Speech, considering every National Assembly as a Parliament.—1 Bl. Com. 147. For the different Opinions as to its derivation, see Mr. Christian’s Note on this place.

Note 5, pa. ii.

It has been supposed and maintained by some Authors, that the King is one (the first) of the three Estates of the Realm. But this assuredly is a mistake, though it seems to be a question more of curi-
NOTES.

osity than importance. In addition to 1 Bl. Com. 153, see Lord Hale's Judicature of the Lords, pa. 10, where he gives several instances taken from the Parliament Rolls, to prove that the three Estates were distinct from the King, viz., 9 Hen. 5, which mentions Coram tribus Statibus Regni, i. e. Prelatus et Clero, Nobilitas et Magnatibus, et Communitate Regni Angliae, 3 and 4 Edw. 4, Le Roy et les trois Estates, &c. &c.

Nor was it the case, it is believed, in any of the other European Monarchies. In France the three Estates were beyond all question distinct Bodies from the King. So were they in Scotland. The Estates of the Scottish Parliament originally consisted of the Prelates, Comites, Barones ac libere Tenentes. In the time of David 2d, mention is made of the three Estates, an Act of his Reign (c. 41) beginning thus,—"In Parliamento ad instantiam trium Communitatum," &c., which is supposed to include Episcopi et Abbates, one Estate; Comites Barones ac libere Tenentes, another Estate; and Burgenses, a third Estate. Even after the smaller Barons sent Representatives to Parliament, they do not seem to have been considered a separate Estate; for in the first Act of the first Parliament of Charles 1st, the Estates are mentioned thus,—The Dukes, Marquisses, Earls, Viscounts, Lords and Commissioners for Shires, for the Temporal Estate; the Archbishops and Bishops, for the Spiritual Estate; and the Commissioners of Burrows for their Estate; have granted, &c. The Peers and Commissioners of Shires are here mentioned as one Estate; but after the final abolition of Episcopacy, which took place in the first Parliament of W. and M., 1689, c. 3, the Noblemen were considered as one Estate, the Barons, i. e. the Commissioners for Shires, as a second Estate, and the Burrows as a third Estate; for by the first Act of W. and M., 1689, c. 1, it was declared that the three Estates then met together (5th June, 1689), consisting of the Noblemen, Barons, and Burrows, are a lawful Parliament. The Barons here mentioned were the small Barons, Tenants of the Crown. In Scotland, all the Estates sat together in one House, and had one President. See Wight on Scottish Elections, 32, 82; Stat. Law of Scotland abr. 249, 432; 1 Bl. Com. 96, Note.

Certain it is, says Dr. Sullivan, that in France, the Clergy made one Estate, the Nobility the second, the Burghers the third; and in Sweden the Peasants make the fourth, all sitting in distinct Houses, the Majority of each of which must concur. And therefore I do believe that in England we talk of three Estates, the Clergy, not the Bishops alone, make one of them, contrary to the modern opinion,
NOTES.

that the King is the first Estate, and the Bishops and the Nobility the second; for the King is in no Country reckoned one of the Estates, but the Head of all. It is pretty clear that by the old Law none were Members of Parliament but the immediate Military Tenants of the King, and that they all sat in one House. The division of Parliament into two Houses was never known in Scotland; nor doth it appear in England previous to the Reign of Edw. 1st.—Sullivan's Lectures, 202, 203. This Work, which has great merit, with the learned and eminent Dr. Gilbert Stuart's Introduction, deserves to be more read than it is.

NOTE 6, pa. ii.

The exact date of the separation of the two Houses, or when they first met in distinct Chambers, has not been, and it is believed, can not be ascertained. Sir William Blackstone says, that in the Reign of Edw. 3, the Parliament is supposed most probably to have assumed its present form, by a separation of the Commons from the Lords.—3 Bl. Com. 428. According to Mr. Professor Christian, the separation took place about the end of the Reign of Edw. 3, or the beginning of R. 2 (A. D. 1377). Mr. Hume says, that Peter de la Mare was the first Prolocutor or Speaker of the Commons, in the first Parliament of R. 2. But Mr. Christian says this is a mistake; for that in the fifty-first of Edw. 3, the year preceding, Monsieur Thomas de Hungerford, Chevalier, qui avait les paroles des Communus D'Engleterre in cest Parlement, requested the King to pardon all who had been impeached in the former year.—See Christian's Account of the origin of the two Houses of Parliament, pa. 11, 12; 1 Bl. Com. 181, Note 56. Lord Coke says, that the two Houses of Parliament sat together till the reign of Edw. 3, and till the Commons had a perpetual Speaker. —See 4 Inst. c. 1, p. 2, and c. 51, pa. 255. Serjeant Wynne says, the separation of the two Houses is commonly referred to the time of Edw. 3, though he never could find on what argument the supposition was built, except that of seeing no traces of separation before that time. The precise time of the separation, nobody, he observes, has ever pretended to fix, but he thinks it probable it commenced in the Reign of Edw. 3.—Eunomus, vol. 2, pa. 42.

But it appears by the Rolls of Parliament, that they sat, or at least acted separately, long before the end of that King's Reign.—9th Edw. 2. Rot. Parl. vol. 1, pa. 351; 13th Edw. 3, Rot. Parl. vol. 2, pa. 104, 107; 14th Edw. 3, pa. 112; 15th Edw. 3, pa. 127; 17th Edw. 3, pa. 136; 18th Edw. 3, pa. 150, &c. The Lords are directed to meet "en
la Chambre Blanche," and the Commons "en la Chambre de Pointe,"
40th Edw. 3, p. 289.—On the opening of the Parliament, the Com-
mons were directed by the King to return to their ancient place en la
Maison du Chapitre de l'Abbaye de Westminster.—51 Edw. 3.; Rot.
Parl. vol. 2, p. 363; see also Pryme Inst. p. 9; 1st Rep. of the
House of Commons on the Public Records, p. 17, 18. The indus-
trious and laborious Giles Jacob (called by Pope a Sinister Bass of
Law), says, "that the first Speaker certainly known was Peter de
Mountford, 44 Hen. 3, when the Lords and Commons sat in several
Houses, or at least gave their Assents severally."—Lex Constitutionis,
p. 162. This is five years before the House of Commons is gene-
rally supposed to have had existence.

The origin of the House of Commons, and when the first Representa-
tion in Parliament of Counties, Cities, and Boroughs took place,
have been subjects of great and keen dispute among our ablest Writers
on the English Law and Constitution. According to Lord Chief
Baron Gilbert (2 Bac. Abr. 9), the most probable opinion is, that the
House of Commons was instituted by the Crown, as a balance to the
Barons, who were grown very opulent and numerous; wherefore upon
the Escheat of a Barony, the Crown parcelled it out into smaller Dis-
tricts, which begot the distinction between Barones Majores and
Barones Minorés. The latter held by Knight's Service, and being too
many to be all called to Parliament, were allowed to sit by Repre-
sentation. Hence we have the Writ to choose duas Milités gladiis
chevetor; to these were added Representatives of Cities and Boroughs.
At what time the Commons sat in a distinct House, is not well settled;
but he says the prevailing opinion is, that it took place in the Reign
of Edw. 1. In truth, whoever attentively and impartially consults
our early History, will be convinced that the Commons, though now
and for the last two hundred years so powerful and important a body,
were in antient times, and prior to the Reign of Hen. 7, comparatively
of small consideration beyond consenting to Taxes. Indeed, attend-
ance on Parliament, instead of being thought an honour and an
advantage, was in many cases deemed a hardship and a burthen.

By the diffusion of property (says a late learned Writer) among
the Commons, owing to the Lords (the great Landholders): being set
at Liberty by the Statute of Wills (39 Hen. 8, c. 1, explained by 34
Hen. 8, c. 5) to alienate their entailed possessions; by the increase of
trade and commerce, and other concurring causes, which took place
in the early part of the 16th century, power, the inseparable attend-
ance on property, became vested in the Commonalty; and from this period:
may be dated the consequence and importance of the House of Commons. Thence powers and privileges were claimed and exerted, which were unknown before, and a spirit of freedom and independence arose, which placed it in its present high state. The duty of attending the House began to be no longer deemed a busken; some Boroughs that had ceased to bear the charge of returning and maintaining their Members, petitioned to have the privilege restored; and others which had never enjoyed it, sought for and obtained that liberty. Even the Sheriffs in some instances, it is said, of their own authority summoned Members to Parliament, so that in and from the Reign of Hen. 8 to that of Chas. 2 inclusive, there was an increase of 200 members to the House of Commons.—Topham's Pref. to Glanv. Reports, iv to vi.

It is generally allowed that the first Election of Members by the Commonalty was in the latter part of the Reign of Hen. 3, and an Opinion long prevailed that those Members sat to deliberate with the Peers, but this has lately been denied.—Rose's Rep. on the Public Records, 44, 45. Mr. Rose does not name the Author of the Denial. That Gentleman, from his situation of Clerk of the Parliaments, as well as his great industry, was doubtless well qualified to give an Opinion on this subject, which he does not seem to have done. Is it not wonderful that upon points of Constitutional History, which must formerly have been matter of the utmost notoriety, there should now be such uncertainty.

In short, "the Constitution itself generated the House of Commons, so that the zeal, which some have shewn in seeking the Origin of the House in the British, or even the Saxon Annals, is not to be commended. Their aim was to serve the cause of Liberty, but at the expense of Truth, and without the least necessity."—Bp. Hurd's Dialogues.

It is a remarkable historical Fact that Ireland, when possessed by England only as a Settlement, had a Parliament anterior to the English House of Commons; for it appears from the learned Petry that the Parliament of Ireland sat in the 38th year of Hen. 3, eleven years before the Commons of England, who did not sit till the 49th of that King. And Prymne admits a Parliament to have sat in Ireland in the Reign of Hen. 2.—Ayres's Compar. Statement: of the English and Irish Law, vol. 1, p. 10.

Note 7; p. iii.

It appears, says Mr. Rose, that in matters of Judicature there was formerly a strange mixture of the Parliament and the King's Council;
and this was the Case so late as the reign of Hen. 6.—See the Rolls of Parl. vol. 4, pa. 334, and pa. 536; b. Rose's Observ. on Mr. Fox's Work, Introd. pa. 18. Here we are left in doubt as to what is meant by Parliament as the word is above used.

One great Cause of the Obscurity which exists in the early part of our legal and constitutional History, is the defective State of the Parliamentary Journals. Those of the Commons go no further back than the 1st of Edw. 6 (1547), and down to the 23d of Eliz.; where those of her reign end, they are very short and unsatisfactory. Those of her successor are also imperfect.—Pref. to Glanv. Rep. by Mr. Topham. pa. 11. The Lords' Journals begin in 1509.

This is not the only subject respecting our early Constitution and History that is involved in darkness. The first Statute in our printed Collection of Acts of Parliament is the Great Charter, not that of King John, but the Charter of 9th Hen. 3 (1225, being 40 years before the supposed commencement of the House of Commons); yet there is no doubt there were many prior Laws passed in this Country, although no Records of them are extant. And it is very probable that much of what is called the Common Law, had its origin in Acts of the Legislature, however it was anciently constituted.—1 Bl. Com. 67, 74, n. 7.

The English Law is composed of Custom, or Leges non Scriptæ, and the Statutes, or Leges Scriptæ; and a distinction has been made between the Statutes themselves, viz. those enacted before and those made since time of memory, which has been fixed by the Statute of Westminster 1, c. 39, at the beginning of the Rich. 1 (1189). The Statutes made before time of memory, and not repealed or altered, are considered as part of the Leges non Scriptæ, forming as it were, part of the Common Law; for though Copies of them may be extant, they obtain not as Acts of Parliament, but by immemorial usage, of which kind, no doubt, is a great portion of our Common Law.—Reeves's Hist. vol. 1. pa. 215.

