A

TREATISE

ON THE

JURISDICTION AND MODERN PRACTICE

IN

APPEALS

TO THE

HOUSE OF LORDS,

&c.

A

A

TREATISE

ON THE

JURISDICTION AND MODERN PRACTICE

IN

APPEALS

TO

THE HOUSE OF LORDS,

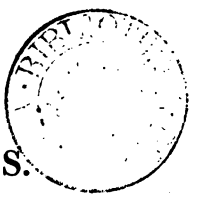
AND IN PROCEEDINGS

ON

CLAIMS

TO

DORMANT PEERAGES.



By WILLIAM ROBERT SYDNEY,
OF AUSTIN FRIARS, LONDON, GENT.

Non sibi sed toto genitum se credere mundo.
Lucan of Cato.

LONDON:
PRINTED FOR J. & W. T. CLARKE,
LAW BOOKSELLERS AND PUBLISHERS,
PORTUGAL-STREET, LINCOLN'S-INN,
AND J. COOKE DUBLIN.

1824.

Luke Hansard & Sons,
Lincoln's-Inn Fields.

TO THE

RIGHT HONOURABLE AND MOST NOBLE,

RICHARD COLLEY WELLESLEY,

MARQUIS WELLESLEY, OF NORRAGH,

EARL OF MORNINGTON,

VISCOUNT WELLESLEY, OF DENGAN CASTLE,

BARON MORNINGTON IN IRELAND,

AND

BARON WELLESLEY, OF WELLESLEY IN SOMERSETSHIRE,

K.G. AND K.C. K.S.L. AND D.C.L.

LORD LIEUTENANT, AND LIEUTENANT GENERAL OF THAT

PART OF THE UNITED KINGDOM CALLED IRELAND,

&c. &c. &c.

MY LORD MARQUIS,

THE freedom I have assumed is not justifiable by ordinary precedent; addresses of this nature being rarely paid to the great without some previous encouragement.

The generality of authors form to themselves indulgent hopes, either from the honor

of a slight acquaintance, or powerful recommendations; I cannot lay claim to any such introductions.

That I have ventured to approach your Lordship without these supports, is owing to my admiration of your principles and patriotism, which I trust is sufficient to screen me from a charge of presumption.

The homage paid to your Lordship's distinguished family, might be allowed to yourself by prescription, but you claim it by a nobler title; and though I am altogether a stranger to your Lordship, yet it is impossible not to be privy to the beneficial effects of your most excellent government.

I have in the following work endeavoured to elucidate the proceedings in appeals to the House of Lords principally from Courts of Equity, and I have attempted to trace the origin of the jurisdiction of the House, and the grounds on which those proceedings are established and supported.

I have also endeavoured to render the practice more easy, by making it better understood, and by those means to enable practitioners to avoid the errors and the consequent delays so usual in appeals, particularly from Ireland *: the subject is worthy your Lordship's attention, and I flatter myself that your Lordship, who is always disposed to encourage every useful design, will pardon the defects for the sake of the intention. Should this little work have the good fortune to obtain your Lordship's approbation, my ambition will be gratified and my labours recompensed.

That your Lordship, amidst your numerous successful plans and arrangements for the benefit of the generous people, now peculiarly the objects of your care and protection, and the still wider range of your active and en-

* In a recent case, the Lord Chancellor (Eldon) observed, that inaccuracies so often occurred in the *Irish appeal cases*, that the House of Lords was *always* in a *state of uncertainty* as to the matters which might form the grounds of their judgment.

Hamilton v. *Houghton*, 2 Bligh, 175.

lightened benevolence, may long continue to enjoy that honour and influence by which your signal talents and integrity have been so justly rewarded; and in the immediate circle of your friends, to receive, as well as to communicate, happiness, is the sincere wish of

My Lord Marquis,

Your Lordship's

most obedient and most humble servant,

THE AUTHOR.

PREFACE.

The great increase in the number of Appeal Causes, and the imperfect manner in which many of them are brought before the Lords, (whereby a considerable portion of their Lordships valuable time is unnecessarily occupied) were the chief motives for the Editor's publishing the present Treatise; and if these considerations had not been sufficient incentives with him to undertake the compilation and arrangement of it, he had the superadded inducement of the advice and sanction of some of the most eminent men at the bar, who were of opinion that such a publication was desirable, and might prove of service to both Senators and Lawyers.

The Editor is indebted for improvement in the arrangement and revision of the first part of the work, for information on points of practice, and some important additions, to RICHARD BLIGH, Esquire, of *Lincoln's-Inn*, to whom he returns his sincere thanks. From his extensive knowledge with all matters relating to proceedings in the House of Lords, the Profession will be enabled to appreciate his assistance to the Editor.

It has been his aim to render this Treatise generally useful, and therefore prolixity has been avoided as much as possible. He has added some practical directions in matters of Peerage, which he thinks may be found serviceable.

The work has been chiefly compiled, and the numerous researches made in the hasty moments which the Editor has, during several years, been enabled to snatch from the duties of a laborious profession.

Such as it is he with much diffidence lays it before the Profession; he is conscious of its many imperfections, but trusts that a share of that indulgence will not be denied to him, which has never yet been withheld from others under similar circumstances.

Court Lodge, Woolwich,
November 1824.

TABLE OF CASES

MENTIONED.

A.

Page.

ATTORNEY-GENERAL
v. Wall - - - - - - 45
——— v. Hoare, executrix of Wall - - - - - 67

B.

Banbury Rioters, case of - 7
Banbury (Earl of), case of 178
Barnardiston, Sir Sam. case of 18
Bernal v. Marquis of Donegal 34
Berry v. Philipps - - - - 37
Bourchier, Sir John, v. Sir Giles Mompesson and others - - - - - - - 4
Brown v. Higgs - - - - 69
Button and Prise - - - - 42

C.

Cassillis (claim) - - - - 190
Chute v. Lady Dacre - - 36
Cole v. Hearn - - - 120, 141
Cooke v. Hicks - - - - 61
Cowardine v. Cowardine - 29
Cunningham v. The Muscovy Company - - - - - 4

D.

Dacre, Lady, v. Chute - - 36
Devereux v. Phelan - - - 33
Donegal, Marquis of, v. Bernal - - - - - - - 34

E.

East India Company v. Skinner - - - - - - - - 8
Ely, Earl of, v. Rochfort - 44
Everard v. Hyndmarsh - - 121
Everard and another, v. Grigson - - - - - - 7

F.

Page.
Fagg, Sir John, v. Dr. Shirley 23
Finch, Sir Moyle, case of - 27
Fitzgibbon v. Scanlan - - 29
Foot v. Nagle - - - - - 100
Fox v. Mackreth - - - - 69

G.

Gore v. Stackpole - - - 100
Greenshield v. Prevost of Edinburgh - - - - - - 45
Grigson v. Everard and another - - - - - - - - 7

H.

Hearne v. Cole - - 120, 141
Henderson v. Tenant - - 42
Hicks v. Cooke - - - - 71
Higgs v. Brown - - - - 69
Hoare (executrix of Wall) v. Attorney General - - 67
Holland v. Lidwell - - - 130
Horner v. Popham - - - 30
Huntingdon, Earl of (case of) - - - - - - - - 156
Hyndmarsh v. Everard - - 121

I.

Irnham, Lord v. Luttrell - - 32

K.

Kirwan v. O'Connor - - - 134

L.

Page.
Lidwell v. Holland - - - 130
Luttrell v. Lord Irnham - 32

M.

Macdonald v. Macdonald - 43
Mackreth v. Fox - - - - 69
Mathew William of Llandaff, case of - - - - - - - 6
Michael de la Pole, Lord Chancellor, case of - - 5
Mompesson, Sir Giles, and others, v. Sir John Bourchier - - - - - - - - 4
Morgan v. Scudamore - - 35
Muscovy Company v. Cunningham - - - - - 4

N.

Nagle v Foot - - - - - - 100

O.

O'Connor v. Kirwan - - 134

P.

Pemberton, Mr. Serjeant - 24
Phelan v. Devereux - - - 33
Phillips v. Berry - - - - 37
Pitt v. Page - - - - - - 29
Pole, Lord Chancellor, case of - - - - - - - - - 5

	Page.
Pomfret *v.* Smith	68
Popham *v.* Horner	30
Prevost of Edinburgh, *v.* Greenshield	45
Prise *v.* Button	42
R.	
Rochfort *v.* Earl of Ely	44
S.	
Scudamore *v.* Morgan	36
Shirley Dr. *v.* Sir John Fagg	23
Skinner *v.* East India Company	8
Smith *v.* Pomfret	68
Stackpole and Gore	100
Stackpole *v.* Stackpole	118, 119
Stewart *v.* Vans Agnew	38
Squire *v.* Lord Wharton	45
Sutherland (claim.)	190
T.	
Tennant *v.* Henderson	42
Turner *v.* Turner	29
V.	
Vaughan, Petition of	7
Vans Agnew *v.* Stewart	38
W.	
Wall *v.* Attorney General	45
Warren, ex-parte	36
Wharton, Lord, *v.* Squire	45
Williams, Walter, case of	30
Woodman *v.* Willoughby	31

A

TREATISE,

&c.

PART I.

OF THE JURISDICTION OF THE HOUSE OF PEERS, IN APPEALS.

THE House of Peers is the supreme Court of Judicature of the United Kingdom. In its determinations it is not like the other Courts, confined to precedents, orders or rules; it does not however depart from, relax, or dispense with them, but on particular and necessary occasions; it has no jurisdiction over original causes, but only upon appeals and writs of error (*a*), to rectify the judgments of the Courts

(*a*) Lord Hale, with respect to the original jurisdiction of the Lords, chap. 14, writes thus: "And it seems that in "two special cases they had, and still have, jurisdiction "simply in the first capacity; namely,

"1st, In cases of breach of their privilege, by arrests "or suits in inferior courts:

below. To this authority, says Sir William Blackstone, they succeeded of course, upon the dissolution of the *Aula Regia* established by William the Conqueror; and as the Barons of Parliament were constituent members of that Court, and the rest of its jurisdiction was dealt out to other tribunals, over which the great officers who accompanied those Barons were respectively delegated to preside, it followed of course that the right of receiving appeals re-

"2d, In case of trial of a Peer, in case of treason, "felony, or misprision of treason, by temporal Lords."

And again, in chap. 15, he says, "The wisdom of the "laws of England is remarkable in these particulars: "1st, That although the judges are constituted by the "King, and chosen out of learned men knowing in the "laws, yet they are not nobles nor peers of Parliament, "or such as would be too great to be called in question "for corruption, or their judgments to be examined if "there be cause.

"2d, That the ordinary courts of justice are still under "the check of a review by writ of error, if there be cause; "the judgments in the Common Pleas, examinable in the "King's Bench; those for the most part in the Exchequer "Chamber; those in the Exchequer, before the Chan-"cellor and Treasurer; and all of them, either mediately "or immediately, in the Court of Parliament. But to begin "with an original petition in the Lords House, which is now "simply the Court of the last resort for appeals, is prepos-"terous and infinitely prejudicial to the people; so that if "we may judge what is unlawful by what is highly incon-"venient, we have no reason to think that such a kind of "jurisdiction in original suits was lodged in the Lords "House."

mained in this noble assembly, from which the other superior Courts were derived (*b*).

During upwards of 180 years before the 18th year of James the First, there was not much business of a judicial nature transacted in Parliament. The printed Rolls of Parliament commence with the 6th of Edward the First; from that time to the end of the reign of Henry the Fourth, they contain civil as well as criminal proceedings; and in the earlier part of that period there is a regular entry of *Placita Parliamentaria*; and, in fact, throughout the same time, they are full of proceedings of a judicial nature; but after the reign of Henry the Fourth, though the very ancient usage of ap-

(*b*) In the time of King Alfred, an appeal lay from all Courts to the King himself in council; the consequence of which was, that he became overwhelmed with appeals from all parts of England; he was indefatigable in the dispatch of these causes; but finding his time must be wholly engrossed by this branch of duty, he resolved to obviate the inconvenience, by correcting the ignorance or corruption of the inferior magistrates from whom it arose: he took care to have his nobility instructed in letters and law; he chose the sheriffs from among the most celebrated for probity and knowledge; he punished severely all malversations in office; and he removed all the sheriffs whom he found unequal to the task; allowing only some of the more elderly to serve by a deputy, till their death should make room for more worthy successors.

pointing receivers and triers or auditors of petitions at the beginning of every Parliament was continued, yet the exercise of jurisdiction of Parliament over causes seems to have been disused (*c*).