It has been observed by the highest authority, that with respect to Legislation, it is clear that many of our public Statutes and Parliamentary Forms were unknown to the most learned men of former times, as we now find by reference to the Parliament Rolls; and many of those Laws are even now not engrafted into the ordinary Collections in the printed Statute Books. Upon the celebrated conferences of this House with the House of Peers in the last century (viz. in 1671), when the exclusive privilege of the Commons respecting Money Bills was discussed and established, the important uses to be
NOTES.

derived from a knowledge of Parliamentary Records, were signally and successfully displayed on the part of the Commons, by Sir Henage Finch (then Attorney General, afterwards Lord Chancellor Nottingham), for which he received their unanimous thanks. So when the Constitution of the Exchequer came into question upon the Banker’s Case, in the reign of King William, it was by the test of public Records alone, that Lord Somers was enabled to settle its limits. And again, when the right of manning the Navy by pressing was disputed, the legality of that practice was established by Sir Michael Foster, on the authority of recorded Precedents (Foster’s Cr. Law, Broadfoot’s Case). And to this same standard of Authority have both Houses of Parliament found it expedient to resort at no distant period, and upon occasions of the most solemn concern, for the safest guide to their joint Proceedings.—1st Rep. of the House of Commons on the Public Records, pp. 19, 20. See also Ruffhead’s learned Pref. to the Statutes.

Note 8, p. 4.

Impeachments are an exception to the grand Rule, that every man is to be tried by his Peers; for an impeached Commoner is tried by the Lords: the reason assigned for which (rather a strained one) is, that as all the Commons of the Kingdom are supposed to be the Accusers, it might be dangerous to trust the accused to a common Jury; but the Lords are strangers to the charge, and unprejudiced.—Sull. Lect. 319, and the Authorities to which he there refers. As to the reason here assigned against trying a Commoner by a Common Jury, would it not equally apply in the Case of a Prosecution by the Attorney General at the instance of the House of Commons?

According to some authorities a Commoner cannot be impeached for a Capital Offence, but only for High Misdemeanors, whereas a Peer may be impeached for any Crime; but the right of impeaching Commoners, even in Capital Cases, has been asserted by the Lords.—4 Bl. Com. 280, Note.

Note 9, p. 14.

The Council, says Mr. Reeves, exercised Jurisdiction in matters not cognizable in the inferior Courts, and in Cases both civil and criminal; they gave Redress where there was none in the ordinary

* Reported in Skin. 601.
† The Impeachment of Mr. Hastings, it is presumed.
course of Law, and decided *ex aequo et bono*; they took cognizance of exorbitant offences; and where persons were too high to be amenable to the usual process, the Complaints were brought before the Council, who in such instances acted in aid of the Courts below; and thus was the administration of Justice still kept, as it were, in the hands of the King, who, notwithstanding the dissolution of the Great Council, in which he presided, was, in contemplation of Law, present in all those derived from it. — Reeves's Hist. Eng. Law, vol. 1, p. 63.

Elsewhere Mr. Reeves observes, that in the reigns of Edw. 1, 2, and 3, there were judicial proceedings in Parliament, which was sometimes called the Council; that the Tribunal next in authority to Parliament was the Grand Council, consisting of all the Lords, who it is supposed were assembled when the Parliament was not sitting, being probably the Commune Consilium Regni before the Commons were summoned to it, and was so distinguished from the other Council, which the King had for advice in matters of Law, and which was in effect what is now the Privy Council, composed of the Chancellor, Ministers of State, Judges, &c. In both of these Councils the King sat as Judge, and Causes were said to be heard *Coram Rege in Consilio*, and both kept a close correspondence with the Parliament, whence Causes were adjourned into either of the Councils to be there determined. Of this instances are to be found in almost every page of the Parliament Rolls.—Reeves's Hist. vol. 2, 413, 415.

Note 10. p. 15.

Lord Hale says the Consent of the Commons, where that is mentioned, was often only implied.—Juris. p. 18. In a subsequent chapter he observes, that it should seem in some Cases, though the Petitions of Error were to the King and Lords, and the Record was removed into the Lords' House, yet that the Commons were called up, and the Judgment of Affirmance or Reversal given, and the award of Execution thereupon in *Pleno Parliamento*.—Juris. 180. But as it does not appear that the Commoners gave, or were asked their assent, it is evident, that Lord Hale's opinion was, at most, but conjecture. If further proof could have been produced, there is no doubt his Lordship's research would have discovered it.

Some of the Cases referred to by Lord Hale are quite anomalous; for instance, that of Sir Geoffrey Stanton, 13th Ed. 3, in which after an Order in *Plen Parliament*, with the advice of the *Consilium Regis*,
NOTES.

Directing a Judgment to be given by the Common Pleas, in which Court there had been great delay and diversity of opinion, a Writ of Error was brought afterwards in the King's Bench, but what became of it does not distinctly appear.—Hale's Juris. 117. Surely Precedents of this sort are of little weight.

Lord Hale informs us that the delays and difficulties in this Case of Stanton gave occasion to the Stat. of 14 Edw. 3, c. 5, erecting a Commissionary Court for remedy of the delays in the Courts—Juris. 118. He afterwards acknowledges that bringing Errors before both Houses had been long out of use.—id. 154.

Indeed Lord Hale appears to have been influenced by a strange prejudice against the Peerage. This is manifested in different parts of his Treatise, particularly where he says, "The Lords are great persons, and if they give Judgment against Law, there is no Appeal but to themselves. If there be an Appeal to the Commons, the Lords will not allow it; if to both Houses, it must pass through the Lords, who will be partial to their own Judgment. If the Appeal be to another Parliament, it is true the Lords may reverse their own Judgment; but who can expect they will do it?"—Juris. 88. It has been said his Lordship's education was puritanical, which may have given him this hostile bias. Whatever was the cause, it is another verification, if any were wanting, of the trite adage, that the best and worthiest of men, for he was one, are not exempt from failings.

There is a recorded precedent, furnished by the Commons themselves, which may be adduced as an admission on their part of the Lords' right to Jurisdiction, but which has not been noticed by Lord Hale or Mr. Hargrave.

The Case here alluded to occurred in the 34th year of King Hen. 8, (1548) and was an Appeal from the House of Commons to the House of Lords, in consequence of the arrest of Mr. Ferrers, Member of the former House, and a Servant of the King, by the Sheriffs of London. The Commons having sent the Serjeant at Arms to demand their Member, the Sheriffs not only resisted, but insulted the Serjeant. Upon this occasion the House rose and retired to the Upper House, where the Case was declared by the Speaker before the Lord Chancellor and all the Lords and Judges there assembled, who, judging the Contempt to be great, referred the punishment thereof to the Order of the Commons House. The conclusion was, that the Plaintiff, the Sheriffs, and the Clerk of the Compt, were committed to the Tower (the Clerk to a place there called Little Ease), and the Officers to Newgate.—1st Halsell, 53 to 58.

A A 2
It should seem that anciently the Lords decided disputed Elections of the Commons. For in a Manuscript Book in the Editor's possession, which there is reason to believe was copied from a Work written by Lord Hale, and which is entitled, "Judicature in Parliament," after enumerating several Cases in which Parliament had Jurisdiction, this passage occurs:—

"In certifying the Elections and Returns of Knights and Citizens for the Parliament. But the Commons alone do now determine of this, therefore I will only shew that the Commons did heretofore petition to the Lords for redress herein, and what course was then taken. I leave it to the Clerk of that House to shew how the Commons proceed herein at this day."

"Of the rest in Order."

"And first on Judgments on Delinquents."

It then goes on to treat chiefly of criminal proceedings and Impeachments, but does not contain anything further on the subject of the paragraph quoted.

This MS. is a thin folio, bound, fairly but not closely written, and contains 162 pages. There are several chasms and blanks, and it is evidently incomplete, though the word Finitis is written at the end. If not the work of Lord Hale, it bears internal marks of having been written by some Judge, as parts of it imply his having been consulted in that capacity.

The incompetence of the House of Commons to administer an oath is an objection to their judicial authority; for though no Witnesses are examined by the House of Lords on Appeals, nor any Evidence permitted that did not previously exist, yet Witnesses are examined on Oath on Divorce and other Private Bills, on Claims of Peerage, &c. And it is necessary to verify by Oath Copies of Proceedings in the inferior Courts, the service of Notices, &c. Mr. Christian observes that the reason this power has been withheld from the Commons, is supposed to be owing to the Jealousy of the Upper House, as it prevents the Commons from participating in Parliamentary Judicature.—4 Bl. Com. 137, n. 5.

Note 11, p. 18.

The Lords are now, in all doubtful and difficult cases, assisted by the Judges, a part of whose duty it is to attend their Lordships' House. But although the opinions of those learned persons have great weight with, and in most cases govern the decision of the Lords, there have been instances where their opinions have not been
Notes.

Adopted. In the Case of Reeves v. Long, 1 Salk. 227, the Lords reversed the Judgment, against the Opinion of all the Judges. It was a Case of great hardship, as it deprived a posthumous Child of an Estate; but it was determined according to the strict Rule of Law. The Lords, moved by its apparent injustice, set aside the Decision. The House of Commons, says Mr. Christian, in Reproof of this Legislative Assumption, immediately brought in the Act of 10th and 11th W. 3, c. 16, which passed into a statute, in order to legalize, in future, what before, in one instance, had been done against Law. See 2 Bl. Com. 169, n. 1. In another Case also, of much later date, the Lords reversed a Judgment, against the Opinion of all the Judges but one. In this Case, however, Lord Chancellor Thurlow was for the Reversal.—The Bishop of London v. Ffytche, Cunn. Law of Simony, 52; 2 Bl. Com. 280, n. 8.

Hence it appears that the House of Lords is not always governed by the Sentiments of the Judges. On this Subject Mr. Christian (ib.) remarks that a distinction may be suggested between Cases arising on the Common Law, and those which depend on Statute Law. A series of decisions in the Courts is the best evidence of the Common Law, and the Lords cannot find any adequate authority for opposing these Decisions; but on the construction of a Statute they seem as competent to determine a question, after any number of decisions in the Courts below, as after the first.

It is in cases of doubt only, as may be inferred from what has been said, that the Judges attend the House of Lords. Were their attendance to be constantly required there, it would materially interfere with their ordinary duties in their respective Courts, and be moreover attended with the utmost inconvenience to the business of the Suitors in those Courts. Some other remarks on this subject occur in the Introduction, p. xlii.

Note 12, p. 22.

In the first ages of Civil Society, while Laws are few, and the execution of them feeble, much must be left to the authority of Sovereign power. As the experience of later times points out the deficiencies of former Laws, and particular Remedies are applied; the exercise of this Sovereign power seems to be so far abridged. The prerogative of the Prince and the dominion of the Laws in this manner occasionally take place of each other. Upon the increase of the latter, the former gives way and retires.—Reeves's Hist. vol. 1, p. 203-4.
Note 13, p. 24.

That the Lords considered themselves entitled to exercise Judicature in Criminal Cases, and particularly to impose Fines, in the Reign of Ja. 1, appears from the following Orders of the House.

23rd February, 1623.

Regulations touching Fines.

"Whereas this High Court of the Upper House of Parliament do find Cause in their Judicature, to impose Fines, amongst other punishments, upon Offenders, for the good example of Justice, and to deter others from such like offences; It is ordered and declared that, at least once before the end of every Session, the Committees for the Orders of the House and Privileges of the Lords of Parliament, do acquaint the Lords with all the Fines that have been laid that Session, that thereupon their Lordships may use that power which they justly have, to take off or mitigate such Fines, either wholly or in part, according to the measure of penitence or ability in the offenders; or suffer all to stand, as in equity their Lordships shall find it; and that until every Session be ended, no Estreat is to be made of such Fines set or imposed by Parliament, nor any copy thereof to be made by the Clerk, without special Order upon public Motion in a full House."

3rd April, 1624.

For the trial of such persons as shall be brought before the Lords and come to Judicature.

"As this Court is the highest, from which all others ought to draw their light, so the proceeding thereof should be most clear and equal, as well on the one side in finding out offences where there is just ground, as on the other side in affording all just means of defence to such as shall be questioned; and therefore in all cases of moment the Defendants shall have copies of all Depositions both pro and contra, after publication, a convenient time before the Hearing, to prepare themselves; and also if the Defendants shall demand it of the House in due time, they shall have their learned Counsel to assist them in their defence, whether they be able by reason of health to answer in person or not, so as they choose Counsel void of just exception; and if such Counsel shall refuse them, they are to be assigned as the Court shall think fit: this their Lordships do, because in all Causes, as well Civil as Criminal and Capital, they hold, that all lawful helps can not, before just Judges, make one that is guilty avoid Justice; and on the other side, God defend that an innocent person should be condemned."
Notes.

Note 14, p. 29.

In the famous Case of the Aylesbury Men, upon the Motion for a Habeas Corpus, that great and intrepid Judge, Lord Chief Justice Holt, delivered an argument which ought never to be forgotten. He said (among other things) "Neither House of Parliament has a power to dispose of the liberty or property of the people, for that can not be done but by the Queen,* Lords, and Commons; and this is the security of our English Constitution, which can not be altered but by Act of Parliament. The House of Commons are Judges of their own privileges, but the Law must also be obeyed. When Subjects have a right to bring actions, they can not be stopped but by Act of Parliament, for no Privilege can extend so far as to take away a man's right. Nothing can make a new Privilege, for the breach of which a man shall lose his right, except an Act of Parliament. The Judges are bound to take notice of the Customs of Parliament, for they are part of the Law of the Land, and there are the same methods of knowing it as the Law of Westminster Hall. It is the Law which gives the Queen her prerogative; it is the Law which gives Jurisdiction to the House of Lords; and it is the Law which limits the Jurisdiction of the House of Commons."—The Queen v. Paty and others. Lord Raym. 1105. Salk. 503. Holt, 526.

In some Accounts of Sir John Holt's life the following Anecdote is related, to which it supposed the Aylesbury Case gave rise. The Serjeant at Arms of the House of Commons having been ordered to require the Attendance of the Chief Justice, proceeded to the Court of King's Bench for that purpose, when that resolute Judge is said to have spoken to the following effect:—"Mr. Serjeant, attend to me. I am here representing the Crown in the administration of Justice, in which I am not to be interrupted; and (taking out his watch) if you remain there five minutes I will commit you, though you had the Speaker and the whole House of Commons in your belly." The Serjeant did not wait to risk a Commitment.

The Courts may judge of the Privilege of Parliament when it is incidental to a Suit of which the Court is possessed.—2 St. Tr. 66, 209. See in Hargrave's juridical Arguments his Opinions on the Cases of Mr. Butler and Mr. Perry.

The Commons have on some occasions considered and styled themselves the High Court of Parliament, and above the Law. Thus they

* The Case occurred in the time of Queen Anne.
express themselves in their Address to King Ja. 1 on the 20th of June, 1604. "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 Law, but have their rights and privileges peculiar unto themselves."—Topham's Pref. to Glanville, xxx. This is a little different from Ch. Just. Holt's Opinion.

The famous Mr. Selden, who was for many years in Parliament, and a strong advocate for popular rights, and the legal Privileges of the Commons, observes in his Table Talk, that "Parliament Men are as great Princes as any in the World, when whatever they please is Privilege of Parliament; no man must know the number of their Privileges, and whatsoever they dislike is breach of Privilege. The Parliamentary Party, if the Law be for them, call for the Law; if it be against them, they will go to a Parliamentary way. If the Law be for them, then for the Law again. Like him that first called for Sack to heat him; then small drink to cool his Sack; then Sack again to heat his small drink."—See Dr. Aikin's Life of Selden, p. 182-3. Mr. Selden appointed Sir Matt. Hale one of his Executors.

Here a remark is suggested respecting the opposite views taken by party zeal, of similar measures at different periods. In the days of Ja. 1st, the conduct of the House of Commons was applauded as highly patriotic, because, in asserting its own privileges in opposition to the Court, it was considered as supporting those of the People. A century and a half later, the House of Commons, for an exertion of power in the case of the celebrated John Wilkes and the Middlesex Election, which it had exercised twenty times before, was charged with subverting the Rights of all the Electors of the Kingdom, in order, as was alleged, to gratify the wishes of the Government; and at the distance of fourteen years the obnoxious Resolutions were expunged.—See 1 Bl. Com. 163, Note 16. On this occasion Mr. Fox must be allowed the credit of consistency, as he always maintained the right of the Commons to act as they did. Those who are not old enough to have known Mr. Wilkes and his times, may learn much of his political history from the last edition of the Letters of Junius. Two very important Events are owing to him, namely, the abolition of general Warrants, and the unrestricted Publication of the Parliamentary Debates.
Note 15, p. 31.

Among the Saxons, it is said, the *Wittenagemote*, or great national Council, consisted of the King, Lords, and Commons. The Lords were Spiritual as well as Temporal. The Lay Lords were the Earls Thanes (Barons) and other Nobility. The Spiritual Lords were the Bishops and other Dignitaries of the Church, whose possessions were held in Frank almoign, but after the Conquest were subject to military service; and strange as it may now seem, Abbesses sat in the *Wittenagemote*. Even in the time of Hen. 3 and Ed. 1, four Abbesses were summoned to Parliament. Sullivan’s Lect. Prelim. Disc. vi.

According to Dr. Pettingal (Inquiry respecting Juries), the *Wittenagemote* rose out of the feudal system. He observes that this system was the principle adopted by the Romans in sending out their Colonies to the conquered Lands, which were granted to the People on condition of supplying Men and Money for the common defence; and he thinks it likely that when the Gothic Nations came to settle on those Territories which the Romans had possessed, they took their plan of Defence and Services from the Custom of the latter, the remains of which probably continued from the Conquests of Augustus in Germany; thus copying the Roman example in the disposition of the conquered Lands, which the northern Nations held by military Tenure. The Tenants of these Lands, who were afterwards called Tenants in *Capite*, became Members of the *Magnum Consilium*, which met once a year, and were called Senators and *Pares Curiae*, which, says the Author, were the Origin of the Lords in Parliament.

Of those Annual Conventions all who held Fees were constituent Members, and this, says the Doctor, was the Formation of the Saxon *Wittenagemote*, the Members of which, according to the quantity of their Tenures, were called either Eorles, or Thanes, which Names, under the Normans, were changed to Counts and Barons. And this was the Basis of our present Constitution; for when the conquered Lands were distributed among the *Capitains* (so called from holding immediately in *Capite*) or Chiefs, from the tenure in *Chef*, which is the same in French as in *Capite*, they met as Representatives of their Fees, to take Order for the good Government of the Public. But this kind of Tenure was altered by degrees, possessions came to be held by other rights, property was diffused, and changes in the Constitution of course followed; which gave rise to the third Estate in Parliament, and the admission of the Commons into the Legislature.

—p. 75 to 90.
From this view it appears that our ancient Constitution was founded entirely upon the feudal tenures by the Anglo-Saxons; and the Doctor strenuously combats the assertion of the Hon. Daines Barrington, in his Observations on the Statutes, that feudal tenures were not known to the Saxons, who had no terms for them; for Doctor Petitault contends that they had the things, if not the words and this he adduces several Arguments and Facts to prove.—90-97

Indeed Sir W. Blackstone admits that feudal tenures were in some degree established in England before the Norman Invasion.—B. 2, c. 4.

In very early times the great Anglo-Saxon and Danish Toparchs or Thanes coined Money, and assumed the style of Cynning, or King, and continued to do so until the year 920, when Alfred changed the title of King to that of Earl.—Johnston's Antiq. Celto Scand. p. 33. Ledwich's Irish Antiq. 218

Note 16, p. 32.

That Chief Baron Gilbert was the real Author of this compilation, which has great merit, is now generally allowed.—Bibliothe. Legum. p. 2; and that Mr. Bacon, a Barri ter of the Temple, of small practice, but of good talents, was employed to revise and arrange the Work, and also to lend his name to it; probably because of the prejudice attached to posthumous publications. Mr. Bacon, who is said to have been a native of Ireland, appears to have performed the task with ability. It has passed through several Editions, with many Improvements, and has long been considered a Standard Work.

Note 17, p. 35.

It has been commonly supposed that the Court of Common Pleas was erected by Magna Charta, but Mr. Reeves maintains that it was created by degrees, and that Pleas in Bank had been held before the Charter of King John, as Justiciarii nostri de Banco are mentioned in it, so that the Clause declaring that Common Pleas should be held in a place certain, is to be understood as settling and confirming what had been previously begun. In truth, he observes, the existence of the Bench appears from Records in the Reign of Rich. 1.—Reeves's Hist. vol. 1, p. 57.

Note 18, p. 37.

It is to be regretted that Mr. Reeves's valuable work has not been brought down farther than the reign of Elizabeth;* it contains a

* The portion relating to this Queen's Reign was only published in the last year of the Author's life.
great deal of curious and useful information, not in Blackstone or any other single work. Besides a luminous view of our old Laws, the many changes which they underwent by time and judicial decisions, the additions made to them by Statutes, the nature of Writs and real Actions, and the description of the different Courts and Judicatures, the Author gives the characters of the antient Writers on the Law, and an Account of their Works. It is true that certain Opinions of this learned Writer, in some of his Publications on the English Constitution and Government, have been strongly controverted, particularly by Mr. Professor Woodeson; still it is conceived that his History of the Law affords as good an explanation of the nature of the old judicial proceedings of Parliament as is any where to be found. The Index is very defective.

Note 19, p. 119.

Writs of Error to enable the Courts to review and correct their own Judgments, are called in the Books of Practice, as they respectively relate to the King's Bench, or the Common Pleas, Writs of Error quod coram nobis residi, and quod coram vobis residi, having been so denominated from these Latin words used in those Writs when Law proceedings were in that Language, because the former required the Record "which remains before us" (meaning the King's Bench, where his Majesty is supposed to be present), and the latter directed the Record, "which remains before you" (meaning the Judges of the Common Pleas), to be examined and rectified; and the terms coram nobis and coram vobis are generally applied to Writs of Error in Fact, the only Error that lies in the Common Pleas, though a Writ coram nobis lies in the King's Bench for Error in Law in some Cases, as well as for Error in Fact.—Tidd, 1126-7. Now it is conceived that these terms are not altogether appropriate. In Lilly's Entries, vol. 1, p. 220, is a Writ of Error coram vobis in the King's Bench. It is directed "to our Justices assigned to hold Pleas before ourselfi" and after stating that "Because in the Record, &c. of a Plea in our Court before us Error happened, &c.," it commands that if Judgment be given, then the Record, &c., "which before you remain" being inspected you cause, &c. In p. 231 there is another Writ of Error, styled coram nobis, in the same form, except that in the latter the Record is said to remain before us. In p. 251 is another in the same Court, called a Writ of Error coram vobis, which commands that the Record, &c. being inspected, you cause, &c. without saying it remains before us, or you. Indeed the words seem
to make a distinction without a difference, and to be mere surplusage, for in all cases where a Record is to be rectified or removed, it must be remaining in possession of the Court by which it is to be corrected or transmitted. In p. 291 is a Precedent of a Writ of Error of a Judgment of the Common Pleas in Ireland, affirmed by the King's Bench there, returnable in the King's Bench here, which says, "and the Judgment thereupon before us is affirmed, and before us in our said Kingdom remains." In a work entitled the Law and Practice of Writs of Error, p. 78, is the form of a Writ of Error, called coram nobis residet, from the Common Pleas to the King's Bench, with the Assignment of Errors, which shews that it was brought for Error in Fact, viz. the death of a Defendant, and the Form is exactly the same as that of another Writ of Error from the Common Pleas to the King's Bench in the same book, p. 67, for Error in Law, neither of them having the words "which remain," &c. In truth, the chief difference in these Writs is that when a Writ of Error in Fact is returnable in the same Court, it is differently directed from a Writ of Error in Law, and the certifying or missive clause is omitted. The direction is, to the Judges collectively, and not to the Chief Justice individually. In short, the use of the words coram nobis and coram nobis tends rather to perplex than to distinguish. With respect to the Form of the Writ for Error in Fact, it is not adapted to its purpose. It commands the Record, &c. to be inspected, that the Errors may be corrected. Now Error in Fact being extrinsic, how can it be rectified by Inspection?