In the fourth parliament of King James the First, the Lords exercised an original jurisdiction on the petition of one Cunningham, against the Muscovy Company: and there are several other cases in which they entertained petitions and made orders, exercising an original jurisdiction (*d*). But in the case of a petition by Sir John Bourchier, against some orders made by the Lord Keeper, in a suit between Sir John

(*c*) A learned commentator*, on the jurisdiction of Parliament, observes, that "though the appointing auditors of petitions at the beginning of a new Parliament, has long, in point of practice, been considered as mere form, yet it seems still to be open to any person at the beginning of a new Parliament, by presenting a petition to the receivers within the time limited by the appointment of them, to call into action the duties both of receivers and triers or auditors, and so to resuscitate the ancient manner of exercising parliamentary jurisdiction, or at least to put its susceptibility of being so revived to the test. It is to be considered also that there may be cases which, from failure of other modes of relief, may, at some future time, induce such an experiment."

(*d*) Journ. Dom. Proc. 1st June 1621.

(*) Mr. Hargrave.

Bourchier and Sir Giles Mompesson and others, the matter of jurisdiction was brought into question (*e*). When the petition was read, the Lord-Keeper moved the Lords, whether the petition should be admitted; and the Lords ordered (*f*) that the Lords Committee for Privileges should consider, "Whether the petition was a formal appeal for matter of justice or no. About a week afterwards, the Committee reported to the House, "that divers Lords of their Sub-committee appointed to search for precedents, could not find "that the word '*Appeal*' was usual in any petition, for any matter brought in thither: but "that they found all matters complained of there, "were by *petition* only, the ancient accustomed "form thereof being to the King and his great "Council; and that they could not find but "only one precedent of that nature, which was "a complaint by petition, against Michael de "Pole, Lord Chancellor, for matter of corruption (*g*)."

Upon this case, Lord Hale observes, "that "the Lords examined the allegations, but would "not proceed to hear the merits or grounds of

(*e*) Journ. Dom. Proc. December 1621.
(*f*) Journ. Dom. Proc. 29 May 1621.
(*g*) Rot. Parl. 7 R. 2, par. 2, n. 11. and 8 R. 2. n. 1.

"appeal;" but although in December 1621, the House hesitated to exercise appellant jurisdiction on the merits of decrees in equity, yet, on the 4th of June following, they made a regulation, which provided, that decrees should not be reversed upon petitions in Parliament, without hearing counsel on both sides; thus, as it were, laying some foundation for afterwards entertaining them; but still, when directly petitioned against a decree in equity, it would seem that they notwithstanding abstained from exercising an appellant jurisdiction, and of which the case of one William Mathew, of Llandaff, is another remarkable instance (*h*). At this period there was therefore a doubt subsisting in their minds, as to their power of interfering with decrees of equity on appeals, and this is evident also from the bringing in bills to reverse such decrees, two of which were read (*i*), and twice committed by the Lords in the preceding Parliament, about the time of the report on Sir John Bourchier's case.

In the second Parliament of Charles the First, the Lords acted as a court of original

(*h*) Journ. Dom. Proc. 8th and 28th May 1624.

(*i*) Vide Proceedings of 21 Jac. 26 Maii 1623, for reversing a decree for the feltmakers.

judicature, and sometimes exercised an appellant jurisdiction over decrees of equity, by ordering further hearings (*k*). On one petition, which was in the nature of an appeal from Chancery, they ordered the cause to be argued by counsel at the bar of the House (*l*); and in the matter of the Banbury rioters, which was determined by them on a complaint by petition, they assumed original jurisdiction over misdemeanors, though not connected with privileges or impeachment. From a great number of civil cases it appears that the Lords were at that period making great efforts to fix in themselves a jurisdiction, both original and appellant, over causes, their orders extending to spiritual (*m*) as well as temporal courts, and even to the punishment of misdemeanors, and to the assessing and awarding of damages; encroaching upon the ordinary jurisdictions of the kingdom, and assuming the provinces both of judges and juries; many instances of which will be found on examining the Journals of the Lords from 1640 to 1642.

In the reign of Charles the Second, a great controversy arose between the Lords and the

(*k*) Jour. Dom. Proc. 1, 2, 16, 17 and 25 March 1625.

(*l*) *Grigson* v. *Everard* and another, Jour. Dom. Proc. 24th June 1626.

(*m*) Jour. Dom. Proc. 30th May 1628, Vaughan's petition.

Commons as to original jurisdiction, in the noted case (*n*) of one Thomas Skinner, a rich merchant of London, against the East India Company, which involves the following important questions relative to the judicature of the House of Peers; viz.

1st. Whether by our law and constitution the Peers, inherently and in right of their order, were invested with original jurisdiction over civil causes.

2d. Whether the King, by recommendation of a business to the Peers, or by any other species of delegation, could supply any defect, which in this respect there might be, in their power.

3d. Whether the House of Peers could, without a jury, assess damages.

4th. Whether it was competent to the Lords to impose fines for breach of privileges, and to award imprisonment till payment.

5th. The pretension of the House of Lords to an original jurisdiction over crimes unconnected with the privileges of the Peerage, or rather the whole compass of their judicative powers.

(*n*) As all the proceedings in this case are expunged from the Journals of both Houses of Parliament, the Editor has collected from the best extant authorities, the particulars of this interesting question. Vide Hume's History of England, Mr. Hargrave's preface to Lord Hale's works, and Hatsell's Precedents.

This controversy appears to have originated in a petition presented by Skinner to King Charles the Second, soon after the Restoration. According to the statement signed by the counsel of Skinner, there was a general liberty of trade to the East Indies in 1657, and he in that year sent a trading ship there. But the Company's agent at Bantam, under the pretence of a debt due to the English East India Company, seized his ship and goods, and assaulted him in his warehouse at Jamba, in the island of Sumatra, and dispossessed him of a little island called Barella. In respect of these injuries, he soon after the Restoration prayed the King to appoint a court of High Constable and Earl Marshal, to hear and determine the matter, as not being remediable by the ordinary course of law, or to put it into any other way for just relief. After various solicitations, the King, by an order of council, dated in March 1665-6, referred it to the Archbishop of Canterbury, the Lord Chancellor, the Lord Privy Seal, and Lord Ashley, to send to the Governor and some of the members of the East India Company, to treat with them, to give a reasonable satisfaction to Skinner.

Under this reference, Skinner gave in a written statement of his case, signed by his counsel, and

estimated his loss at about 3,300*l.*; and upon that sum he claimed damages, but which he submitted to the discretion of the referees. To this case the Company gave in a defensive answer, but concluded it with an offer to pay 1,500*l.* upon having Skinner's release in full.

Skinner replied to this answer, and concluded with submitting the amount of his demand to the decision of the referees, and with a hope that he should have his island returned. After hearing counsel on both sides, the referees, on the 6th December 1666, reported that they found Skinner to have suffered much wrong from the Company, or their agents, and therefore had endeavoured to persuade the Company to give satisfaction; but that on account of the great difference between Skinner's demand and the Company's offer, the mediation of the referees had proved ineffectual.

To this the referees added, that as to the island of Barella, in the East Indies, they conceived Skinner ought to enjoy it, and to trade from thence to any part of the world, except England.

Upon this report of the referees, the King was induced, on the 19th January 1666-7, to send a message on the business to the House of

Lords, recommending it to them to do justice according to the merits of the cause.

All the proceedings in council were transmitted to the Lords, and Skinner also presented to them a petition, setting forth the wrongs done to him by the East India Company (*o*). Being thus possessed of the case, the House of Lords ordered a copy of Skinner's petition to be given to the Company, and that they should answer it.

For answer the Company gave in a plea to the jurisdiction, namely (after protesting against the truth of the injuries supposed,) that the petition was in the nature of an original complaint, not brought by way of appeal, bill of review, or writ of error, nor intermixed with privilege of Parliament, nor having reference to any judgment. They pleaded also, that the Company was incorporated by several charters, in the reigns of Elizabeth and King James, and likewise by a charter from Oliver Cromwell, which excluded all others, not members of the Corporation, from trading to any part of the East Indies, within the limits of the said charters; and that therefore if any such injuries were done, it was

(*o*) Whether the recommendation or the petition preceded, is not quite clearly stated.

by virtue of the charters; and that, whether criminal or civil, they were for ever released and discharged by the act of oblivion.

Upon this plea the Lords ordered the counsel on both sides to be heard on the 24th January 1666-7. However, such postponements occurred, that the session ended without a hearing, but Parliament meeting again in October following, Skinner presented a new petition to the House of Lords, and the Company pleaded as before; adding, that the matters of complaint in the petition were such as to be remediable in the Courts of Westminster Hall, and that in them the Company had a right to be tried, and that they ought not to be brought before the Lords *per saltum*.

In this state of the business, the Lords, in December 1667, referred it to all the Judges to consider, whether the case of Skinner was relievable in law or in equity, and if so, in what manner. Upon this reference the Chief Justice of the King's Bench reported, that all the Judges were of opinion that the matters touching the taking away the petitioner's ship and goods, and assaulting his person, notwithstanding the same were done beyond the seas, might be determined in His Majesty's ordinary Courts

at Westminster, and as to the dispossessing him of his house and island, that he was not relievable in any ordinary court of law.

After this report, the Lords ordered the cause to be heard, and having spent several days in hearing both sides, they appointed a day for considering the cause; and upon the day appointed, they after solemn debate resolved to relieve Skinner, and referred it to a committee to consider what damages he had sustained, and what recompense was fit to be given him. Upon report also of the committee, the Lords adjudged the East India Company to pay 5,000*l.* to Skinner. But pending the order of reference and before the report, the East India Company presented a petition to the Commons, which they stated the hearing by the Lords, notwithstanding the plea to their jurisdiction, and that the Lords had denied to the Company both a commission to examine witnesses abroad, and time to send for their witnesses home. The petition also stated, that the Lords had appointed a committee to assess damages against the Company; that the committee was proceeding accordingly; that several members of the Company were members of the House of Commons; and in conclusion submitted that the proceedings of the Lords were against the

laws and statutes of the nation, and the custom of Parliament, and prayed that the House of Commons would interfere with the Lords for relief of the petitioners.

This petition raised a flame in both houses; the Commons (*p*) upon reading it, and upon its being owned by the Company's Deputy Governor Sir Samuel Barnardiston and others, ordered the committee recently appointed, in respect to the jurisdiction of the Lords, to consider the case also in point of grievance and extent of jurisdiction, and particularly recommended the dispatch of it to Mr. Solicitor-General Finch, and all the gentlemen of the long robe.

From this committee there soon came a report with three strong resolutions, against the jurisdiction and proceedings of the Lords.

The first of which stated the proceedings of the Lords to be a breach of the privilege of the Commons, in respect that several of their members were members of the East India Company.

The substance of the second was, that the cause being brought before the Lords originally, and the matter complained of by Skinner, as to the seizure of his ship and goods, and assaulting

(*p*) 17th April 1668. Vide 3 Hatsell's Precedents of Proceedings in Commons, 179.

his person, being relievable in the ordinary courts of law, the assumption and exercise of jurisdiction by the Lords, and their overruling the plea of jurisdiction, were contrary to the law of the land, and tended to the depriving of the subject of the benefit of the known law, and introducing arbitrary power.

The third was, that allowance by the Lords of affidavits before Masters in Chancery, and a Judge of the Admiralty, as proofs, with their not granting a commission to examine witnesses, was illegal.

On the 1st of May 1668 (*q*), the Commons committed Skinner for a breach of privilege; and the business was debated in the Commons, both in the forenoon and afternoon of the following day (*r*).

The debate was concluded with three resolutions of the (*s*) Commons.

(*q*) 3 Hatsell's Precedents of Proceedings of Commons, 179.

(*r*) As far as can be judged from the existing short notes of the debate, Mr. Solicitor Finch, Mr. Serjeant Maynard, Sir R. Atkins, Sir Robert Howard, Sir Robert Thurland, afterwards a Baron of the Exchequer; Mr. Vaughan, afterwards Lord Chief Justice of the Common Pleas; Sir John Northcote, and the poet Waller, were the speakers against the jurisdiction of the Lords; and the only advocate for it was Mr. Prynne, who appears to have been zealously answered by Mr. Solicitor Finch.

(*s*) 1 Grey's Deb. 150.

By the first, the proceedings of the Lords on Skinner's petition were censured, as taking cognizance originally of a common plea:

By the second, their taking cognizance of the right to the island, and giving damages, were censured; and

The third declared the proceedings of Skinner a breach of privilege.

On the part of the Lords there was an equal share of activity and warmth. It appearing that copies of the East India Company's petition to the House of Commons were current, the House of Lords voted it a scandalous libel against them; and having given their final judgment, that the Company should pay 5,000*l.* to Skinner, they next referred it to their committee for privileges, to examine who was the publisher of the petition.