Note 20, p. 135.

In the Case of the Chamberlain of London (Harrison) v. Evans, above referred to, it appears by the Lords Journals, 6th March, 1766, that the Chief Baron delivered in the Writ of Error brought to reverse the Judgment of the Commissioners Delegates, appointed to hear the Errors in a Judgment given in the Sheriff's Court of London, and affirmed in a Court of Hustings. The Chief Baron became the first Commissioner, the Chief Justice of the Common Pleas having died.

In the Case of Harrison v. Alexander, which was an Action of Debt brought in the Mayor's Court of London, by the Chamberlain against the Defendant, to recover £5, as a penalty for practising as an Attorney in the City, without being free of the Scrivener's Company,—the Defendant pleaded his Privilege, contending that he was not liable to be sued in the Mayor's Court; and the Plaintiff having demurred, the plea was over-ruled, and Judgment of Respondeas
Ouster given against the Defendant. The Defendant refusing to answer over, Judgment by *Nil dicti* was entered against him; upon which he sued forth a special Commission of Error, directed to Judges Delegates; and the Record being brought before them by Writ of Error, the Defendant below assigned Errors. The Cause was argued at great length several times, before Chief Baron Parker and four other Judges, at Serjeant's Inn Hall. And on 3d November, 1758, Chief Baron Parker and three other Judges met at Guildhall, when they gave their Opinions against Mr. Alexander, and affirmed the Judgment.—See Report of the Proceedings in the Case of Harrison v. Alexander, qto. 1768.

It is supposed that the City did not persevere, as Attorneys afterwards and ever since have practised in the City without molestation, though not free of any Company.

In the paragraph to which this note refers mention is made of the Court of *Hustings*, or Lord Mayor's Court. Of this word the learned Doctor Pettingal in his Enquiry respecting Juries (pa. 61), gives an ingenious derivation. By the Saxons, he observes, a Cause was called a *Thing*; Lawyers *Thingsmen*; a Judge *Thingrave*; and a Court *Husting*, or the House for hearing Law Causes; and as Thing and Cause signified the same, the Italians and French made their *Cosa* and *Chose* out of *Cause*.

The main object of the Doctor's Work is to shew that Juries were in use among the ancient Greeks and Romans, from whom the Northern Nations derived them, and that the words in the Greek and Latin Languages which have been translated and supposed to mean *Judges* do not properly bear that meaning, but that they really signify *Juries*. The Doctor also incidentally endeavours to prove that, contrary to the general opinion, feudal or military Tenures originated with the Romans, or were borrowed from them by the Northern Nations.

But the ancient Juries differed from the present English Jury, inasmuch as they were more numerous, consisted of an odd number, and decided by a Majority, which was also the case in England until King Alfred, as is related, fixed the number at twelve, and ordained that they should be unanimous, which Dr. Pettingal calls a salutary regulation.—163-167. His reason is, that when there was an odd number of Jurors, a Man might be condemned to death by a Majority of a single voice only, as would be the case if the Jury consisted of thirteen, and seven were opposed to six. But the Doctor seems to have forgotten that by requiring unanimity it is put in the power of
one Man to control or defeat the Opinions of eleven others, no matter whether he happens to be influenced by good, or by bad motives, whether his dissent proceeds from virtuous and conscientious feelings, or from obstinacy, stupidity, or knavery. Such a Juror, if he can but endure privation longer than his fellow Jurymen, is sure either to compel them to yield to his Sentiments, and cause an acquittal or condemnation, or to prevent any Verdict from being given; whereas in the former Case there must be at least the Opinions of seven persons for the Decision. In fact, this boasted System may be truly affirmed to have caused, as it must continue to cause, countless Perjuries and violations of Conscience, besides in many Cases great delay and inconvenience; and, therefore, however unpopular any attack upon the Trial by Jury may be deemed, there are many who think it requires, and hope it will, ere long, receive amendment. It is only within the last ten years that the ancient, and once popular, but most vindictive and barbarous Law, allowing the Appeal of Murder, was annulled; and it then became matter of wonder that it had not been sooner abrogated. That practice was at one time defended by Mr. Horne, afterwards Tooke; and the proposed removal of that long-standing and dangerous metropolitan nuisance, London Bridge, met with a strong and persevering Opposition, which fortunately proved ineffectual, and the old unsightly pile will soon be exchanged for that magnificent structure now nearly completed.

On the subject of Jury Trial, see a very able Pamphlet entitled, "Observations on Trial by Jury," &c. by John Longley, Esq. Recorder of Rochester; 1812, by which it appears, that notwithstanding Alfred's supposed Law, unanimity was not invariably required for some ages afterwards, viz. till the latter part of the reign of Edw. 3, (about 1320).—See also Reeves's Hist. E. L. Mr. Longley does not complain of the reduction of the number of Jurors to twelve, indeed he thinks it should consist of a still smaller, and an odd number; but he justly objects to their forced accordance in Opinion.

Doctor Pettingal assigns a reason for not allowing refreshment to a Jury different from that commonly given, viz. that it tends to dispatch. He thinks it was to prevent the consequences of intemperance, to which the northern Nations were addicted; and he observes that among the Romans Causes were not heard, nor Business transacted, in the Afternoon, that is, after the ninth hour (hora nona, reckoning from six o'Clock in the Morning) viz. our three of the Clock. Hence the term Noon, though it now means twelve o'Clock.

—188-9.—This is different from common derivations.
The Treatise displays a profusion of learning and considerable sagacity, but, it is believed, has not made many Converts to the Doctor's Opinions, nor does it appear to have been much noticed. He is a most ardent advocate and admirer of Liberty and Equality, and yet he maintains the right of a Parent State to a Contribution from its Dependencies, for speaking of the Roman Colonies, he says, "When they refused to comply with this duty they were to be treated as Rebels;" "and what was a just conclusion then, from the Laws of Nature and Nations, cannot now under the like circumstances be illegal or unjust."—p. 78. This was written, or rather published, in 1769, during the dispute between this Country and the American Colonies, to which the last paragraph evidently alludes.

Note 21, p. 149.

It is presumed there must have been circumstances in this Case not appearing in the Report of it. It is usual for a Defendant's Attorney, who intends bringing a Writ of Error, to serve the Plaintiff's Attorney with a Rule to give notice of taxing the Costs, meaning to serve the Writ immediately afterwards. When a Debt is large, and the Costs not considerable, a Plaintiff will often rather give up the Costs than have payment of the Debt delayed. His Attorney therefore, to avoid the effect of a Writ of Error, does not tax the Costs, nor of course give any notice of taxing, but forthwith sues out Execution, the Plaintiff's Attorney, who did not foresee or expect this sacrifice, not having served the Allowance of the Writ of Error; but if this had been done in time, it is conceived to be quite clear that execution could not afterwards have been issued.

Note 22, p. 151.

Whether a Writ of Error in Fact lies in the Common Pleas, has been matter of doubt. According to some authorities it does lie.—Com. Dig. Tit. Pleading, 3 Bl. 1. That it may be brought in the King's Bench is unquestionable.—Skin. 523, 2 Mod. 194, 1 Burr. 410, Lil. Ent. 228. But there is no positive determination against its being brought in the Common Pleas; and the precedent in Mr. Tidd's Forms, p. 498, and referred to in his most comprehensive and accurate Book of Practice, p. 1137, we are informed by that learned gentleman, was taken from a Writ of Error coram vobis, actually used in practice, so that it seems to be at the option of the party complaining, to have the Writ returnable in either Court, as a Trial can be had as well in the one as the other.—See Palm. 161, Stra. 234.

The Court of Exchequer, according to the opinions of very
eminent Counsel (Mr. Serjeant Hill, and Mr. Law afterwards Lord Ellenborough*), has cognizance of Error in Fact in that Court, and not the Court erected by 31st Edw. 3, though it has been said a Writ of Error does not lie, and that an Audita Querela is the proper remedy.—Bunb. 282, 3. But this is evidently a mistake, as that Writ would not apply in such cases; consequently without a Writ of Error in Fact there would be a failure of Justice, though it is believed no instance of one can be found.

Note 23, p. 171.

With respect to Costs at Law, it is probable that the Statutes on that subject were thought requisite, because by the old Common Law, Defendants, when Judgments were given against them, were liable to be amerced, and in some cases imprisoned; and when there was Judgment against the Plaintiff, he and his pledges might also be amerced, but these at length became only nominal Punishments or Remedies, which gave occasion to the different Acts awarding Costs. —See 3 Bl. Com. 399-401. Scarcely any subject has occasioned more doubts or diversity of Decision than this.

As to Costs in Equity, it is true the 17th of Rich. 2, c. 6, ordains, that "forasmuch as people be compelled to come before the King’s Council, and into Chancery upon untrue suggestions, the Chancellor, upon their being proved untrue, shall have power to award Damages according to his discretion, to the party unduly troubled." This certainly leaves the matter in the Chancellor's discretion. The Act of 15th Hen. 6, c. 4, is stronger, for after reciting "that persons had been grieved by Writs of Subpoena for matter determinable at Law, the King commands that no Subpoena shall be granted in future until Surety be found to satisfy the party vexed, his damages and expenses, if the matter contained in the Bill cannot be made good."

However, neither of these Statutes have been much observed; and if they had, they are quite silent on the subject of giving Costs to a Plaintiff, and the latter Act seems to have been intended to protect a Defendant from Suits in Chancery when there was a remedy at law. In short, Costs in Equity Suits are in general in the discretion of the Courts, and it is conceived should be so in all cases.

Note 24, p. 178.

Although Writs of Error require "the Record and Proceedings with all things touching the same" to be sent to the superior Court,

* See p. 266-273.
and the Return (except from the Common Pleas) purports that the Record and Proceedings are annexed to it, and though it is said in Nat. Brev. 20, E. that the Record itself is to be removed, and not a transcript, that it may remain a precedent in similar Cases (except the Transcript of a Fine), yet in no Case is the original Record sent, but a Transcript; and the Transcript only contains a Copy of the Pleadings and Judgment, without the Judicial Writs.—Bac. Abr. 467.

As to its being a precedent, though few persons search the Rolls for precedents, the Transcript would serve for that purpose. Besides, the course of Proceeding on Writs of Error, by giving rules to transcribe, &c. is quite inconsistent with the idea of sending the original Record to the Court above. It is said in some of the books, that the Record is sent back from the Lords, in order that if the Judgment be affirmed the Court below may proceed to Execution.—21 Dy. 375 a. Cro. Ja. 341.

According to Lord Holt, a Transcript becomes transmuted into the true Record, for his Lordship is reported to have said, "It is no objection that it should be a Transcript for fear of peril of Sea (speaking of the Writ of Error from Ireland), for one might object in the same manner that upon Error in the Common Pleas, the Transcript only is removed hither, lest the Record should be burnt or lost before it reaches the King's Bench. But in fact when the Transcript in both Cases arrives here, then it is the true Record, and not before; and that in Ireland, or in the Common Pleas, ceases to be the Record."—1 Lord Raym. 427. Lord Holt might have said the same of a Record of his own Court (the King's Bench) when sent to the Exchequer Chamber or to the Lords, and that when the Transcript is remitted back, then the original Record, by a new transmutation, was restored. It is sufficient to say, as Lord Hale observes (Jurisd. 169), that the Transcript is to some purposes a Record, for it certainly answers the same end. The reason given for making and sending the Transcript, which Lord Holt discredited and ridiculed, namely, to guard against accidents, if not the true, is assuredly a good one; otherwise why send a Transcript and not the Record? That eminent Judge, great as were his talents, sometimes was singular in his opinions. To compare the risk attending a Sea and Land Voyage of between three and four hundred miles, with the danger of fire in crossing Westminster Hall, was hardly consistent with the wisdom or gravity of a Judge. The Lords do not consider the Transcript as the true Record, for their Proceedings are said to be super tenorvm Recordi, and not super Recordum.—2 Bac. Abr. 153.