The Commons afterwards desired a conference with the Lords; which being granted, the Lords were informed of the votes of the Commons, and of the reasons for them; whereupon the Lords, by two resolutions, declared; first, that the proceedings of the Commons, upon the petition of the East India Company, were a breach of the privilege of the House of Peers; secondly, that the proceedings of the Lords, in taking cognizance of Skinner's petition, over-

ruling the plea of the Company, and adjudging 5,000 *l.* damages against them were agreeable to law (*t*).

These resolutions were immediately communicated by the Lords to the Commons, at a conference desired for that purpose.

The conference, however, between the two Houses, did not in the least reconcile the differences. The Commons, on the reports of the votes of the Lords, immediately voted negative resolutions; viz. that the petition of the East India Company to the Commons, was not scandalous, and that the delivery of it to them,

(*t*) These resolutions were as follow:

"That the House of Commons entertaining the scandalous petition of the East India Company against the Lords House of Parliament, and their proceedings, examinations, and votes thereupon had and made, are a breach of the privileges of the House of Peers, and contrary to the fair correspondency which ought to be between the two Houses of Parliament, and unexampled in former times."

"That the House of Peers taking cognizance of the cause of Thomas Skinner, merchant, a person highly oppressed and injured in East India by the Governor and Company of merchants of London, trading thither; and overruling the plea of the said Company, and adjudging 5,000 *l.* damages thereupon, against the said Governor and Company, is agreeable to the laws of the land, and well warranted by the law and custom of Parliament, justified by many parliamentary precedents, ancient and modern."

and their proceedings upon it, were no breach of privilege or encroachment upon the jurisdiction of the House of Lords, and the next day the Commons voted, that whoever should aid or assist in putting into execution the order or sentence of the House of Lords in the case of Skinner against the East India Company, should be deemed a betrayer of the rights and liberties of the Commons of England, and an infringer of the privileges of the House of Commons. The Lords, on the other hand, sentenced Sir Samuel Barnardiston, the Deputy Governor of the East India Company, to pay a fine of 300*l.* for breach of their privilege, in promoting the application to the Commons, against their judgment.

The dispute had proceeded thus far, when, in consequence of the King's orders, both Houses adjourned for a long time, but on their meeting again, the quarrel was immediately renewed, and the Commons resolved, that no member of their House should, without leave, plead as counsel in any cause before the Lords (*u*). Shortly afterwards they desired a conference with the Lords, on their sentence against Sir Samuel Barnardiston; and resolved, that the following propositions ought to be insisted upon at such conference; viz.

(*u*) 1 Grey's Deb. 159.

" First, that it was the inherent right of every " Commoner to present petitions to the House " of Commons in case of grievance, and of " that House to receive them.

" Secondly, that it was the right of the " House to determine how far such petitions " were fit or unfit to be received.

" Thirdly, that no Court had power to cen- " sure a petition to the House of Commons, " unless transmitted from thence.

" Fourthly, that the sentence and proceedings " of the Lords against Sir Samuel Barnardiston, " were in subversion of the rights and privileges " of the House of Commons, and of the liberties " of the Commons of England.

" And fifthly, that the continuance upon re- " cord of the judgment by the Lords, in the " case of Skinner and the East India Company, " was prejudicial to the rights of the Commons " of England."

At the same time they resolved, that the Lords should be desired to vacate both their judgment against Sir Samuel Barnardiston, and their judgment against the East India Company. The following general heads they resolved should be used at the conference.

" It hath always been, time out of mind, the " constant and uncontroverted usage and cus-

" tom of the House of Commons, to have peti-
" tions presented to them by Commoners, in
" case of grievance, public or private, in evi-
" dence whereof it is one of the first works of
" the House of Commons to appoint a grand
" committee, to receive petitions and informa-
" tions of grievances.

" That in no age that we can find, any person
" who presented any grievances by way of
" petition to the House of Commons, which
" was received by them, was ever censured
" by the Lords, without complaint of the
" Commons.

" That no suitors for justice in any inferior
" Court whatever, in law or in equity, exhibit-
" ing their complaint for any matter proper to
" be proceeded upon in that Court, are there-
" fore punishable criminally, though untrue, or
" suable by way of action in any other Court
" whatever, but are only subject to a moderate
" fine or amerciament in that Court, unless in
" some cases specially provided for by act of
" Parliament, as appeals or the like.

" In case men should be punishable in other
" Courts, for preparing and presenting petitions
" for redress of grievances, to the House of
" Commons, it may discourage and deter His
" Majesty's subjects from seeking redress of

" their grievances, and by that means frustrate " the main and principal end for which Par- " liaments were ordained.

" That no petition, or any other matter de- " pending in the House of Commons, can be " taken notice of by the Lords, without breach " of privilege, unless communicated by the " House of Commons."

Upon conclusion of the first four propositions, it was further to be alleged, " That the House " of Peers, as well as other Courts, are in all " their judicial proceedings to be guided and " limited by law. But if they should give a " wrongful sentence contrary to law, and the " party grieved might not seek redress thereof " in full Parliament, and to that end repair to " the House of Commons, who are part of the " Legislative power, that either they may inter- " pose with their Lordships for the reversal of " such sentence, or prepare a bill for that pur- " pose, and for preventing the like grievances " for the time to come; the consequence thereof, " would plainly be, both that their Lordships " judicature would be boundless and above law, " and the party grieved should be without " remedy."

On 10th December 1669, in this stage of the quarrel, the King thought fit to stop its progress,

by proroguing both Houses of Parliament to the 14th February. The House of Commons, as soon as they met, again resumed the debate on the Lords jurisdiction. But for the purpose of ending these differences, by which public business had been much delayed, the King, in a speech to both Houses, proposed that he should give orders to erase all records and entries of this matter in the Council books and the Exchequer, and that the two Houses should do the like, so that no memory might remain of the dispute. This proposal being accepted by both Houses (*x*), the controversy ended; the claim of original jurisdiction in civil causes has never been renewed, and of late years has frequently been denied by the Lord Chancellor, and those Peers on whose legal knowledge the House is accustomed to rely, and by whose opinion their judgments are guided.

The Lords, by the obliteration made in their Journals, conceded all the points required by the last resolution of the Commons. For in effect, the judgments against the East India Company, and the order against Sir Samuel Barnardiston, were vacated without protestation, exception, or reserve.

(*x*) Hume's Hist. chap. lxv.

The Commons yielded nothing but the oblivion of their own proceedings, to annul the usurped jurisdiction, when that object was sufficiently accomplished.

Encouraged by this victory, the Commons proceeded to dispute the right of the Peers, to receive appeals from any Court of Equity (*y*). This second controversy arose, during the thirteenth Session of the Long Parliament, under the following circumstances. Sir John Fagg, who was a member of the House of Commons, had been served with an order of the Lords, to answer the petition of one Dr. Shirley, against whom a decree had been made, in a suit instituted by him in Chancery, against Sir John Fagg. Of this proceeding, Sir John complained

(*y*) Lord Hale, in his Reasons on the Subject of the Jurisdiction of the Lords upon Appeals, says, in chap. xxxii.

"It seems a thing highly unreasonable, that the decree "of a Chancellor, who may err as well as another man, "should be so conclusive, that the same should be unex- "aminable by any other Court, but be binding as the laws "of the Medes and Persians, or as an act of Parliament.

"The Court of Parliament as sitting in the Lords House, "or the Lords spiritual and temporal assembled in Par- "liament, are the highest Court of Justice in the realm, "and here the judgments at law of the greatest ordinary "Court of Justice, namely, the King's Bench, are examin- "able and reversible for error, and what reason can there "be, that a decree in a Court of Equity, should have a "greater sacredness than a judgment at law."

to the Commons, who immediately ordered that Dr. Shirley should be brought before the House, in custody of the Serjeant at Arms, for breach of privilege, in prosecuting an appeal against a member of the House during the Session and Privilege of Parliament. Sir John Fagg was ordered not to answer the appeal without leave of the House, and shortly afterwards they voted Dr. Shirley's appeal a breach of privilege (z); committed him to the Tower, and on the same day resolved, that whoever should appear at the bar of the Lords, to prosecute any suit against a member of the House of Commons, should be deemed an infringer of the privileges of that House. Serjeant Pemberton, and three other counsel who pleaded at the bar of the Lords as counsel in the appeal, were committed to the Tower for a breach of privilege, though it seems they acted under an order of the Lords, commanding their attendance; and Sir John Fagg having answered the appeal without leave of the Commons, it was voted a breach of the privilege, and he also was committed to the Tower.

The House of Peers, on the other hand, denounced these commitments by the Commons,

(z) Journ. Com. 14 May 1675.

as violations of the great charter, and ordered the Lieutenant of the Tower to release the prisoners; but he declining obedience to their orders, they applied to the King, and requested him to punish the Lieutenant for his contempt. The King summoned both Houses to Whitehall, and exhorted them to unanimity; but finding his advice to be ineffectual, he at length prorogued the Parliament to the 13th of October.

When the Parliament re-assembled, the King, in his address, professed his hopes that these disputes between the two Houses would not be revived; but no change appeared in the disposition of either House, and the controversy was renewed with increased violence.

In the House of Lords, a motion was made, ineffectually, for addressing the King to dissolve the Parliament, and finally it was prorogued for the unusual term of fifteen months.

In the meantime, Dr. Shirley had petitioned the Lords to appoint a day for hearing his cause with Sir John Fagg, which occasioned a very animated discussion, and ended in a resolution to hear the cause accordingly.

The Commons thereupon immediately voted, that Dr Shirley was guilty of a breach of privilege, by presenting his appeal in the House of Lords; ordered Sir John Fagg not to make any

defence to the same, and passed the following resolution:

"Whereas the House has been informed of "several appeals depending in the House of "Lords from Courts of Equity, to the great "violation of the rights and liberty of the "Commons of England, it is this day re-"solved and declared, that whosoever shall "solicit, plead or prosecute any appeal against "any Commoners of England, from any Court "of Equity, before the House of Lords, shall be "deemed and taken a betrayer of the rights "and liberties of the people of England, and "shall be proceeded against accordingly (*a*)." But this resolution was the last effort of the Commons to resist the jurisdiction claimed by the Lords (*b*). The prorogation of Parliament immediately followed, and after it met again, which was on the 15th of February 1676-7, the Lords continued, without opposition, to receive and hear appeals from Courts of Equity; and from that time have exercised jurisdiction upon appeals from decrees, and over orders of the Courts of Equity, without interruption or dispute.

(*a*) Journ. Com. 19 Nov. 1675.

(*b*) On the same day the Lords voted a resolution, declaring the paper containing the resolution against their judicature, by the Commons, to be illegal, unparliamentary, and tending to the dissolution of the government.

To account for this sudden and unexpected termination of the controversy, no reasons appear upon record; and at this day the cause of this perseverance on the one side, and acquiescence of the other, must be left to conjecture. From the publications of the day, it seems probable, that the great constitutional lawyers of the age (*c*), though decidedly adverse to the

(*c*) Lord Hale and Lord Vaughan: but in a valuable manuscript of the Earl of Nottingham, concerning the Court of Chancery, and which was in the possession of the late F. Hargrave, Esquire, and entitled *Prolegomena*, the first chapter of that work is *de officio cancellarii*, and at the end of it, there are the following passages, which seem to show that *his* impressions were against the claim of the Lords, even to appellant jurisdiction over equity. "In 37 Hen. 6, 13, it is said, a writ of error lies in Parliament upon a judgment in Chancery; but no writ of error lies on proceedings by *subpœna*; for therein the Chancery is no Court of record: no man then heard of a petition in nature of an appeal, else doubtless it had been mentioned. In 27 Hen. 8, 18, it is argued, that an erroneous decree could not be reversed in the same Court, and therefore must be in Parliament. It is more natural and legal the appeal should be to the King in person, whose conscience is ill administered: so it was done in Sir Moyle Finch's case; and so ought to be done in cases before Constable and Marshal. But Lord Coke says, the first decree in Chancery was 17 R. 2, and that, as appears, was examined in Parliament. By the Journal of the House of Commons, 18 James, divers bills read to vacate several decrees in *cancellaria*, so it was fit for the Legislature, and not proper for the judicial power of the Lords, as now is used."

claim of original jurisdiction, were disposed to admit the right of appeal to the Peers, from decision of Courts of Equity; for as Courts of Equity were established as tribunals for deciding civil causes of great importance and value on questions of property, the right of appeal from their decisions became as necessary as writs of error from the Courts of Law, over which the jurisdiction exercised under the King's writ of error, however questionable as to its being final, is established in the House of Peers; and upon the same principle stands the right of appeal to the King in Parliament from decrees and orders of the Chancellor, relating to the commissions for the dissolutions of chauntries, &c. under the stat. 37 Hen. 8. c. 4, as also for charitable uses, under the stat. 43 Eliz. c. 4.

The jurisdiction in the case of appeals against interlocutory orders of Courts of Equity, might be considered as novel; but in the case of decrees, the jurisdiction by appeal against the judgments of Courts of Equity rested on the same principle as the power which they were acknowledged to possess over judgments of the Courts of Law, by writ of error.

That the decrees of the Judges in Equity should be exempt from appeal, and irreversible,

was hardly to be desired; and if it were contended, according to the apparent opinion of Lord Nottingham, that the appeal should be to the King, it must have occurred to the Commons, that if they should succeed in wresting this jurisdiction from the Peers, it would only tend to increase the power and influence of the Crown, inasmuch as the King would refer all appeals from Equity, to commissioners of his own nomination, and possibly they had good reason to think that any enlargement of the Royal power, whilst Charles the Second sat upon the throne, was far from the true policy and interest of the nation.

But the controversy, and all questions upon the subject, have been long at rest, and the House of Lords is at this time admitted to be the Court of Appeal for parties who are aggrived by the decrees or orders of a Court of Equity (*d*). The order of the House when it

(*d*) But no appeal lies for costs only; and as to this, the learned reader is referred to the cases, *Turner* v. *Turner*, 14th May 1726. *Cowardine* v. *Cowardine*, 19th November 1757. *Pit* v. *Page*, 1 Bro. P. Ca. 550. Vide also 1 Ves. 250. Ambl. 521. 1 Bro. 141. And in a recent cause of *Fitzgibbon* v. *Scanlan*, 1 Dow's Rep. 270, Lord Chancellor Eldon observed, "That although an appeal would not be "received merely on the subject of costs, yet it did not "follow but the article of costs might be taken into con- "sideration when there was an appeal respecting other "matters."

operates as a final judgment, is not subject to re-examination by the House itself, although it seems by the standing order of the 14th February 1694, (Appendix, A.) relating to the "rehearing of any cause or part of a cause "formerly heard in this House," that a review or rehearing was at that period allowed at their Lordships bar.

In the case of an appeal against a decree of Lord Nottingham's, after the appeal had been dismissed by order of the House, the appellant, Walter Williams, a barrister of the Middle Temple, in a subsequent session petitioned for a rehearing, and printed an elaborate work, with authorities and precedents, to show that "error "in Parliament may be rectified in a subse-"quent session, or even in another Parliament." The prayer of the petition was granted, and the appeal was referred on the 4th January 1693-4, and the judgment affirmed with costs. From that time it does not appear that any rehearing of causes has been permitted.

In the cause of *Horner* v. *Popham* (*e*), which occurred in January 1697, this point of practice seems to have been finally settled; for in that cause an order was made on the 18th January 1697, "on the petition of Sir C. W. Bamfield "and others, praying the directions of the

(*e*) Lords Jour. Vol. 16, p. 197.

"House, for the Court of Chancery to proceed "on a bill of review to reverse a report of an "equivalent in this cause, wherein petitioners "were plaintiffs, and Alexander Popham the "defendant; as also upon the answer of "Alexander Popham, whereby he insisted that "equivalent had been in judgment before and "settled by this House. It is ordered and "adjudged by the Lords, that the petition "should be dismissed, because it appeared "that the matters therein complained of had "already been settled by the House (*f*).

But notwithstanding this decisive order, the question of rehearing was again revived in April 1699, in a cause of *Woodman* v. *Willoughby* and others (*g*), where the respondents being dissatisfied with a decree made in Chancery, had appealed against the same to the Lords, and on the 14th January 1691, the Lords, after hearing both parties, had barely "reversed the "decree," without making any further order.

Sometime afterwards Woodman presented this petition for rehearing the appeal, and thereby prayed the Lords to explain the order of reversal, and to make some order for relief, or to give directions to the Court of Chancery

(*f*) Lords Jour. Vol. 16, p. 197.
(*g*) Lords Jour. Vol. 16, p. 442.

how to proceed therein. Upon the hearing of this petition the Lords, on the 19th April 1699, ordered and adjudged that the appeal should be dismissed.

When the minutes of an order have been read at the table of the House, it is considered final and unalterable. The general doctrine upon this point is undoubted, that no review, rehearing, or alteration of the judgment is permitted after it has been pronounced. But where a judgment has been fraudulently obtained, it is treated as if no judgment had been pronounced; as in a case (*h*) where the respondent, when the appeal was called on for hearing, produced an agreement, which, as he represented, put an end to all litigation between the parties; and the House, on this representation, having affirmed the decree in the Court below, and afterwards it appeared that the agreement did not relate to the matters of the appeal, the parties as well as the House having been taken by surprise, on the application of the appellant for a further hearing, it was granted. Applications for rehearing have also been entertained by the House, on the representation and supposition that the original hearing had taken place in the absence of a party named in the pro-

(*h*) *Luttrell* v. *Lord Irnham.*

ceedings, but to whom no notice had been given of the hearing. The representation proved to be false, but the fact was investigated; and if it had been made out in proof, it was considered by the House a case in which they ought to give relief (*i*); and in points of mere clerical error, and matters not affecting the substance of the judgment or merits of the case, alterations have been permitted at any time. As where a judgment was affirmed with costs out of pocket, not exceeding 200 *l.* there being no officer of the House appointed to ascertain such costs, and no person being named for that purpose by the order, the judgment was imperfect in that respect; and upon petition representing the defect, an alteration was made in the order, giving 200 *l.* for costs, without reference or taxation. So in another case, where the word "Master" had been used in an order, speaking of proceedings in the Exchequer, instead of the words "Chief Remembrancer or his Deputy," the necessary alteration was made after the judgment had been pronounced. These are exceptions to the rule; and in order to guard against error, it is the practice of the House, in all cases of difficulty and importance, to deliver to the agents copies of the proposed minutes of

(*i*) *Devereux* v. *Phelan*, Lords Jour.

the judgment, that they may make such objections and suggest such alterations as may occur to them; and in that state of the proceedings new points may be argued, or old points re-argued, if the House, on representation, think it expedient.

In some cases it has happened, that owing to the course which the cause has taken in the House, or in the Court below, some material question has not been argued; as in the case of *Bernal* v. *The Marquis of Donegal*, where the appeal was heard in March 1814, and the judgment moved and pronounced in July following. On the petition of the respondent, in the following year, alleging some errors in the judgment, the parties were permitted to be heard by one counsel on each side; the Lord Chancellor observing, that it was not intended to be a rehearing, but simply to correct the mistakes which had been made in drawing up the judgment. The counsel for the respondent on that occasion proposed to argue the case on the general merits, on the ground that he had omitted to do so on the former hearing, as he understood the appellant rested his case on a preliminary point of form: but the counsel for the appellant objected to this course. The Lord Chancellor (Eldon) and Lord Redesdale ob-

served, that the merits had been set forth in the printed paper for the respondent, which was as much a judicial representation as the speeches of counsel; and Lord Redesdale said, the judgment of the House could not be reviewed, because counsel had omitted to argue the point. No further hearing took place, but the former judgment was corrected, by an order made on the 7th July 1815.

Some cases, which upon a slight view may appear to be rehearings, are in fact hearings upon further directions, according to the practice which in former times prevailed in the House, of directing trials upon issues by order of the House, and retaining the appeal, and all the proceedings in the House, until after the issue had been tried. This was the course pursued in cases where, on appeals from Courts of Equity, some doubt arose upon the facts; to ascertain which, an issue was directed, and the cause was not remitted to the Court below to apply the judgment according to the present practice, but the whole proceedings retained in the House, and the decree affirmed, reversed or varied, upon the result of the issue (*k*). In such cases the order of the House, directing the issue, was not final, but interlocutory; and the second

(*k*) Vide *Scudamore* v. *Morgan*, Lords Jour. 4th March 1677.

hearing was upon the result of a proceeding directed by the House itself. Now it is the practice to remit the cause to the Court below, leaving to that Court the trial of the issues, and the directions consequent upon the event of the trial.

Sometimes appeals were in former times heard by the House in the form of a Committee; and in such cases there have been instances where counsel have been heard a second time, upon particular points in the cause, after the Committee had declared an opinion, not amounting it seems to a final judgment, that the decree ought to be affirmed. But in this case, the rehearing on the special points was not permitted on the application of the parties; it was the spontaneous order of the House (*l*). So where it is alleged that a judgment of the House has been obtained by misrepresentation, a party has been heard on petition against the judgment; but the further hearing is confined to the question, whether it has been obtained by false representation; the substance of the judgment itself, on the merits of the case, not being brought into discussion (*m*). In some cases where the judgment of the House has been pronounced in

(*l*) *Chute* v. *Lady Datre*, 12th and 19th Nov. 1680.
(*m*) *Ex parte Warren*, Lords Journ. March 1689.

such a form as to be inefficient, as where directions are necessary upon reversing a decree, and none have been given, but the decree simply reversed, the order, as a matter of necessity, has been reconsidered, for the purpose of giving the necessary directions. This happened occasionally, from the year 1688, until Lord Somers became Chancellor, during which interval (*n*), the seals were in commission, and the Lord Chief Baron usually acted as Speaker merely, and not as one of the Peers, on the hearing of appeals. Of such a description was the case of *Philipps* v. *Berry*, where a judgment of the Court of King's Bench had been simply reversed, it being impossible to proceed in the case in the Court below as justice required (*o*). The House, on the petition of the parties, pronounced a further judgment, to give operation and effect to the former. That irregular practice was corrected by Lord Somers; and since his time, upon the reversal of decrees, the cause has been remitted to the Court below, with proper directions for the application of the judgment. The foregoing cases of rehearings or further hearings have occurred only where the judgments have been interlocutory, imperfect,

(*n*) Vide Lords Journ. during the period in question.

(*o*) Lords Journ. 1694.

or incorrect, or where they have been obtained by fraud. On the substance of the judgment and merits of the case they are never permitted, after the order of the House, operating as a judgment, has been read at the table, from which time it is considered as final (*p*).

If a judgment were pronounced in the absence of a material party, the House undoubtedly would permit a rehearing, which in fact, as to that party, would be an original hearing; but the omission of counsel to argue any point in the cause, on any particular ground of appeal, does not warrant an application for rehearing.

But in a special case (*q*), although the House refused to rehear the cause on the merits, yet they altered their judgment on a particular point, which owing to the course which the cause took in the inferior Court, had not been discussed there, or in the House on appeal. The alteration was made, by striking out of the order the part which related to that point, leaving the parties to proceed on that matter in the Court below, according to the course of that Court. The case arose in the Court of Session in Scotland, in an action brought by a party entitled under a marriage settlement of lands

(*p*) *Vans Agnew* v. *Stewart*, Lords Journ. 1823.
(*q*) *Vans Agnew* v. *Stewart, qua suprà.*

by way of statutory entail, to reduce judicial sales of the lands irregularly made by a decree of the Court of Session, under the authority, but not according to the directions, of an act of Parliament.

The purchases under this decree had been made between thirty and forty years before the action commenced to reduce them. To that action, the purchasers or their representatives were parties, and the summoners concluded (among other things) for a reduction of the purchases, and an account of the rents and profits received by any of the purchasers. By the judgment of the Court of Session, the sales were held valid, and the defenders were assoilzed from all the conclusions of the summoners, and therefore, among the rest, from the account of rents and profits. The appeal was against this judgment, which opened the whole matter of the summons to the Court of Appeal. The question upon the account of rents and profits was therefore one of the subjects to be discussed upon the appeal; but in the Court below the discussion was unnecessary, because the judgment did not affect the right of the purchasers to retain the lands; and at the bar of the House of Lords, the principal question only, as to the validity of the sales, was dis-

cussed. The judgment of the Court of Session was reversed by the House; and in the order, directions were given that the purchasers should account for the rents and profits from the accession of the appellant to the entailed estates.

The cause was remitted to the Court below, to apply the judgment; but that Court presuming that there was some error in the order made by the Lords, on the petition of the respondents, suspended the application of the judgment until after the ensuing session of Parliament, to give an opportunity of applying by petition for a rehearing. This was accordingly done, on behalf of the several respondents having distinct interests. The petitions prayed a rehearing generally on the merits, or a special alteration as to a particular part of the order, or such alteration as the House might think fit; and the question as to the rents and profits was particularly pressed on the House, as having been decided without the opportunity of discussion; and after frequent consideration, and much doubt and hesitation as to the practice, and protestations on the part of the Lords, advising the House against the precedent, an order was made, reciting, that the question as to rents was before the House, and ought to have been discussed on the hearing of the

appeal; but on the ground of misapprehension on the part of the respondents, and under the particular circumstances of the case, the judgment was amended, by omitting the directions as to the account of rents, and inserting the words, "without prejudice to any question which may be made in the further proceedings in the Court of Session, touching the rents of the entailed estates." As to all the other matters prayed in the petitions, they were dismissed (*r*).