The reason above alluded to for bringing back the Record, viz. that
the Court below may proceed on it, is inconsistent with the idea of its becoming a nullity. It is, besides, unsatisfactory, because as the Transcript is returned, so might the Record be after Judgment by the Lords. Another reason, and perhaps the best of all, for returning the original Record, is given by Lord Hale, namely, that the same Roll concerned divers other matters.—Jurisd. 149. Formerly Pleadings were more concise, and the writing closer than at present. Hence several Records might be contained in one Roll.

Note 25. p. 127.

Mr. Ayres, in his "Comparative View of English and Irish Law," strongly contends for the Independence of the Sister Island, which was soon afterwards acknowledged by the British Parliament. He adopts the reasoning of the famous Molyneux in his "Case of Ireland," &c.; and in reply to the argument drawn from the Statutum Hiberniae, 14th Hen. 3, which had been usually cited to shew that Ireland was bound by English Acts of Parliament, maintains that this Statute, as it is improperly called, was only the King's Answer to a question proposed by the then Chief Governor of Ireland on a point of Law. The conclusion of it is, Teste me ipsa apud Westmonast. 9th Feb. Anno Regni 14, which words shew it was not a Legislative Act.—Ayres' Introd. xlxi. It is set down in the Statute Book as obsolete.

The Work of Molyneux above noticed, it appears, was burnt by Order of the English House of Lords.—Ayres' Introd. And yet had the Author's Life extended to the year 1789, he would have witnessed the triumph of his arguments; but the Union of the two Countries has (it is hoped for ever) terminated the controversy.


The Court of Admiralty is two-fold, consisting of the Instance Court, which takes cognizance of Contracts not under Seal, made, and Injuries committed, on the high Seas,—and of the Prize Court, which has Jurisdiction over Prizes taken in war time. The Commissions to hold the two Offices are perfectly distinct, though usually given to the same person.—2 Browne's Civil and Admiralty Law 29. From the Instance Court an Appeal lies to the King in Chancery, who appoints Delegates by Commission, to determine it. From the Prize Court the Appeal is to Commissioners of Appeal, consisting chiefly of the Privy Council.—id. 30. There has been in Ireland, from time immemorial, an Instance Court of Admiralty.—id. 32.
NOTES.

Besides the Instance and Prize Courts, there is a Criminal Jurisdiction in the Lord High Admiral over Offences committed at Sea, or on the Coasts; but those Offences are now, by the Statute 28th Hen. 8, c. 15, tried by a Commission of Oyer and Terminer.—id. 32-3.

When Judges Delegates are equally divided, application is made to the Court of Chancery for a Commission of Adjuncts.—id. 551.

The Editor has not met with an explanation of the word Instance, as above used in "Instance Court;" and the Gentlemen of Doctors' Commons seem to be as much at a loss as he is respecting it. In the French Language, one signification of the word is poursuite en Justice, and in France they have Courts of Premier Instance.—Perhaps this may help to account for its derivation.

Note 27, p. 313.

It appears that matters of Honour were adjudged by the King in Parliament in the time of Hen. 6. This was done in the Case of the Earl of Arundel. So in the same reign, in the controversy for Precedence between the Earls Marshal and Warwick, it was adjudged by the King, with the advice and assent of the Lords spiritual and temporal, &c. that the Earl Marshal, as Son and Heir of the Duke of Norfolk, was entitled to Precedence; and again, in the same King's time, the Case of Precedence between the Earls of Arundel and Devonshire being referred to the Judges, they answered that it ought to be determined by the King and Lords; and Judgment was given by the King, by the advice of the Lords, &c. for the Earl of Arundel to enjoy Precedence, by reason of the Castle and Honour of Arundel. Of the same nature were the Decisions on the Titles of the Office of Great Chamberlain and Earldom of Oxon in 3 Car. 1, and of the Title of Lord Grey de Ruthen in 16 Car. 1, on reference from the King to the House of Lords.—Lord Hale's Juris. of the Lords, 104-5.

Note 28, p. 337.

To constitute a Session of Parliament, it is laid down that an Act must have passed both Houses, and received the Royal Assent, [or a Judgment been given]; and the Session is never understood to be ended until a prorogation takes place: so that unless some Act be passed, or some Judgment given in Parliament, it is no Session at all. 1 Bl. Com. 186. In 1678, there was a prorogation of two days, viz., from the 13th to the 16th of March, a single day only intervening. In that Parliament no Legislative Act had been done, but the Lords on the 17th of March resolved "that their late meeting was a Ses-
sion, in relation to the Acts of Judicature of that House; but not so
as to the determining of Laws determinable at the end of a Session;" on
which Mr. Hatsell observes, that this resolution does not appear
much to clear up the matter: vol. 2, p. 284. It is decided that
nothing concludes a Session but a prorogation or dissolution of
made by the Lords, it must be owned, is not very obvious. It is not
stated that any judgment was given. However, it is not conceived
to be now material to discuss the point—1st, because it has been
long settled that judicial proceedings remain in statu quo, not only
from session to session, but after a dissolution of Parliament; and
2dly, because such a prorogation is not likely soon to happen again.

ADDITIONAL NOTES.

The following Note was meant to have been referred to at the word
omnipotent, second paragraph, p. iii.

Parliament, all potent as it is supposed, cannot bind, restrain, or
set limits to its own acts, or to the power of a future Parliament;
for Lord Coke observes, that though divers Parliaments have at-
tempted to restrain, qualify, or make void subsequent Parliaments,
yet could they never effect it; for the latter Parliament hath ever
power to suspend, explain, or make void the former, notwithstanding
any words of prohibition or penalty; it being a maxim in the Law of
the Parliament, quod leges posteriores priores contrarias abrogant.
4 Inst. 43.

A very eminent person, in answer to an objection against the ab-
solute power of Parliament, has observed that it is true Parliament
may abuse the power with which the Constitution has entrusted it;
but it will do this at the risk of entitling the subjects to resist
oppression, and resort to first principles; it will do so at the peril of
subverting the Constitution, and by letting in the paramount rights
of human nature, of overwhelming the powers of Parliament. See
address of Mr. Baron Smith, of the Court of Exchequer in Ireland,
on the Union. Pamphleteer, vol. 6, p. 435.

But on the other hand, the Laws cannot be altered except by the
same authority that made them. Hence Lord Bacon has been cen-
sured for advancing, "that it is an inseparable Prerogative of the
Crown to dispense with political statutes;" which could hardly have
been his real and honest opinion; for this is so far from being true,
that the clause of Non Obstante was introduced here only in the 34th
NOTES.

of Henry 3, (1251) in imitation of Pope Innocent the Fourth's assuming that dispensing power in 1245. Pettingal on Juries, 88.

Note which should have been referred to at the end of the last paragraph, p. vii.

There is no declared privilege to exempt a Peer from the operation of a Writ of Ne exeat Regno, but it is believed there is not any instance of its having been issued against a Peer at the suit of a Creditor. Yet as it is a Prerogative or State Writ, by which the King can prevent any of his subjects from going into foreign parts without Licence; (1 Bl. Com. 187,) it may be doubted if a Peer has any implied privilege against the Royal Prerogative.

By the Act of 5 Rich. 2, c. 2 s. 67, "All persons were forbidden to leave the Kingdom, excepting the Lords and other great men, and true and notable Merchants, and the King's Soldiers." But these latter words, do not take away the King's Prerogative. The rule appears to have undergone several fluctuations, the result of which, according to Mr. Beames, seems to have been, that no person of whatever rank or station, being a subject, possessed the right of quitting the Realm, without the King's Licence being previously obtained.— See Beames view of the Writ of Ne exeat Regno p. 8.

A question is now depending in the Ecclesiastical Court, between Lord and Lady Westmeath respecting costs awarded against his Lordship, which is likely to involve a point of privilege.

The following Note refers to the last paragraph in page 283.

Montesquieu, speaking of the Burgundians, mentions the Paires or Homes de Fief, i.e. Peers or Homagers, whom he also calls Judges or Paires, Sp L. B. 28, C. 27. And Dr. Pettingal says, that those Peers or Judges were Jurymen, being the same as those called in the Laws of Edward the Confessor, Pers de la Tenure, or Homagers, out of whom the Jury of Peers were chosen, to try matters in dispute between the Lord and his Tenants, or any other controversy in the Manor. So in all other countries, where the Roman Colonies had been settled, the Goths, who succeeded them, continued their Laws. This, he says, is a much more natural way of accounting for the origin of trial by Jury, than the fabulous story of Woden and his savage Scythian companions, as the first introducers of so beneficent a system. Pettingal on Juries, pref. vii, viii.

Dr. Pettingal observes there were two sorts of Peers. 1. The
Tenants that attended the Lords' Court Baron, being equals with respect to the Tenure, were called Pares of the Court. 2. The Lords that held in Capite from the Crown were called Pares of the Land. —84, 85.

Further notice respecting Lord Holt.

Since the anecdote of Lord Chief Justice Holt, in page 359, was printed, the Editor has seen an anonymous publication, in which another version is given of the story, and which places that Judge's firmness in a stronger light; viz. that when the Serjeant at Arms delivered his message, the Chief Justice answered, only by saying with a stern look and commanding voice, "be gone!" and that the Serjeant being followed by the Speaker in person, and several members of the House, the Judge said, "Go back to your chair, Mr. Speaker. You talk of your authority; I am here representing the Crown in the administration of Justice, in which I will not be interrupted, and (pulling out his watch) if you stay there five minutes, I will send you to Newgate, were the whole House of Commons in your belly." The Speaker deemed it prudent to withdraw, and the House thought it best to let the matter drop.

As to the origin of Appeals.

Reference being had to the Lords Journals, on the subject of the Case of the Marquiss of Winchester and his Lady, mentioned in pa. 276, the following entries appear:—

Die Sabbati, 4 Martii, 1580, 23 Elizabeth.
"Memorandum that this day Mr. Oughtred, that was sent for by order of the Lords, made his appearance, and had days given him for bringing in of his counsel on Tuesday next, and the same day was also appointed for my Lady Marchioness of Winchester.

Die Martis, 7 Martii, 1580, 23d Elizabeth.
"Memorandum that this day appeared before the Lords, as it was appointed, the Lord Marquis with his Counsel on the one side, and the Counsel of the Lady Marquessse on the other side, and Mr. Oughtred for himself. The Lord Chancellor, with the consent of Lords, after hearing of all the parties, and upon conference, thought it best, for the better expedition of the matter, that certain of the Lords, if the parties consented thereunto, should have the hearing of all the controversies between them, and of the several accounts of Mr. Oughtred; to the which the parties being called again, every
one for himself did personally assent; only further order was taken, that the Lady Marquesse should deliver her assent the next day by her Counsel. The Lords that were named to hear the said controversies were these, which were chosen by the parties themselves; the Lord Chancellor, the Lord Treasurer, the Lord Chamberlain, and the Earl of Bedforde; and for the causes betwixt the Lord Marquis and the Lady Marquesse, were chosen by the said parties, the Lord Chancellor, the Lord Treasurer, the Lord Chamberlain, and the Lord Buckherst.

Die Martis, 9 Februarii, 1585, 27 Elizabeth.

"Memorandum—that this day the Lords after the hearing of the matter between the Lord Marquis and Mr. Ughtred, for the more speedy end of the same, committed the Cause with the consent of the parties, unto the Lord Treasurer, Lord Steward, Earl of Arundell, Earl of Hartforde, Viscount Montague, the Bishops of Winchester and Sallisburie, to the Lords Cobham, Graye, Lumley, Northe, and ordered that the said Lords should hear and end the matter between the said parties if they could; and if they could not, then to make report thereof to the whole House, and appointed the Lord Chief Justice of England, Justice Windeham, and Mr. Serjeant Gawdie to attend the said Lords."