By this decision, new authority is given to the doctrine, that rehearings will never be permitted on the merits. And it was further decided, that all collateral and incidental questions arising out of the principal matter of appeal, although not discussed in the Court below, ought to be discussed and decided in the House, unless it should be thought fit on that point, and on the application of the party interested, to remit the case for discussion to the Court below. The alteration in the judgment seems in this case to have been made on the special ground of surprise on the party, or mistake, if it can be brought within that principle; and it may be doubtful whether any similar application would be entertained in future. In deciding upon cases brought before it, the House of Peers has

(*r*) *Vans Agnew* v. *Stewart*, 12 March 1823.

the advantage of the best advice which the country can afford. Their judgments are considered with the most cautious attention, and in all cases of doubt or difficulty, if they arise in England, the judges are called to aid the House with their learning; if they arise in Scotland, the points are remitted for the consideration of the inferior Court.

In proceeding upon appeals and writs of error in this House no new evidence is admitted (*s*); this Court being a distinct jurisdiction, which differs considerably from those instances wherein the same jurisdiction revises and corrects its own acts, as in rehearings and bills of review; for it is a practice unknown to our law (though constantly followed in the Spiritual Courts) (*t*), when a superior Court is reviewing the sentence of an inferior Court, to examine the justice of the former decree by evidence that was not adduced on the hearing in the Court below: and in a case (*u*) where the Court below had refused to hear argument upon a ground not urged before the Lord Ordinary, the Lord Chancellor (Eldon) refused to permit the cause to be *argued on that ground*, thinking that the

(*s*) Prec. in Ch. 496. *Prise* v. *Button*, Colles' P. C. 246.
(*t*) Black. Com. vol. iii. p. 455.
(*u*) *Tennant* v. *Henderson*, 1 Dow's Rep. 324.

Court of Session had decided themselves not to be at liberty to take notice of the new ground of argument which had not been brought before the Lord Ordinary in the first instance; and if the Court of Session could not notice the new ground, the House of Lords could not do so in the first instance. Certificates were given in to show that the Court of Session might, in conformity with their practice, have noticed the new ground of argument; but the Chancellor not being satisfied, the cause was, on the 20th July 1813, remitted for review on the point of practice, on which, in this instance, the whole depended. And in the more recent case of *Macdonald* v. *Macdonald* (*v*), the Lord Chancellor said, it appeared to him that counsel were precluded from arguing at the bar here any other points than those which they had addressed to the Court below.

Between appeals from a Court of Equity and writs of error from a Court of Law, there are these differences: An appeal from a Court of Equity may be brought upon any interlocutory matter; from a Court of Law, a writ of error can only be brought upon a definitive judgment. On appeals, the House gives directions to the Court below to rectify its own order or decree;

(*v*) 2 Dow's Rep. 72.

on writs of error, the House pronounces the judgment: in appeals from Equity, sometimes the House directs an issue at law on some point, and after the trial sends the cause back to the Court of Chancery for further directions (*w*); but the Lords will not reverse a decree made by consent (*x*).

If the cause was heard before the Master of the Rolls, an appeal cannot be regularly made to the House of Lords till after a rehearing before the Lord Chancellor (*y*); unless the decree be enrolled, in which case it cannot be reheard before the Lord Chancellor (*z*).

No appeal lies to the Lords from decrees made in the Plantations (*a*); nor against an order awarding a commission of lunacy, or idiotcy, by the Great Seal; nor against any proceedings touching the awarding or refusing such commission (*b*); nor from ecclesiastical decrees (*c*), except in cases arising in Scotland, where, in matters of ecclesiastical cognizance,

(*w*) Vide ante, page 35.

(*x*) 1 Eq. Ca. Abr. 165. Amb. 229. 3 Dow's Rep. 146.

(*y*) It is said, that upon an appeal from the Rolls to the Lord Chancellor the appellant may be let into new evidence which was not read there, provided he will give up his deposit. *Vide* 1 Vern. 443; Gilb. Eq. R. 151; 2 Vern. 463; 2 Atk. 408; Prec. in Ch. 496, *contrà* Prec. in Ch. 295.

(*z*) 1 Har. 77.

(*a*) 2 P. Wms. 262.

(*b*) *Rochfort* v. *Earl of Ely*, H. 1768, 6 Bro. P. C. 329.

(*c*) 1 Vern. 118.

an appeal lies to the House of Peers from the judgments of the Lords of Session (*d*).

From orders in bankruptcy no appeal is admitted; (but, in cases of difficulty and importance, it is the practice of the Chancellor sitting in bankruptcy not to pronounce an order, but to direct a bill to be filed, to raise the question in a suit in equity, in order that the party may not be deprived of the benefit of an appeal, if the opinion of the Judge should be erroneous:) nor upon proceedings in writs of extent; even in a case where, by statute, the proceedings had been assimilated to the practice in Courts of Equity (*e*).

In maritime or prize causes, as in all cases arising in the Colonial Courts, the appeal lies to the King in Council.

No words in a grant (*f*) from the Crown can deprive a subject of his right to appeal, much less if the grant be silent in that particular.

It seems, upon the authority of the case of *Lord Wharton* v. *Squire* (*g*), that a general order of a Court not made in any cause, (as the filing an ancient record many years mislaid,) may also be the subject of appeal to the Lords;

(*d*) *Greenshield* v. *Provost of Edinburgh*, Colles' P. C. 427.

(*e*) *Wall* v. *Attorney General*, Lords Journ. 1824, Mr. Bligh's MSS. vide, pages 66 & 67.

(*f*) 1 P. Wms. 329. (*g*) Lords Jour. vol. 17. 275.

and the person at whose instance the order was made cannot decline the Lords jurisdiction, by alleging that it is original and not appellate, or that many not before the House are interested in the record (*f*).

The appeal was from the following order of the Court of Exchequer, dated the 15th July 1701: "Whereas, on the 26th February last, upon "motion of the part of Thomas Lord Wharton, "it was ordered by the Court, that a commis- "sion issued out of this Court in the 15th year "of the reign of King James the First, together "with six several articles of instruction, and "eight several schedules thereunto annexed, "purporting to be a boundary and survey of "the honor of Richmond and the lordship of "Middleham, in the county of York, taken by "virtue of the commission by Sir Timothy "Hutton and Sir Talbot Bowes, Knights, and "other commissioners, and dated at Richmond, "19th October 1618, should be left in the "hands of Mr. Thompson, one of the attornies, "but should not be received as a record, or "filed, nor any use made thereof, or of the "enrolment thereof, until further order; and

(*f*) As this case involves other considerations regarding the Jurisdiction of the House, the Editor thinks it useful to state the facts of the case at large.

" on motion of Mr. Turner, on behalf of Sir " William Robinson, Baronet, and others, pray- " ing that the said order might be set aside, " and that the said commission, articles and " survey, might be allowed of as a record, and " filed accordingly; for that it appeared by an " indorsement, written in the hand of the Court " on the outside of the last of said schedules, " that the same were delivered into this Court on " the 28th of November, in the 16th year of the " reign of King James, by the hands of Roger " Kenion, Gent. one of the commissioners in " the commission named; and that the com- " mission and survey likewise appeared to have " been returned and filed in this Court; for that " in an order or decree made the 18th June, " 19th Jac. touching the tenants of the honor " of Richmond and lordship of Middleham, it " was recited, that upon survey made in June, " July, August, September and October 1618, " by Sir Timothy Hutton and Sir Talbot Bowes, " Knights, and other commissioners, certified " into this Court, and there remaining of record; " and it appeared that there had been improved " of and from the moors and wastes of the " manors of Richmond and Middleham, several " great parcels of ground, and other parcels " were intended and desired to be improved,

" which improvements are particularly recited " in the said order or decree, and are the same " that are mentioned in the said survey now in " question; and after the recital of the said " improvements in the said order or decree, it " is therein mentioned in these words; viz. " as by the said certificate, bearing date at " Richmond the 19th day of October 1618, " relation being thereunto had, may more fully " appear; and the Court was also informed, " that in the book of enrolments of surveys, " and other matters of the reign of the said " King James (No. 21), remaining with the " Auditor of the county of York, the said arti- " cles of instruction and survey contained in " the said eight schedules annexed to the " said commission, were entered and enrolled " together with these words written in the said " book of enrolments immediately before the " said entry of the said articles and survey; " viz. *Inter inquess' et extent, de anno* 16° " *Regis Jacobi in scacciõ' remanen' ac in custod'* " *Remem' Regis existen' inter al' continenter ut* " *sequitur*: and the Court was likewise in- " formed, that the said commission, articles of " instruction and survey were copied, in or " about the year 1674, by the said Mr. " Thompson, for his master Hugh Frankland,

" Gent. deceased, late one of the attornies of " this Court; and that it also appeared " amongst other things, by the affidavit of " Mathias Hawkins, Gent. formerly clerk to " Mr. Watts, one of the attornies of this " Court, now read in Court, that two or three " years after the year 1671, he had sent the " commission, articles of instruction, and sur- " vey now in question, as he was well satisfied, " and in his conscience did believe, upon " the proper title of special commissions and " inquisitions, in the sixteenth year of the reign " of the said King James the First, in the in- " nermost room of the King's Remembrancer's " office at Westminster, and that the said Mr. " Hawkins did then show the same on the " said title to Humphrey Wharton, Esq. and " Peter Atkinson, Gent. and that when he " saw the said commission and survey on the " file, there was not any map annexed or " filed with the same, as he did assuredly be- " lieve; and the said Mr. Turner also in- " formed the Court, that the said commis- " sion, articles of instruction and schedules, " were unexpectedly found by John Rudd, " Gent. late clerk to Ralph Grainge, Esq. de- " ceased, who was formerly concerned as soli- " citor for John How, Esq. in one or more trials

" at bar of this Court, concerning some lead " mines in the said lordship of Middleham; in " which trials, the said commission, articles and " survey, were, as was alleged, used as evi- " dence, about two days after, the 29th day of " August last, at Stockton, in the county of " Durham, in the presence of Alderman Atkin- " son of Stockton aforesaid, and others, amongst " a bundle of papers belonging to the said Mr. " Grainge in his life-time; which bundle of " papers, amongst other papers of the said " Mr. Grainge, were by the permission of the " late Lord Chief Justice Treby, given to the " said Mr. Rudd, and were by Richard Bel- " lasyse sent unaltered to the said Mr. Rudd " at Stockton aforesaid, and that the said com- " mission, articles and survey, contained in the " said eight schedules, were all that the said " Mr. Rudd then found relating to the said " survey, and were tacked together when the " said Mr. Rudd found the same, and that " there was no map, nor schedule or schedules " of depositions, annexed thereto, when the " same were so found by the said Mr. Rudd; " and that the said Mr. Rudd on or about the " 12th day of October last, in the presence of " John Commins, Gent. and others, did seal up " and deliver the said commission, articles and

" and survey, in the same plight and condi-
" tion exactly, and as whole and entire, as the
" said Mr. Rudd found the same, without dimi-
" nution or alteration whatsoever, to George
" Bowes, Esq. to deliver the same to the said
" Mr. Thompson, in order to have the same
" put into its proper place; and that the said
" commission, articles and survey, as the same
" were delivered to the same Mr. Bowes, were
" afterwards, in the said month of October last,
" delivered by the said Mr. Bowes, sealed up,
" to the said Mr. Thompson at the Exchequer
" office in the Inner Temple; all which, as to
" the finding of the said commission and sur-
" vey by the said Mr. Rudd, and the sending
" thereof to the said Mr. Thompson, appeared
" by the affidavits of Bellasyse, Rudd, Atkin-
" son and Commins, now read in Court;
" whereupon, and upon hearing Mr. Cooper,
" one of his Majesty's counsel learned in the
" law, and Mr. Phipps, on the behalf of the
" said Sir William Robinson and others, and
" upon the examination of the said Mr. Thomp-
" son, touching the said commission and survey,
" and the copy or copies thereof made by him
" as aforesaid, and upon reading the said order
" of the 26th of February last, and the said
" order or decree of this Court, made the 18th

" day of June in the 19th year of the reign of " the late King James the First, the said entry " or enrolment in the Auditor's book, and also " of the affidavits of John Todd, Gent. and of " Robert Squire, Gent.; and upon hearing Sir " John Hawles, Knight, his Majesty's Solicitor-" general, Mr. Ettrick, Mr. Dodd, Mr. Slone " and Mr. Cheshire, on the behalf of the said " Lord Wharton, opposing the filing of the " said commission and survey: and upon view " and perusal of the said commission, articles " and survey, and on long debate of the matter, " the Court, *seriatim*, delivered their opinions " touching the same; it is thereupon this day " ordered by the Court, that the said order of " 26th of February be and it is hereby set " aside; and that the said commission, articles " and schedules purporting the survey as afore-" said, be allowed as a record of this Court, " and filed accordingly on the proper file, (to " wit) amongst the inquisitions and extents of " the 16th year of the reign of the said King " James the First; but the enrolment thereof, " prepared by the said Mr. Thompson, is hereby " set aside: and the entry of the said enrol-" ment on the said commission and schedules " is to be obliterated."

From this order an appeal was presented to

the House of Lords; in support of which the appellant stated, that he had a cause depending in Chancery, about the boundaries of certain lands, in the mines of Yorkshire, in which the respondent was a defendant; and finding by the respondent's answer and cross bill in Chancery, that he relied much on a pretended survey of the honor of Richmond and lordship of Middleham, the appellant caused diligent search to be made in all the offices of record, but could not then find any such survey: that the appellant had afterwards discovered, that about Michaelmas term 1700, the pretended survey had, by the respondent's contrivance, while the cause was depending, been privately brought out of Yorkshire, and delivered to one Thompson, an attorney in the Exchequer, and agent for respondent, designing that Thompson should secretly file the same with intent to make use thereof, when upon record, as evidence in that cause; and that Thompson had, without any warrant, taken upon him to receive it as an officer, and to keep it for some time privately, and had also clandestinely made and prepared an enrolment thereof, which the appellant had likewise discovered, and thereupon applied to the Court of Exchequer; and that the Court of Exchequer thereupon, 20th February 1700,

made an order to suspend the filing it; and afterwards, on respondent's application, made the order of the 15th July 1701, by which last final order appellant conceived himself aggrieved, and insisted it ought to be set aside and discharged, and that the pretended survey or parchment writing should be ordered to be put into the same state and condition wherein it was when the said suits were commenced; because it was not denied that it had been for twenty-eight years out of the Court, and out of the custody of any sworn officer; nor was there any order of Court for taking out same, nor any manner of account given, by whom it was taken off the file; or where it had been from that time until it was pretended to be found amongst the papers of Grange, after his decease, who had died about five years past; and that from that time, instead of being immediately transmitted into the office, it appeared to have been privately kept by respondent's agents for some years, and endeavoured to be privately filed, without the knowledge or order of the Court; and that it was now manifestly imperfect, and that some schedules had been taken from it; and that there were no verdicts, depositions, plots, or maps now remaining therewith, all which were required by the commission, and

by the certificate and return appeared to have been taken, and were referred to for the explanation thereof, the commissioners in their return referring to several schedules as annexed thereto; and though to answer, in appearance, the words of the return, the certificate was now divided into eight several pieces or presses, each figured or numbered at the top, yet that it appeared by the stitches at the top and bottom of each press, that they had been originally all sewed together as one long schedule; and that Thompson owned that he or his master set the said figures thereon; and that it appeared by several holes in the parchment, where it was now tied, that it had been often untied, and that the office-book wherein the account would have appeared of the true number of schedules originally returned therewith, had been taken away, though the other books of the office, both before and since that time, were all extant; and that Thompson, who pretended to prove that he had made a copy, about the same time, to be given in evidence upon a trial at York, and to remember it by the circumstance of one Johnson riding post therewith to York, could give no reason why he believed there were no more schedules then annexed to it; and that it appeared by John-

son's own letter, that he (Johnson) was in London during the trial at York aforesaid, when he was pretended to have ridden post. And appellant stated, that he had purchased the mines in question before this pretended record was brought into the office; and that, if such writing should be suffered to be filed as a record after such length of time, the searching the Record-office, which was the common security of every subject, would signify nothing, all settlements and purchases would be easily defeated, and no man could be safe in his estate or inheritance. And appellant showed, that the other defendants in Chancery were not made parties to this appeal, because the respondent, Squire, was the only defendant who made affidavits for the supporting the survey, and the principal person who solicited therein, and employed Thompson to file and enrol it. And whereas it was objected that others might be concerned in this pretended record, who ought to be heard, appellant answered, that if it were not a good and perfect record, it ought not to be evidence for any; and that the mischief in establishing it would be more dangerous on the other side.

The respondent, on the other hand, showed, that this record had been made use of on a trial at bar some years ago, and was by mistake

(among several other writings and papers) then also made use of, carried to Mr. Grange's chamber in the Temple, and had been found since his death, and delivered back into the Exchequer to be put on the proper file; but that appellant, finding that this record might affect him in a difference he then had with Sir William Robinson, Mr. Bathurst, Colonel Byerly, respondent, and others, touching certain lead mines, thought fit to move the Court of Exchequer to have it suppressed; which Court thereupon examined the matter, and in the mean time stayed the filing; and after four months time, upon full examination of all persons who knew any thing concerning the record, and upon inspection thereof, and comparing it with entries in divers books concerning it, on the 15th of July 1701 made the order complained of, being satisfied it was in the same plight as when taken off the file, and had not been altered or defaced: and that appellant had since acquiesced; but that record having been made use of, and allowed as evidence, in Michaelmas term last, at a trial at bar in the Queen's Bench, and a verdict being given against appellant upon full evidence, and a view previously had, Lord Wharton had now appealed from that order, to deprive the parties (defend-

ants to the suit in the Queen's Bench) of part of their evidence, and therein named Squire and Thompson (a sworn clerk of the Exchequer) for parties, because Squire was defendant in a cause appellant had depending in Chancery about certain lead mines; and they (Squire and Thompson) were advised that this petition was not properly an appeal, but an original complaint against them, or rather against the Court of Exchequer, for a matter relating to the safe custody of the records of that Court, and about which no suit was ever depending in that Court between them and the Lord Wharton; so that they could in no sort properly be made parties to the said petition and appeal; and therefore, on the 7th of January 1702, they petitioned the Lords, setting forth the said matters at large, and prayed to dismiss Lord Wharton's petition, and discharge the order for their answering thereunto. But the Lords, on the 22d of January 1702 (*i*), ordered that Squire and Thompson should answer Lord Wharton's petition: and Lord Wharton, on the 25th of January 1702, moved the House that Thompson

(*i*) Die Veneris, 22° Januarii 1702:—After hearing counsel on the petition of Robert Squire and John Thompson, and the answer of Thomas Lord Wharton, and debate thereon, the question was put, whether this petition shall

should be left out of the order for answering his petition, and obtained an order that Thompson should not be obliged to answer.

Squire in his answer stated that Charles

be dismissed, and they ordered to answer? and it was resolved in the affirmative.

Dissentient:

1st. Because we conceive that by this we assume a jurisdiction in an original cause; for these reasons: first, because there has been no suit between the parties in the Court of Exchequer, and consequently this petition cannot be called an appeal from that Court: secondly, although there was a suit in the Court of Chancery, yet one of the persons required to answer was not a party in that suit; and therefore, as to him at least, it must be an original cause: thirdly, though all had been parties in Chancery, yet it never was heard that an appeal lay from one Court that had no suit depending in it, because there was a suit depending in another Court:

2dly. Because no Court can take any cognizance of a cause in which that Court cannot make an order; but in this case the House of Lords cannot make an order, because very many are concerned in this record who are not before the House; therefore this House cannot take any cognizance of it.

Signed by the eleven following Lords, out of eighty-three then present:

W. Carliol.	*Nottingham.*
Townshend.	*Leeds.*
Poulett.	*Weymouth.*
Dartmouth.	*Rochester.*
N. Duresme.	*Tho. Roffen.*
	Jona. Exon.

Lords Journ. vol. 17. p. 252.

Bathurst, Esq. Sir William Robinson, Bart. Robert Byerly, Esq. William Bower, John Bower, John Langstaff, Thomas Langstaff, and Gregory Elsely, were defendants in the suit in Chancery, and plaintiffs in a cross cause in that Court together with himself; and therefore insisted that they ought to have been made parties to this appeal together with respondent, if the being a party to a cause in Chancery be any proper foundation for making respondent a party to this petition, complaining of an order in the Court of Exchequer: and that as to the charge in the petition, of respondent's contrivance and designing to cause the parchment to be filed clandestinely as a record of the Court of Exchequer, with intent to use the same as evidence, respondent hoped the Lords would not take cognizance originally thereof, but leave him, if guilty of such undue practices, to be tried by the known course of the laws of the realm: and that, as to any grievance on petitioner by such pretended design to file it clandestinely, it appeared by the petition, that the petitioner had been already fully relieved therein by the order of the 26th February 1700, which stayed the filing till the Barons afterwards ordered it; and that therefore petitioner had not, in that respect, any ground of appeal: and

that as to the residue of the petition which imported an appeal from the order of the 15th July 1701, and prayed to set aside that order, and to have the record taken off the file, respondent showed that the record in question not only greatly concerned Her Majesty, but all her subjects who were or might be entitled to lands in that part of the kingdom to which the record relates, and more particularly concerned all persons having lands within the honor of Richmond and lordship of Middleham, which honor and lordship respondent showed were much larger than the whole county of Middlesex; and respondent stated, that divers lands therein had been in the reign of King Charles the First, purchased from the Crown by the trustees of the city of London, and the greatest part sold by them to several persons, who yet held under that title; all which purchasers, and also all those who with respondent were entitled to the mines in question in the Court of Chancery, respondent conceived ought to be heard touching this record; and respondent showed, that the order affected to be appealed from had not been made in any cause depending in the Court of Exchequer, but was made in exercise of the duty of that Court, to see its records duly kept and preserved from embezzlement, and restored

when recovered; and that if the Lords should think proper to receive any complaint against the Court of Exchequer for making that order, or touching the reality of the record, respondent, as one only of many who were or might be equally interested in the record, hoped the Court of Exchequer would be able to give the Lords entire satisfaction in the justice and reasonableness of their proceedings in that matter; and respondent conceived it would be highly improper and officious in him alone, who was but one of many interested in the record, to undertake the defence thereof, lest the justice of the Barons, in a point relating to their duty, or the property of so many others concerned, should receive injury by his or his counsel's inability, neglect or inadvertency; and therefore, forasmuch as the matters aforesaid had been examined, and received a determination in the proper jurisdiction, and as the inheritances of many persons of great quality, and of a thousand others, depended upon the record, who were not made parties to the petition, the respondent hoped the Lords would not proceed to any further examination of the premises, nor make any order touching the same, at least till all parties concerned therein had been heard thereto. Upon hearing this cause the House pronounced the following orders:

" Die Jovis, 11° Februarii 1702.

" It was ordered by the Lords, that the " officers of the Exchequer should bring into " the House the bundle or roll in which the " survey of the honor of Richmond was, which " was taken in the fifteenth year of King James " the First, the original affidavits upon which " the survey was filed, the office-book in which " there was an entry of a survey taken of the " honor of Richmond in the seventh of King " Charles the First; and the survey also " itself:" And,

" Die Veneris 12° Februarii 1702.

" After hearing counsel upon the petition " and appeal of Lord Wharton, touching the " order of the 15th July 1701, it was ordered " by the Lords, that a trial should be had " next term at the bar of the Court of Common " Pleas, by a jury of the county of Middle- " sex, in an action wherein this should be the " feigned issue, viz. *whether the skins of parch-* " *ment, directed by the order of the Court of* " *Exchequer of the 15th July 1701 to be filed,* " *are the perfect, unaltered, exact and entire* " *commission and return, first filed in the Court* " *of Exchequer, in the sixteenth year of King* " *James the First*; and that in such action the

" said Robert Squire should be plaintiff, and " take upon himself the proof of the said issue, " and Lord Wharton defendant; and that the " said skins of parchment, or any copy thereof, " should not be given in evidence in any Court " whatsoever, until the said trial should be " over; and that the said skins of parchment " which were now upon the file, by virtue of " the said order of the 15th July, should not be " allowed as any evidence on said trial for the " plaintiff; and that the verdict to be given on " such trial should be certified and returned " by the Court of Common Pleas into this " House (*k*)."

20th January 1703. Charles Bathurst, Esq. one of the parties named in the foregoing case, petitioned the House of Commons, complaining of this order of the Lords, and the House appointed a committee to inquire and report; and on the report, after some interlocutory orders, the Commons, on the 28th January 1703, resolved, " That the House of Lords taking " cognizance of, and proceeding on the petition " of Thomas Lord Wharton, complaining of an " order of the Court of Exchequer," (viz. the order aforesaid,) " is without precedent and un- " warrantable, and tends to the subjecting of the

(*k*) Lords Jour. vol. 17. p. 275, 277.

" rights and properties of all the Commons of " England, to an illegal and arbitrary power; " and that it is the undoubted right of all the " subjects of England to make such use of the " said record as they might by law have done " before the said proceedings in the House of " Lords (*l*)." In consequence of this resolution, the Lords, on the 27th of March 1704, resolved, " That the House of Commons taking " upon them, by their votes, to condemn a " judgment of the House of Lords, given in " a cause depending before this House in the " last session of Parliament, upon the petition " of Thomas Lord Wharton, and to declare " what the law is, in contradiction to the pro- " ceedings of the House of Lords, is without " precedent, unwarrantable, and an usurpation " of a judicature, to which they have no sort " of pretence."