It is observable that the word Appeal does not here occur, and that the Proceedings in the foregoing Case are very different from those now in use upon Appeals.

As to the Peerage.

It being stated in pa. 280 that the Title of Duke became extinct in the year 1573, and the date of the Creation of the Dukedom of Norfolk being 1483, it may be proper to observe, that the Dignity was restored by Act of Parliament in the year 1680.

By 55 Geo. 3, c. 184, the following stamps are required for Patents creating Peers, viz.—

On a Patent conferring the dignity of a Duke..............£350

of a Marquis ............ 300

of an Earl ............... 250

of a Viscount ........... 200

of a Baron............. 150
<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
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<th>d</th>
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</thead>
<tbody>
<tr>
<td>Attending, taking instructions to prepare and present a Petition to the</td>
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<td>13</td>
<td>4</td>
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<tr>
<td>House of Lords, on behalf of your Lordship, that you might be admitted to</td>
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<tr>
<td>the right of voting on the Election of Representative Peers of Ireland</td>
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<tr>
<td>Perusing Patent granting the Peerage, and your Lordship's pedigree</td>
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<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Drawing Petition to the Lords</td>
<td>1</td>
<td>1</td>
<td>0</td>
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<tr>
<td>Fair copy to present</td>
<td>0</td>
<td>10</td>
<td>6</td>
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<tr>
<td>Attending your Lordship therewith, for your perusal and signature</td>
<td>0</td>
<td>13</td>
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<tr>
<td>Attending the House with petition to be presented</td>
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<td>1</td>
<td>0</td>
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<tr>
<td>Instructions for case to lay before the House</td>
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<td>13</td>
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<tr>
<td>Attending the Witnesses who were to prove the decease of the late Lord,</td>
<td></td>
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<tr>
<td>the Marriage of your Lordship's parents, and other necessary facts, and</td>
<td></td>
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<tr>
<td>taking down minutes of their testimony</td>
<td>0</td>
<td>13</td>
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<tr>
<td>Drawing Case, setting forth shortly the Derivation of the Title, and a</td>
<td>2</td>
<td>2</td>
<td>0</td>
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<tr>
<td>Statement of the Evidence in support of it</td>
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<tr>
<td>Fair Copy Case for your Lordship's perusal</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Attending your Lordship therewith and thereon</td>
<td>0</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Copy to Print</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Attending the Printer therewith, and giving him directions as to the mode</td>
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<td>13</td>
<td>4</td>
</tr>
<tr>
<td>of Printing, &amp;c.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Perusing and Revising Proof sheets</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Paid the Printer's Bill</td>
<td>3</td>
<td>5</td>
<td>0</td>
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<tr>
<td>Attending with prints of case at the Parliament Office</td>
<td>0</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Attending at the House to get a time appointed for a meeting of the</td>
<td>0</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Committee of Privileges</td>
<td></td>
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</table>
Attending the Witnesses to give them notice when to attend to be sworn .................................................. 0 13 4
Attending at the House to meet the Witnesses, and waiting several hours to get them sworn ......................... 1 1 0
Attending Lord Redesdale and other noble Lords with prints of case, and to acquaint them with the time of meeting ................................................................. 1 1 0
Attending the Committee of Privileges, and proceeded on the claim, which was adjourned on account of the absence of a witness ................................................................. 5 5 0
Several attendances at the House to get another meeting fixed ............................................................. 1 6 8
Attending to inform the Lords who before attended of the day .............................................................. 1 1 0
Attending to inform the witnesses ................................................. 0 13 4
Attending the Committee when the claim was fully made out and allowed .............................................. 5 5 0
Attending the House when the Committee made their report, which was agreed to .................................... 1 6 8
Paid Bar Fees ................................................................. 7 0 0
Door-keepers ................................................................. 4 4 0
Paid Mr. Walmisley's bill ..................................................
Paid Short-hand writer's charge ......................................
Paid Expences of Witnesses ............................................
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CORRECTIONS.

Preface. Page iii, Line 14, at the end insert to.

Contents. ix, 8 from the bottom, for reverse read revive.

Introd. x, 5, for 10 read 104.

xxiv, 3, dele *

xxix, 9, for Mompesson read Mompesson.

xl, 3, for Holt read Holt.

xli, 4, for are read is.

5, from the bottom, after their insert Friends.

xlii, 8, dele e before decision.

lviii, 15, after Error insert and Appeals.

Practice. 59, the paging is by mistake numbered 89.

100, 4 from the bottom, for receiving read reviving.

107, 13 from the bottom, after Order insert that.

117, 3, for Order read Orders.

137, last line, for 12, 3, 4, read 124.

150, 19, dele 2 Burr. 1540.

224, 6, instead of when the latter is the fact, read when it is brought for delay.

250, 2 from the bottom, in Note, for of after direction, read and.

281, 21, for Dom. read Com.

282, 13, for wit read meet.

286, 11, for Charta read Charter.

305, 9 from the bottom, after Kingdom, insert except that of Arundel.

306, 19, for Cincturum read Cincturam.

309, 8, dele Marquiss, Earl.

343, before Sutherland, insert Arundel and.

343, under the head of Dates, &c. instead of Shrewsbury, 1442, read Arundel, 1139, that being one of the Titles of his Grace of Norfolk, who is premier Earl as well as premier Duke of England.

Under the same head, the date of the Duke of Leinster's Marquisate (Kildare) should have been 1761, not 1316.

Notes. From No. 8, p. 253 of the Notes, to No. 18, p. 362, the reference should have been to Roman Numerals (the paging of the Introduction) instead of the common Figures.
A SHORT SUPPLEMENT

TO THE

PRACTICE

OF

THE HOUSE OF LORDS,

ON

APPEALS, WRITS OF ERROR,

&c.

CONTAINING

FORMS OF WRITS OF ERROR,

UNDER THE NEW JURISDICTION,

CREATED BY

THE STATUTE OF 1 W. IV. C. 70;

WITH

SOME OBSERVATIONS SUGGESTED BY THAT ACT.

BY JOHN PALMER, GENT.

LONDON:

SAUNDERS AND BENNING, LAW BOOKSELLERS,
43, FLEET STREET.

1830.
A SHORT SUPPLEMENT,
&c. &c.

Since the publication of *The Practice of the House of Lords on Appeals, Writs of Error, &c.*, an Act of Parliament has passed, which will make a great change in our judicial system, and cause a considerable alteration in Proceedings in Error. The Statute to which we allude, is that of 1 W. 4., c. 70; intituled "An Act for the more effectual Administration of Justice in England and Wales." Beside providing for the appointment of a fifth Judge to each of the three Law Courts, varying the Terms, abolishing the Courts of Chester and Wales, &c. &c., it enacts, (Section 8) "that Writs of Error upon any Judgments given by any of the Courts of King's Bench, Common Pleas, or Exchequer, shall hereafter be made returnable only before the Judges, or Judges and Barons, as the case may be, of the other two Courts, in the Exchequer Chamber; that a Transcript* of the Record only shall be annexed to the return of the Writ: and the Court of Error, after Errors duly assigned, and Issue in Error joined, shall, at such time as the Judges shall appoint, either in Term or Vacation, review the Proceedings, and give Judgment, as they shall be advised: and the Proceedings and Judgment, as altered or affirmed, shall be entered on the original Record; and such further Proceedings as may be necessary, shall be

* A Transcript only, has in fact, been heretofore returned, though the Writ required the Record to be sent. Perhaps this Enactment was intended to make the Writ agree with the practice.
awarded by the Court in which the original Record remains; from which Judgment in Error, no Writ of Error shall lie or be had, except it be returnable in the High Court of Parliament."

From this last sentence it appears, that the meaning of the Act is, that Writs of Error shall be made returnable only in the Exchequer Chamber, in the first instance, though this is not expressed, for they may ultimately be brought in the High Court of Parliament."

This Act will of course occasion a variation in the direction and form of Writs of Error to the House of Lords, as well as require a form for the new jurisdiction. The Editor has, therefore, ventured to draw the following, by way of precedents, which he submits to the profession, and this he does the more confidently, as they have been perused by, and have received the approbation of his learned friend, John George, Esq.

*Writ of Error in Parliament of a Judgment of the King's Bench after having been affirmed in the Exchequer Chamber, under the Act of 1 W. 4. c. 70.*

William the Fourth, &c.—To our right trusty and well-beloved Charles Lord Tenterden, our Chief Justice assigned to hold Pleas in our Court before us, Greeting. Whereas† in the Record and Process,‡ and also in the giving and affirming of the Judgment in a Plaint which was in our Court before us, between A.B. Plaintiff, and C. D. Defendant, of a Plea of Trespass on the Case, (or as the fact 'is) which Record and Process, by reason of Error intervening, as was said, we caused to be brought before our Justices of the Bench and the Barons of our Exchequer, in our Exchequer Chamber, and the Judgment has been affirmed, as it is said, manifest Error hath happened, to the great damage of the said A. B. (or C. D.), as by his complaint we are informed; We, willing that the Error, if any there be, should be duly corrected, and full and speedy justice done to the said A. B. (or C. D.) in this behalf, do command you, that if judgment be thereupon given and affirmed, then you dis-

---

* According to Blackstone and other authorities, the High Court of Parliament consists of the King, Lords, and Commons, though the House of Lords, which is meant by the Act, is often so styled in judicial proceedings.
† Or, Forasmuch as, or Because.
‡ Or Proceedings.
tinctly and plainly send, under your Seal, the Record and Proceedings aforesaid, with all things touching the same, to us in our present Parliament, without delay, (if Parliament be sitting), or (if prorogued) at the next Session thereof, to be holden on the day of next, or (if after dissolution) in our Parliament, to be holden on the day of next, (omitting the words without delay) and this Writ; that the Record and Proceedings aforesaid being inspected, we may cause further to be done thereupon, with the assent of the Lords Spiritual and Temporal in the same Parliament, for correcting the said Error, what of right and according to Law ought to be done. Witness ourself, at Westminster, the day of , in the first year of our reign.

Where the first judgment has been reversed, the form may be as follows:—

William the Fourth, &c.—To &c. Forasmuch as in the Record and Process, and also in the Reversal of the Judgment in a Plaint, which was in our Court before us, between A. B., Plaintiff, and C. D. Defendant, of a plea of (as the case is), which Record and Process, and the Judgment thereupon, by reason of Error intervening, as was said, we caused to be brought before our Justices of the Bench, and the Barons of our Exchequer, in our Exchequer Chamber, and the said Judgment has been by them reversed, as it is said, manifest Error hath happened, to the great damage of the said A. B. (or C. D.), as by his complaint we are informed, We willing, &c.:—do command you that if Judgment be thereupon given and reversed, then &c. as above.


William the Fourth, &c. To our trusty and well-beloved Sir Nicholas Conyngham Tindal Knight, our Chief Justice of the Bench, Greeting. Whereas in the Record and Proceedings, and also in the giving and affirming of the Judgment, in a Plaint which was in our Court before you and your companions,* our.

* If the Judgment was given in the time of a former Chief Justice, then it is conceived the words should be “in our Court before Sir W. D. B. Knight, late our Chief Justice of our Bench and his Companions, then Justices of the same Bench.”
Justices of the Bench, between A. B. Plaintiff, and C. D. Defendant, of a Plea of Trespass on the Case (or as the fact may be), which Record and Proceedings, by reason of Error intervening as was said, we caused to be brought before the Justices of our Court before us and the Barons of our Exchequer in our Exchequer Chamber, and the Judgment thereupon has been affirmed, as it is said, manifest Error hath happened, to the great damage of the said A. B. (or C. D.) as by his Complaint we are informed; We, willing that the Error, if any there be, should be duly corrected, and full and speedy justice done to the said A. B. (or C. D.) in this behalf, do command you, that if Judgment be thereupon given and affirmed, then you distinctly and plainly send, under your Seal, the Record and Proceedings aforesaid, with all things touching the same, to us in our present Parliament, without delay, (or in our Parliament to be holden on the day of , as in the first Precedent,) and this Writ, that the Record and Proceedings aforesaid being inspected, we may cause further to be done thereupon, with the assent of the Lords Spiritual and Temporal in the same Parliament, for correcting the said Error, what of right and according to Law ought to be done. Witness ourself at Westminster, the day of in the year of our reign.