" Ordered, that the resolution and declara- " tion made this day, with respect to the votes " of the House of Commons, in relation to the " judgment of this House upon the petition of " Thomas Lord Wharton, the last session of " Parliament, shall be forthwith printed and " published (*m*)."

(*l*) 8 State Trials, 175.
(*m*) Lords Journ. 17, p. 535.

The authority of this case may be lessened by the protest of the dissentient Lords; and it may be doubted whether, at this day, the House would exercise jurisdiction in any appeal against proceedings, which did not take place in a suit in Court, except in the cases warranted by ancient precedent, as under the statutes 37 Hen. 8, c. 4, and 43 Eliz. c. 4.

In a case which occurred in the Court of Exchequer, where estates subject to mortgages had been seized under a writ of extent, and where a commission of bankrupt afterwards issued against the owners of the estates, and an act of Parliament was passed, enabling the Court of Exchequer to refer to the Deputy Remembrancer to ascertain priorities, &c. and make orders respecting the funds in Court, under the extent, upon motion or petition, as in causes in Equity, an order having been made under the authority of this act on a question or dispute between the Crown and the bankrupts, (whose commission had been superseded,) respecting the right to accumulation upon a fund which had been laid out by consent of the parties interested under the direction of the Court, declaring that the Crown was entitled to the accumulations, an appeal was presented to the House of Lords against that

order; but the House were of opinion, that if the case was to be considered as arising under the extent, it was a proceeding at common law, and that the appellant could not bring his case *per saltum* to the House of Lords; and if it were to be considered as arising under the statute, there was no jurisdiction given by the statute, and no authority to hear an appeal against such statutory order. The case was first heard in 1822, and then stood over to search for authorities, and for further argument; and being again argued most elaborately in 1824, the judgment was given as above stated (*n*).

After the decree is signed and enrolled, it cannot be reheard or rectified, but by bill of review, or by appeal to the House of Lords.

A rehearing shall not stop or hinder proceedings on an order or decree appealed from without the special order of the Court (*o*); as, where a party had appealed to the House of Lords from an interlocutory order made in the cause, pending the appeal a motion was made by the appellant to appoint a receiver of the estate in question. Lord Apsley, C. observed, that the

(*n*) *Wall* v. *The Attorney-general*, Lords Journ. 1822. *Hoare*, Executrix of *Wall*, v. *Attorney-general*, Lords Journ. 1824.

(*o*) Cl. Tut. 38. Or. Ch. 167.

practice was, by appealing to the House of Lords the Lord Chancellor's jurisdiction was suspended only as to the matter appealed from, not totally, so as nothing could be done in any other part of the cause to which the appeal did not extend (*p*).

A motion was made by a defendant that the proceedings under a decree should be stayed until an appeal should be presented to the House of Lords; Lord Eldon, C. observed, that what *was* the law with regard to this point upon appeal from the Court of Chancery, it is very difficult to state positively; but *now* it is settled by the highest authority, that of the House of Lords itself, that an appeal from a Court of Equity to that House does not stay execution of a decree; but that it is consistent with the regulation that a special application may be made either to the House of Lords or to the Court below, with this observation, that it is much more expedient that the application should, if it can, be made to the House than to the Court below, as the order made upon that occasion may be the subject of appeal, and it is difficult to determine how far appeals may go.

In another case the Lord Chancellor doubted whether, after a rehearing at the Rolls, it was

(*p*) *Lord and Lady Pomfret* v. *Smith*, 1 Har. 680.

fit for him to rehear the cause, or whether it ought to go immediately to the Lords; he said, it was obvious, that if the rule laid down by Lord Thurlow, in *Fox* v. *Mackreth* (*q*), is a wholesome rule, there shall not be a second rehearing, but the parties are to go to the Lords; and on the other hand, if the practice is according to what has happened, that where the case begins at the Rolls, it may be reheard there, and here again upon an appeal before it goes to the Lords, the suitors will have the expense of four hearings in one case and three in the other. The Lord Chancellor would not, however, in the first instance which occurred in experience, decline the duty of hearing the cause. His Lordship said, that the suitors had a right to the deliberate attention and judgment of every Court in every stage in which the cause might proceed, according to the constitution; and there could be no circumstance under which he would permit himself to say, that as the cause was to go elsewhere he would give his judgment *pro formâ* only; for if it should be thought right to prevent the like in future, it would be much better done by some rule of prctice to regulate all future cases (*r*).

(*q*) 1 Harg. Jur. Arg. 451.

(*r*) *Brown* v. *Higgs*, M. 1803, 8 Ves. 566.

A bill of review upon matter discovered has been permitted even after an affirmance of the decree in Parliament; as where, after a decree dismissing a bill, and which (the decree) was affirmed in the House of Lords, a bill of review was brought for discovering of a deed said to be burnt pending the appeal, which made out the plaintiffs title, and the bill was, in order that after such discovery the plaintiffs might apply to the Lords for relief; the defendant demurred to the bill, but the demurrer was overruled, and the defendant ordered to answer (s).

(s) 1 Vern. 416. Redesd. Tr. Ch. Pl. 79.

PART II.

OF THE PRACTICE ON PROCEEDINGS ON APPEALS TO THE HOUSE OF LORDS.

ALL appeals to the House of Lords are in the form of petitions, and must be brought within five years from the signing and enrolling the decree or order from which the appeal is made, unless the person entitled to such appeal be within the age of twenty-one years, under coverture, *non compos mentis*, imprisoned, or out of Great Britain or Ireland (*a*); in which case, such person may bring an appeal at any time within five years next after his or her full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland. (Vide Standing Order, Appendix, B.)

As soon as there is a prospect of an appeal being brought, it would be proper to retain counsel; the usual retaining fee is two guineas.

(*a*) In the cause *Hicks* v. *Cooke*, 4 Dow's Rep. 29, the decree was affirmed in the House of Lords, solely on the ground of long acquiescence.

There is a standing order of the House, dated 13th June 1685, (Appendix, C.) whereby it is ordered, that the Attorney General, nor any assistant of the House, shall be allowed to be of counsel at the bar of the House for any private person. Out of respect to the House, it would therefore seem proper, whatever the practice may be to the contrary, to petition their Lordships that this standing order may be dispensed with in any particular case in which it is desirable to have the assistance of any of these learned persons; but the petition should state that the Crown is not in anywise interested in the matters in question in the appeal.

In case any counsel retained for the appellant or respondent should be appointed a King's Counsel, he cannot plead against the Crown without a license from His Majesty. To obtain this license, a petition must be presented to the King, through the medium of the Secretary of State for the Home Department, and will be granted as a matter of course, on payment of the usual fees.

Previous to any appeal being presented, it is necessary to give notice to the respondent's solicitor in the cause, in the Court below, of the time when such petition of appeal is intended to be presented; and the day on which such

notice was given, must be endorsed, by the person serving such notice, on the back of the petition of appeal. (Vide Standing Order, Appendix, D.)

The notice should be as follows:

In Chancery:

Between *Henry Cave*, Plaintiff,
and *Charles Armstrong*, Defendant.

TAKE NOTICE, that upon the meeting of Parliament, a petition of appeal will be presented to the Right honourable the Lords Spiritual and Temporal in Parliament assembled, in the name of the plaintiff, against the decree pronounced in this cause, bearing date the 12th day of December 1820.

To R. W. Lloyd, Defendant's Solicitor. } *W. R. Sydney*, Plaintiff's Solicitor.

Dated 1st Jan. 1821.

The indorsement on the back of the petition of appeal, of the service of such notice, should be made in the following form; viz.

I the undersigned, agent for the within-named appellant, do hereby certify, that upon this day I gave notice to R. W. Lloyd, the Solicitor for the within-named respondent Henry Cave, that upon the next meeting of Parliament a

petition of appeal would be presented to the Right honourable the Lords Spiritual and Temporal in Parliament assembled, in the name of the within-named appellant, against the decree complained of by this appeal. Dated this first of January 1821. *W. R. Sydney*,
Agent for appellant.

The appeal should shortly set forth the material parts of the proceedings below, in the following forms.

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

The humble petition and appeal of John Brown, of Sheldon Hall, in the County of Somerset, Esquire;

Sheweth,—That Edward Farnworth, of Tiverton, in the county of Devon, Esq. being possessed in fee simple, [here set forth your case:] That your petitioner some time in Trinity term 1820, exhibited his bill in the High Court of Chancery, [or the Court of Exchequer on the Equity side, in England, Scotland, or Ireland, as the case is,] against Charles Davis, of London, Esq. to be relieved, &c. [here set forth the prayer of the bill;] and to which bill the said Charles Davis appeared, and by his answer

insisted, that [here set forth the material parts of the answer insisted upon by the defendant against the plaintiff's bill:]

That your petitioner having replied to the said answer, and the said Charles Davis having rejoined the said cause was at issue, and divers witnesses being examined on both sides, the same came on to be heard before the Lord High Chancellor of Great Britain, [or the Lord Chancellor of Ireland, or before the Barons of His Majesty's said Court of Exchequer in England, Scotland, or Ireland, as the case is,] the day of when although the said Charles Davis, by his answer expressly swore, &c. [here set forth the matters made out by his answer, and for which you appeal,] yet his Lordship was pleased [or the Barons were pleased, as the case is] to decree, that, &c. [here set forth the decree, and if there were any subsequent proceedings before the Master, or any subsequent orders, or the like, set forth the same briefly:]

That your petitioner is advised that the said decree and subsequent orders are erroneous, and not agreeable to equity or justice, and humbly appeals therefrom to your Lordships.

Your petitioner, therefore, humbly prays your Lordships will be pleased to order the said Charles Davis to put in his answer

to this your petitioner's appeal; and that service of your Lordship's order upon the said Charles Davis's solicitor or clerk in Court in the said cause, shall be deemed good service; and that your Lordships, upon hearing the merits of the said cause, will be pleased to reverse or vary the decree and subsequent orders in the said cause, or grant to your petitioner such other and further relief in the premises, as to your Lordships, in your great wisdom, shall seem meet.

And your petitioner shall ever pray, &c.

A. HART,
J. BELL.

We humbly certify, that there is, in our judgment, reasonable cause of appeal.

A. HART,
J. BELL.

The form of a petition of appeal from the Court of Session in Scotland.

To the Right honourable the Lords Spiritual and Temporal, in Parliament assembled;

The humble petition and appeal of Alexander M'Dougal, of Glasgow, in Scotland, merchant,

Sheweth,—That George Hunter, Esq. of Ayr, deceased, prior to the year 1800 had contracted

debts to a larger amount than the value of his estate, and thereby having become insolvent, his creditors proceeded to judgment and execution against him; some of them took possession of his real estate, and others sued out execution against his person, particularly the said George Hunter was in the year 1800 twice arrested upon a caption or capias, at the suit of one of his creditors:

That in this situation the said George Hunter granted unto Charles Dunn, one of his creditors, who was uncle to him the said George Hunter, a heritable bond (in the nature of a mortgage) over the whole of his real estate, for a capital sum of 10,000*l.* sterling, bearing date the 21st day of August 1801, whereupon the said Charles Dunn took out a charter under the great seal of Scotland, and was thereupon enfeoffed the 25th day of October in the same year:

That Edward Dunn, the son of the said Charles Dunn, having, after his father's death, established a title in his person to the aforesaid heritable bond, as heir to his father, brought an action, at his suit, in the Court of Session in Scotland, against the legal representatives and creditors of the said George Hunter, 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 George Hunter would be exhausted by the said heritable bond, so as to leave nothing to your petitioner, or any of the creditors, other than the said Edward Dunn, your petitioner objected against the said Edward Dunn, that the said heritable bond had been granted by the said George Hunter to the said Charles Dunn, his near relation, after he the said George Hunter had become insolvent and a notorious bankrupt, to the prejudice and defrauding of his other creditors; and that, agreeable 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 the person claiming under the same, to the prejudice of the bankrupt grantor's other lawful creditors:

That the Court of Session allowed parties to bring in proofs in regard to the bankruptcy of the said George Hunter, and his circumstances at the date of the said bond; and a proof having been accordingly brought, the Court upon

the 1st day of June 1803, pronounced the following interlocutor: "Repel the objections made "to the heritable bond aforesaid, and prefer "the said Edward Dunn 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 the Session, by interlocutor of the 4th day of November 1804, adhered to their former interlocutor, and refused the desire of the petition:

That your petitioner being advised that the interlocutors above recited are contrary to law and justice, and conceiving himself greatly aggrieved thereby, humbly appeals therefrom to your Lordships.