In Case a Reversal is complained of, the Writ must be varied as above.

Writ of Error in Parliament of a Judgment of the Court of Exchequer, after affirmance in the new Exchequer Chamber.

William the Fourth, &c. To the Treasurers and Barons of our Exchequer Greeting. Because in the Record and Proceedings, and also in the giving and affirming of the Judgment in a Plaint which was in our Court before you our said Barons in our Exchequer aforesaid, between A. B., our debtor, Plaintiff, and C. D. Defendant of a plea of debt, (or as the Case is) which Record and Process by reason of Error intervening, as was said, we caused to be brought before our Justices of our Court before us and our Justices of the Common Bench, in our Exchequer Chamber, and Judgment thereupon is affirmed, as it is said,
manifest Error hath intervened, to the great damage of the said A. B. or (C. D.); the rest as above.

In case of a Reversal, the Writ is to be varied as before.

Writ of Error of a Judgment of the King's Bench, returnable in the Exchequer Chamber, under the Act of 1 W. 4. c. 70.

William the Fourth, &c. To our right trusty and well-beloved Charles Lord Tenterden, our Chief Justice, assigned to hold Pleas in our Court before us, Greeting. Whereas by a Statute made in the first year of our Reign, intituled "An Act for the more effectual Administration of Justice in England and Wales," it was (among other things) enacted, that Writs of Error upon any Judgments given by any of the three Courts of Law therein before mentioned, should thereafter be made returnable only before the Judges, or Judges and Barons, as the case might be, of the other two Courts, in the Exchequer Chamber; that a Transcript of the Record only should be annexed to the return Writ, and that the Court of Error, after Errors should be duly assigned, and issue in Error joined, should, at such time as the Judges should appoint, either in Term or Vacation, review the proceedings and give Judgment, as they should be advised; as by the said Statute more fully appears. And because in the Record and Process, and also in the giving of Judgment in a Plaint which was in our Court before us,* between A. B., Plaintiff, and C. D., Defendant of a Plea (as the fact is), as it is said, manifest Error hath intervened, to the great damage of the said A. (or B.) as by his complaint we are informed; We, willing that the said Error, if any there be, shall be duly corrected, according to the said Statute, and speedy justice done to the said parties in this respect, Do command you, that if Judgment be thereupon given, you cause a Transcript of the Record and Process aforesaid, with all things touching the same, to come before the Justices of our Common Bench and the Barons of our Exchequer, in our Exchequer Chamber, on the day of next ensuing (the return day) that the said Justices and Barons

* If the Judgment be one in the time of the late King, say "before the Lord George the Fourth, late King of the United Kingdom of Great Britain and Ireland."
examining the Record and Process aforesaid, and the matters which shall be assigned for Error, may cause further to be done therein, as of right and according to Law ought to be done. Witness ourselves at Westminster, the day of in the year of our reign.


To our trusty and well-beloved Sir Nicholas Conyngham Tindal, Knt., our Chief Justice of the Bench, Greeting. Whereas (as above) And forasmuch as in the Record and Process, and also in the giving of Judgment in a Plaint which was in our Court before you and your Companions, our Justices of the Bench, between A. B., &c. (as above, until) Do command you, that if, &c., you cause a Transcript of the Record and Process aforesaid, with all things touching the same, to come before the Justices of our Court before us, and the Barons of our Exchequer in our Exchequer Chamber, &c.

If the Judgment was given in the time of a former Chief Justice, then instead of the words, before you, &c., say before Sir William Draper Best, Knight, late our Chief Justice of the Bench, and his companions, then Justices of the same Bench.

Form of a Writ of Error of a Judgment of the Exchequer, under the new Act.

To the Treasurer and Barons of our Exchequer, Greeting. Whereas (as before) And because in the Record and Process, and also in the giving of a Judgment in a Plaint which was in our Court before the Barons in our Exchequer aforesaid, between, &c. (as above) Do command you, that if, &c., you cause a Transcript of the Record and Process aforesaid, with all things touching the same, to come before the Justices of our Court before us and our Justices of the Common Bench, in our Exchequer Chamber, on, &c., that the said Justices examining, &c. (as before.)

In the forms of Assignments of Error, there will also be an alteration. As no more Writs of Error can be brought from the
Common Pleas to the King's Bench, or from the latter Court directly to the Lords, and the old Jurisdiction for reviewing the Judgments of the Court of Exchequer is taken away, the following forms will now serve for assigning Errors on Judgments of the three Courts, after Affirmance or Reversal in the new Exchequer Chamber.

Assignment of Errors in Parliament of a Judgment of the King's Bench affirmed in the new Exchequer Chamber.

A. against B.—In Error.

House of Lords.

Afterwards, to wit, on the day of the year of our Lord, 1831, before the Lord the King and the Lords Spiritual and Temporal in this present Parliament assembled, comes the said A. by C. D. his attorney, (or in his own proper person) and says, that in the Records and Proceedings aforesaid, and also in the giving and affirming of the said Judgment of the Court of the Lord the King before the King himself, there is manifest Error in this, to wit, that by the Record aforesaid it appears that the Judgment given by the said Court of the Lord the King before the King himself, was given for the said B. against the said A.; Whereas by the Law of the Land Judgment ought to have been given for the said A. against the said B.; therefore in that there is manifest Error. There is also Error in the Affirmance of the said Judgment, because the said A. says that the Judgment aforesaid was affirmed in the Court of the Lord the King, before the Justices of the Common Bench, and the Barons of the Exchequer, in the Exchequer Chamber; Whereas no such affirmation ought to have been given thereon, but by the Law of the Land the said Judgment ought to have been reversed; therefore in that there is manifest Error. And the said A. prays that the Judgment aforesaid, for the Errors aforesaid, and other Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and entirely held for nothing; and that he may be restored to all things which he has lost by occasion of the said Judgment, and the Affirmance thereof as aforesaid; and that the said B. may rejoin to the said Errors, &c.

Where the Judgment has been reversed in the Exchequer Chamber, the Assignment may be as follows:
(As above to)—and says that in the Record and Proceedings of the reversing and annulling of the said Judgment of the Court of the Lord the King before the King himself, there is manifest Error in this, to wit, that the said Judgment was reversed and annulled; Whereas by Law, that Judgment ought to have been affirmed, therefore in that there is manifest Error. And the said A. prays that the reversal and annulling of the Judgment aforesaid, for that Error, and others appearing in the Record and Proceedings of the reversal and annulling of the same Judgment, may be reversed, annulled, and held as entirely void; and that the said first Judgment may be in all things affirmed; and that he may be restored to all which he hath lost by reason of the reversal and annulling of the same; and that the said B. may rejoin to the Errors aforesaid, &c.


Afterwards, that is to say, on the day of in the year, &c., before the Lord the King, and the Lords Spiritual and Temporal in this present Parliament assembled, comes the said A. by C. D. his attorney, (or in his own proper person) and says, that in the Record and Process, and also in the giving and affirming of the said Judgment of the Court of the Lord the King of the Bench, there is manifest Error in this, to wit, that it appears by the Record and Process aforesaid, that the Judgment given by the Court of the Lord the King of the Bench, was given for the said B. against the said A.; Whereas by Law Judgment ought to have been given for the said A. against the said B.; therefore in that there is manifest Error. There is Error also in affirming the said Judgment, because the said A. says that the Judgment aforesaid was affirmed by the Court of the Lord the King in the Exchequer Chamber, by the Justices of the Court of the Lord the King, before the King himself, and the Barons of the Exchequer; Whereas no such Affirmance ought to have been given thereon, but by the Law of the Land the said Judgment ought to have been reversed; therefore in that there is manifest Error. And the said A. prays that the Judgment aforesaid, for the Errors aforesaid, and others in the Record and Process aforesaid, may be reversed, annulled, and altogether held for nothing;
and that he may be restored to all things which he hath lost by occasion of the said Judgment, and the Affirmance thereof as aforesaid; and that the said B. may rejoin to the Errors above assigned, &c.

In case of a Reversal, the Assignment will be as follows:—

Afterwards, &c. (as above) and says, that in the Record and Proceedings of the reversing and annulling of the said Judgment of the Court of the Lord the King of the Bench, there is manifest Error in this, to wit, that the Judgment aforesaid given by the Court of the Lord the King of the Bench, was reversed in the said Court of Exchequer Chamber, before the Justices of the Court of the Lord the King, before the King himself, and the Barons of the Exchequer, on the said first Writ of Error; Whereas by Law that Judgment ought to have been affirmed; therefore in that there is manifest Error. And the said A. prays that the reversal and annulling of the said Judgment, for that Error and others in the Record and Proceedings of reversing and annulling the same Judgment, may be reversed, annulled, and held entirely void; and that the said first Judgment may be in all things affirmed; and that he, the said A., may be restored to all that he hath lost by reason of the reversal and annulling of the said Judgment; and that the said B. may rejoin to the said Errors, &c.

Assignment of Errors in Parliament of a Judgment of the Court of Exchequer, affirmed in the new Exchequer Chamber.

Afterwards, to wit, on, &c., in the year, &c., before the Lord the King and the Lords Spiritual and Temporal in this present Parliament assembled, comes the said A., by C. D. his Attorney (or in his own proper person), and says, that in the Record and Proceedings aforesaid, and also in the giving and affirming of the said Judgment of the Court of Exchequer, there is manifest Error in this, to wit, that the Judgment aforesaid was given for the said B. against him the said A., when by Law Judgment ought to have been given for the said A. against the said B.; therefore in that there is manifest Error. There is also Error in this, that it appears that the said Judgment was affirmed by the Court of the Lord the King, before the Justices of the Lord the King before the King himself, and the Justices of the Court of the
Lord the King of the Bench, in the Exchequer Chamber; Whereas no such Affirmance ought to have been given thereupon, but by Law the said Judgment ought to have been reversed; therefore in that there is manifest Error. And the said A. prays that the Judgment aforesaid, and the Affirmance thereof, for the Errors aforesaid, and others in the Record and Proceedings aforesaid, may be reversed, annulled, and held entirely void; and that he may be restored to all things which he hath lost by occasion of the said Judgment and Affirmance; and that the said B. may rejoin to the said Errors, &c.

If a Reversal should be complained of, then the Assignment is to be as follows:—

(As above, to)—and says, that in the Record and Proceedings of the reversing and annulling of the said Judgment of the Court of Exchequer, there is manifest Error in this, to wit, that the Judgment aforesaid was reversed and annulled, Whereas by Law the said Judgment ought to have been affirmed; therefore in that there is manifest Error. And the said A. prays that the reversal and annulling of the said Judgment, for that Error and others appearing in the Record and Proceedings of the reversal and annulling of the same Judgment, may be reversed, annulled, and entirely held for nothing, and that the said first Judgment may be in all things affirmed; and that he may be restored to all that he hath lost by occasion of the reversal and annulling of the same; and that the said B. may rejoin to the said Errors, &c.

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OBSERVATIONS.

Upon Writs of Error to the Lords, it is conceived that in future the Transcripts of the Record will be taken to the House by the Chiefs of each of the three Courts.

After the Removal of the Record, the Practice will in no respect be different from the present Course.

By the late Statute the several Acts of 14 Ed. 3, Stat. 1, c. 5—31 Ed. 3, Stat. 1, c. 12 (which has been long in a state of desuetude)—31 Eliz. c. 1—16 Car. 2, c. 2, and 20 Car. 2, c. 4, relating to the bringing of Writs of Error on Judgments in the Court of Exchequer, are virtually repealed; and what is mentioned in p. 121, and other places, of "The Practice of the House of
Lords," will no longer be applicable to Writs of Error; for they
cannot henceforth be brought from the Common Pleas to the
King's Bench, nor can they be brought from the Exchequer of
Pleas to the Council (or Exchequer) Chamber, but from each of
those Courts Writs of Error must, in future, be first brought in the
new Court of Exchequer Chamber; neither can Writs of Error be
brought, in the first instance, from the King's Bench to the
Lords, unless where the Crown is a party, if that be an excep-
tion.

But whether the new Act repeals the Statute of 27th Eliz. c. 8,
may be doubted. It does not contain any express words of
Repeal, and seems rather to enlarge and extend the operation
of the latter Act. The 27th Eliz. gives Suitors in the King's
Bench, a Writ of Error returnable before the Judges of the
Common Pleas and Exchequer, in the Exchequer Chamber, in
certain species of Action therein mentioned, if first commenced
in the King's Bench, and where the Crown is not a party. Now,
it may be asked, why can not a Writ of Error be still brought from
the King's Bench to the Exchequer Chamber under the 27th Eliz.,
if the parties choose, in cases within that Act? The late Act not
only omits to annul the former, but is quite consistent with it, for
the reviewing Jurisdiction on Error from the King's Bench is the
same under both Acts, viz. the Judges of the Common Pleas
and Exchequer. And as the King is not mentioned in the new
Act, is it clear that a Writ of Error cannot still be brought by the
Crown to the Lords in the first instance? Upon these questions
different opinions are entertained by some learned Gentlemen* of
the Author's acquaintance.

To the Editor's mind it is evident that the new Act was meant
to supersede the 27th Eliz. for it not only creates a more general
Jurisdiction, by enabling parties to bring Writs of Error from all
the Superior Law Courts, in all Cases, before the Judges in the
Exchequer Chamber, but it takes away the Suitor's Common
Law right of electing to resort to the Lords in the first Instance;
and in some Measure varies the mode of proceeding, by directing
a Transcript of the Record only to be sent, and empowering the
reviewing Judges to sit in Vacation as well as Term time. It
also empowers them to alter the Judgment, the Statute of Eliz.

* Mr. Tidd and Mr. George.
having only given Authority to reverse or affirm. But supposing the old Act were to be held still in force, it is probable that, as the course of Practice under the new one will be more simple and less expensive, the latter will in all cases be preferred.

It may be noticed, that by the 27th of Eliz. power is given to any Six of the Judges in the Exchequer Chamber to decide. This is not done by the late Act; so that all the Judges of the two presiding Courts (viz. eight at present, and ten when additional Judges shall be appointed), must, it is presumed, assemble in the Exchequer Chamber, unless the Act of Eliz. shall be considered to reserve that power. And no provision is made in either Act for the case of an equal division of opinions among the Judges.

The new Act, it is conceived, does not apply to Error in Fact, (which was not cognizable by the Exchequer Chamber under the 27 Eliz.), and relates only to Cases in which Error is brought from one Court to another. Consequently that species of Error must be determined in the same Court that gives the Judgment.

Nothing is said in the late Act about Clerks of Errors under the new Jurisdiction, or by whom the Writs are to be allowed, or Transcripts made. The Act of Eliz. confined the power of bringing Writs of Error to particular cases therein mentioned, which might make it proper to see that the Writ was warranted by the Statute, and render an allowance needful. In the recent Act there is no limitation or restriction, for the Act speaks of any Judgments given by any of the Courts. As to Writs of Error at Common Law, it is certain that anciently they required the sanction of the Courts, and hence the practice of allowance; but for a great while it has been only a mere form, Writs of Error having long been matter of right, not of discretion.

Before the new Act, there was a Clerk of Errors on Writs of Error from the Common Pleas to the King's Bench; another on Writs of Error from the King's Bench to the Exchequer Chamber, and to the House of Lords; and there was also a Clerk of Errors who carried on the Proceedings in the Exchequer Chamber.* There does not seem to have been a Clerk of Errors in the Court of Exchequer. In each case there was a different mode of practice,

* It has been understood that these Gentlemen have been handsomely compensated for the diminution of Fees, occasioned by one of Mr. Peel's Acts.
and different fees. As the old Jurisdiction on Writs of Error from the Common Pleas to the King's Bench has been abolished, it has been asked whether the Office attached to it does not also cease? Also, whether any allowance (which only serves to create expense) will be requisite under the new Act, and by whom it is to be granted? Surely the production of the Writ to the opposite Solicitor would be sufficient notice; the Transcripts can be made by the Keepers of the Records of each Court, at the usual charge of office copies, and the remaining part of the business may be transacted by the Solicitors.

If, however, an allowance should be thought proper, would not a Judge be the most fit person to grant it? This was the case in the Exchequer. And after such Allowance, should the Defendant in Error be permitted to proceed on the Judgment below?

There is no permanent Court of Exchequer Chamber. That Chamber is a place of Meeting for several purposes; and it is a Court only when the Judges are called together in each particular case. There are not, as in the ordinary Courts, any certain, stated days for its sitting; these are to be settled by the Judges themselves.

That some such officer as a Clerk of Errors under the new Jurisdiction will be necessary, seems clear; for there must be a person to receive and take care of the Transcripts, to attend to the putting in of Bail in Error, to set down the Causes, to convene the Judges, and get times fixed for hearing the Errors argued, and to give Notice to the Parties. For these purposes, and these only, it is conceived, a Clerk of Errors will be required.

The Charges for Writs of Error in the old Exchequer Chamber were heavy, and some of them most unnecessary; for besides that the Plaintiff in Error was obliged to pay for a Transcript of the Record, both parties were required to take Copies of it, i.e. of their own pleadings, which they already possessed. This expense might indeed have been some check on frivolous and vexatious Writs of Error; but now that few, if any, Writs of Error will be brought, without real and good cause, these charges should in future be saved to the suitors. But doubtless the practice will be duly settled; for by sec. 11 of the late Act, the Judges of the several Courts, or any eight of them (including the Chiefs), are empowered not only to make Rules and Orders for regulat-
ing the practice and proceedings of all the said Courts, but also of the Court of Error thereby constituted. And we may be confident that those enlightened persons will take the foregoing circumstances, and all others connected with the subject, into consideration, and do what shall be most likely to answer the purposes of Justice, with the greatest convenience, and at the least expence.

Should the Editor of *The Practice of Appeals*, &c., live to prepare a new Edition of that work, he does not think he will find it expedient to make much alteration in its Arrangement or Contents, beyond inserting the new Forms; for though many things are superseded by the late Act, they will show what the Course of Proceeding has been, and the Changes that have from time to time taken place on the subject of Error. It is an old remark, that a knowledge of ancient Laws and Practice materially serves to explain those which have succeeded them.

FINIS.
POSTSCRIPT.

SINCE the foregoing pages were printed, the Editor has seen a small publication by Thomas Chapman, Esq. Assistant Master of the Court of King's Bench, intitled "The Practice of the Superior Courts at Westminster as far as the same is varied by the Act of 1 W. IV. c. 70", &c. As the opinion of this very intelligent Gentleman is in some respects at variance with that of the Writer of this, the latter hopes to be excused for offering a few remarks in support of his own idea.

Mr. Chapman, p. 42, says that Clause 8 of the Act, "so far as respects Judgments of the King's Bench, does not alter either the Law or the Practice respecting Writs of Error." This is laid down as if it were quite clear, and indisputable. Again, Mr. Chapman, p. 44, takes it for granted, that "the Practice on Writs of Error from the King's Bench to the Exchequer Chamber remains unaltered, and will now govern the Practice on all Writs of Error." Now with all due deference to Mr. Chapman, his proposition is stated too generally, even supposing the Act of 27 Eliz. c. 8, to remain in force. Under that Act Writs of Error could only be brought from the King's Bench to the Exchequer Chamber in the seven sorts of action mentioned in it; and in those only when the suit had commenced by Bill. If the Action was founded on an Original Writ, or began in an inferior Court, or was of a different description from those mentioned in the Act, or if the Crown was a party to the suit, no Writ of Error would lie under the Statute of Eliz. So that in many* Actions begun by Bill, and in all those commenced by Original, or removed from inferior Courts, or where the Crown was a party, Writs of Error could only be brought in the House of Lords; and even those within that Act might, if the parties chose, be

* See Tidd, 1130.
brought immediately before the Lords: But now, Writs of Error in all cases (with perhaps the exception of Crown Suits) not only may, but must be brought in the Exchequer Chamber in the first instance; for the New Act directs that Writs of Error upon any Judgments given by any of the three superior Courts, shall be made returnable only before the Judges, or Judges and Barons, of the other two Courts, in the Exchequer Chamber, (thus creating a new Jurisdiction, with additional Judges, and also imposing a restriction), and that a Transcript only, instead of the Record itself, shall be returned; and it enables the reviewing Judges to sit, both in the Vacation and Term. How then can it be maintained that the Law or Practice has not been altered? It seems to the Editor that the late Act has not merely altered the Practice, but that it meant to repeal the Old Act; and has virtually (though not in words) done so; for it is very unlikely that the Legislature intended to give a double Jurisdiction to the King's Bench. That this would be the case is evident, as there must be a different form for the Writ of Error under the New Act from that under the old one, each Writ reciting the Act authorizing it; and there may likewise be a different course of proceeding under the recent Act; for though Mr. Chapman supposes (he does not say why) the Practice will remain unaltered, it is earnestly to be hoped that it may not; because it will create much confusion, and because the old Procedure has been attended with needless expence and grievous delay,* without answering any useful purpose.

Seeing then that Writs of Error may in all cases be brought from all the Courts under the New Act, why should recourse be had to the Old Act in any case, when no conceivable benefit to the Suitors can accrue from it?

For the foregoing reasons, and those stated in the three preceding pages of this Pamphlet, the Editor submits it was neither intended nor would be eligible that the old Practice should be continued. He has the satisfaction of being enabled to add, that the opinion expressed by him as to the virtual repeal of the Act of 27 Eliz. is sanctioned by that of a Counsel of great legal knowledge.

There is a small Error in what Mr. Chapman mentions, p. 43, respecting the former Jurisdiction on Writs of Error in the Exche-

* Of a year or more.
quer of Pleas, which he says were returnable before the Common Pleas' Judges and the Barons. This was not the case. — See Burton's Exchequer, or Palmer's Practice in the House of Lords.

To what has been previously observed as to the Practice in the House of Lords, may be added (though scarcely requisite) that Writs of Error to the Lords will be obtainable in the usual manner at the Cursitors' Office.

The following Form will serve for the Precipe:—

ENGLAND.—Writ of Error for C. D. (or A. B.) of a Judgment in Case (or as the fact is) of the King's Bench (Common Pleas, or Exchequer) affirmed (or reversed) in the Exchequer Chamber under the Act of 1 W. IV. c. 70, in which A. B. was Plaintiff, and C. D. Defendant. Returnable.

(Agent's name).

ERRATA.

Page 13, line 12, before seems, insert it may be said.
21, after is, insert argued to be.
ADDITIONAL CORRECTIONS.

Page xv, lines 9, 10, instead of in their legislative capacity, which it is needless to detail further than observing that in this respect, read as Lords Spiritual and Temporal only, in which capacity.

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xxv, 18, for Commissioners read Commissions.

xxxiii, 2, for depend read depends.

lxx, 4, from the bottom, for is read are.

8, 2, dele but.

10, 1, for other read others.

30, 10, for refusing read granting.

47, 12, for a insert v.

—, 13, for 1120 read 1820.

50, 12, after be insert able.

68, last line, for th read they.

71, 8, from the bottom, for Statuary read Statutory.

76, 9, from the bottom, instead of Exchequer Causes, read Causes in that Court.

85, 3, for Equivalent read Equivalent.

170, 10, from the bottom, for legis- it should be legis-

173, 12, for Disseisor read Disseisor.

—, 19, for Dale's read Dalis.

201, after the last line add the King of the Bench, by the said Court of the Lord.

307, 5, after rights dele the comma.

320, 11, for De Gray read De Grey.

359, 23, after it insert is.