Your petitioner, therefore, humbly prays your Lordships will be pleased to reverse, vary or amend the interlocutors appealed from, and to order the said Edward Dunn to put in his answer in writing to this petition and appeal; and that service of your Lordships order on any of the counsel or agents of the said Edward Dunn in the Court of Session in Scotland, may be deemed good service; or to grant to your petitioner such other relief in the premises,

as to your Lordships, in your great wisdom and justice, shall seem meet.

And your petitioner shall ever pray, &c.

J. BELL.
G. HEALD.

We humbly certify that there is, in our judgment, reasonable cause of appeal.

J. BELL.
G. HEALD.

These appeals being drawn, must be signed by two counsel, who must respectively either have been of counsel in the cause below, or shall attend as counsel at the bar of the House of Peers when the appeal is heard, and who must certify as above, that there is, in their judgment, reasonable cause of appeal. (Vide Standing Order, Appendix, E.)—And by the standing order of the 9th April 1812 (Appendix, D.) it is ordered, that on appeals from interlocutory judgments of either division of the Lords of Session, the counsel signing the petition (or two of the counsel for the parties in the Court below) shall sign a certificate, stating either that leave was given by the division of the Judges pronouncing such judgment, to pre-

sent such appeal, or that there was a difference of opinion amongst such Judges. After the draft is signed by counsel, it must be fairly transcribed on parchment, in a strong round hand, and filed with the clerk assistant at the Parliament Office, where it remains as a matter of record; but the same will not be received unless ingrossed on parchment.

Irish and Scotch appeals are generally drawn and sent up, signed by one, and sometimes two, counsel concerned in the cause below. If an appeal is transmitted unsigned by counsel, or signed by only one, it must, before it is presented, be signed in London by other counsel who are to argue the cause on the hearing: it must then be presented to the House of Lords (which is usually done by leaving it with the Clerk-assistant at the Parliament Office), with the two counsels names copied at the bottom of it.

All appeals to the House must be moved by a Peer or Member of the House; which is done thus: With the parchment appeal in his hand, he mentions whose petition it is, and the prayer, and then moves that it may be read to the House; the Clerk thereupon reads it, and the usual order for the respondent to answer is then immediately made.

The customary method of getting an appeal moved is, to leave it with the Clerk-assistant at the Parliament Office, who will get some Lord to move it as a matter of course; but though the Clerk is willing to facilitate the proceedings, it sometimes happens that he is so much engaged with important matters that he cannot attend to it, and therefore it is the business of the agent, when he apprehends this to be the case, to apply to some Peer to move the appeal, and he will not find any difficulty in accomplishing it.

Upon English appeals, the time limited in the order for answering is a fortnight; upon Irish appeals it is five weeks; and upon Scotch appeals it is four weeks.

The order made for the respondent to answer on the reading an appeal is usually as follows:

Die Mercurii, 8 Decembris 1813.

Upon reading the petition and appeal of John Stone, complaining of an interlocutor [order or decree, &c. &c. as the case is,] and praying, &c. it is ordered by the Lords Spiritual and Temporal, in Parliament assembled, that the said Richard Raven (the respondent) may have a copy of the said appeal, and do put in his answer thereunto in writing on or before the 22d day of December next; and service of

this order upon any of his counsel, solicitor, clerk in court, or agent in the court below, shall be deemed good service.

Appeals should be presented to the House within the first fourteen days of each session, unless they happen to be from decrees made whilst the Parliament is actually sitting; and then when from an English decree, within fourteen days after it is made and entered; from judgments in the Court of Scotland, within twenty days; and from Irish decrees, within forty days; (Appendix, F.) but the House will receive the appeal after the expiration of these periods, in case the delay was not owing to any wilful neglect or default of the appellant or his agent; or where the delay was unavoidable by circumstances, or accidents; or where inconveniences can be pointed out as accruing from the not receiving it.

To effect this, an application must be made to the House, by petition; for where there is a standing order on any particular matter, there can be no proceeding contrary thereto, without a petition, and an order of the House thereon dispensing with the standing order. The petition should be suited to the circumstances, in the following form:

In the House of Lords:

Between *John Bertrand*, Appellant;
John Hudson, Respondent.

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

The humble petition of the above named appellant, John Bertrand, of Edinburgh, Esq.

Sheweth,—That your petitioner did in due time transmit to London his petition and appeal to your honourable House, against the said respondent, from an interlocutor of the Court of Session in Scotland, of date the 19th day of July 1814; but the time limited by your Lordships standing order for the presenting appeals, during this present session, being expired, from the date of the said interlocutor, by reason of your petitioner's agent in London being indisposed, and unable to transact business for some days past:

Your petitioner humbly prays your Lordships will be pleased to receive the said petition of appeal, although not presented within the time limited, and to dispense with your Lordships standing order in this case.

And your petitioner shall ever pray, &c.

William Robert Sydney,
Agent for the petitioner.

The petition must be signed by the petitioner's agent, as above, and then presented and moved by some Lord or Member of the House; this will readily be effected, by being left with the Clerk-assistant, who will give notice to the agents when to attend the appeal committee, to whom these petitions are always referred. The solicitor signing the petition must attend at the bar of the House, and will be called in before a committee of the Lords, and questioned upon the allegations of the petition; for without being satisfied of the truth they will not grant the request. Sometimes the solicitor is required to make affidavit of the truth of the statements of the petition; and regard should be had that nothing but facts are stated.

The appeal being at length received in the House, the appellant must within eight days afterwards give security to the Clerk-assistant of the Parliaments, by recognizance to His Majesty, in the penalty of 400 *l.* conditioned to pay such costs to the respondent as the House shall order, in case the decree shall be affirmed, and if he neglect to give such security within that time, the Clerk of the Parliaments is to inform the House thereof, and the appeal from thenceforth is to be dismissed. Great care must therefore be taken that the recognizance be

signed in due time, since any neglect in this particular might be attended with dangerous consequences, as the appeal would be void. (Appendix, G.) Should the appellant not be in London, his agent, or some other person, must enter into the recognizance for him; but this cannot be done without leave of the House, which is obtained by petition, as follows:

In the House of Lords:

John Armstrong, of Dublin, Appellant;
Henry Cave, of Limerick, Respondent.

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

The humble petition of the above-named appellant,

Sheweth,—That your petitioner presented his petition of appeal to your Lordships, on the day of

That by the standing order of your honourable House of the 27th January, 1710, it is ordered, that the appellant shall enter into a recognizance with the Clerk of the Parliaments, within eight days after the appeal shall be received:

That your petitioner resides in Ireland, is in a bad state of health, and unable to travel to London:

Your petitioner therefore humbly prays, that your Lordships will be pleased to allow his agent, Mr. of to sign the said recognizance on your petitioner's behalf.

And your petitioner will ever pray, &c.

J. W. Agent for Appellant.

This petition is taken to the House, and upon being moved, the House makes an order of course; after which, the Clerk of the Parliaments prepares the recognizance, which is signed by the person named in the petition for the appellant, at the Parliament Office. When, however, appeals are brought on behalf of the Crown, no recognizance is necessary to answer costs, since costs are not awarded in any Court against His Majesty.

The order for the respondent to answer may be served on either of the parties named in it; that is, on the respondent, or his counsel, solicitor, clerk in court, or agent in the court below: it may be served on the day of the date, or as soon after as convenient.

The order is served by delivering a true copy thereof to the person you intend to serve, and at the same time showing the original order.

An affidavit of service must then be indorsed upon the order, in the following form:

John Skardon Taylor, clerk to Messrs. Madox and Sydney, the solicitors for John Armstrong, the appellant within named, maketh oath and saith, that he this deponent did, on the 10th day of December instant, serve the within order of appeal upon Henry Johns, the solicitor for Richard Raven, the respondent within named, by delivering to him a true copy of the said order, and at the same time showing him the original order.

Sworn, &c. *John Skardon Taylor.*

If the respondent be in England, and it is intended to swear to the service of an order on an appeal from any Court in England, the affidavit may be sworn before any public officer having a legal power or authority for taking affidavits.

If the respondent be in Ireland, and the affidavit of service is to be of an order on an appeal from any Court in Ireland, the affidavit must be sworn either at the public Affidavit Office there, or before a Master in Chancery, Judge, Baron of Exchequer, or any Magistrate, or public officer there, having power to take

affidavits; or if the service has been made by a person coming from Ireland to England, such person may make the affidavit in England, of the service in Ireland.

If the affidavit be of the service of an order on a Scotch appeal, and made in Scotland, the affidavit should be made before a Justice of the peace, or an ordinary Lord of Session, or a Baron of Exchequer, or any other Judge or Magistrate there having a power to take affidavits; but the most usual way in Scotland is, to have such affidavits sworn before a Justice of the Peace; and these affidavits are received in the House as evidence, without objection. These affidavits are often necessary, and they should invariably be made at the time of the service: difficulties unforeseen often occur from inattention to this part of the practice.

If the respondent's answer be not put in by the time limited, the appellant's solicitor may, upon proof of the due service of the order to answer, obtain an order for the defendant to answer by a peremptory day, and no notice of such order need be given to the respondent: (Appendix, H.) to obtain this you should leave with the Clerk of Parliaments the order for the respondent to answer made on the appeal, with the affidavit of service indorsed thereon; and

upon the Clerk's reading the affidavit, an order is made by the House as a matter of course: this order, which is termed the peremptory order to answer, is obtained for you by the Clerk-assistant of Parliaments, on motion, as follows:

In the House of Lords:

John Armstrong, Appellant;
Henry Cave, Respondent.

The order made upon the respondent to put in his answer to this appeal having been served upon him, as by affidavit of service thereof now lodged in the hands of the Clerk of Parliaments doth and may appear, 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 any further notice to be given.

The Clerk-assistant of Parliaments immediately afterwards draws up the peremptory order, which he delivers to the appellant's agent as a matter of course.

A week is the time always limited by the peremptory order for putting in an answer; and when that time is expired, and the answer not filed, the appellant's agent should, if he be

desirous of having the appeal quickly decided, apply to the Clerk-assistant of Parliaments to have the cause set down *ex parte*; and which will be done, and the cause will also be heard *ex parte*, unless the respondent petition the House to be allowed to file his answer *nunc pro tunc*, in time to be let in to defend the appeal, and will instruct counsel to appear at the hearing; but generally, on petitioning, he will be permitted to file his answer *nunc pro tunc*, and to argue the case, notwithstanding he did not put in his answer in time; and he may, by petitioning the House, have the hearing put off if he can, as is hereinafter particularly mentioned, assign good reasons for so doing. These petitions must state the facts and grounds of the application, and be presented as before pointed out.

If the respondent be desirous of having the cause heard without loss of time, he may, immediately after he finds the appeal is lodged, and without waiting to be served with the order for him to answer, take an office copy of the appeal, and file his answer; at the same time the House will relieve the appellant by putting off the hearing of the appeal, if it should be made apparent that the respondent should have been too precipitate in his movements, and have

taken the appellant by surprise; the usual and general answer to appeals is in the following form; viz.

" The answer of Henry Cave to the petition and " appeal of John Armstrong.

" This Respondent, not confessing or acknow- " ledging all or any of the matters or 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 " by reason of the errors, defects and imper- " fections of the said appeal, and by reason of " the forms, matters and things of and in the " said appeal contained, for answer thereunto " saith, that he doth admit the Court [of Chan- " cery or Exchequer, in England or Ireland] " did make such decree [or order; or the Court " of Session in Scotland did make and pro- " nounce such interlocutor,] as in the said pe- " tition and appeal is or are mentioned and " complained of; but as to the date and con- " tents of such decree [order or interlocutor] " the respondent doth, for greater certainty, " refer to the same when it shall be produced; " but the respondent is advised, and humbly " apprehends, that the decree [order or inter-

" locutor] complained of is agreeable to law,
" equity and justice (*b*), and therefore humbly
" hopes the same will be affirmed, and the
" appeal dismissed with costs.

" *William Robert Sydney,*
" Agent for the Respondent."

Should it, however, appear that there are not all the necessary parties to the appeal, or that the decree, order or interlocutor appealed from did not become final in the Court below, but remains under review or rehearing by appeal, or by a reclaiming petition; or that the date of the decree, order or interlocutor is erroneously stated or set out in the appeal; or that the matter is not cognizable before the Lords, a special answer may be put in: but the nature of a special answer does not admit of a particular form, because the special matters must be set out according to the circumstances. But commonly answers cannot be too general, and, in fact, special answers are now but seldom put in, and, in the Editor's humble opinion, are not

(*b*) Where, however, a cross-appeal is intended, the answer must be varied according to the circumstances, by adding exceptions, after the general words, to the parts intended to be complained of by the cross-appeal. Many forms of these answers, where cross-appeals are intended, may be seen at the Parliament Office.

the last-mentioned standing order: but this is also without prejudice to the appellant presenting a new appeal.

It sometimes becomes absolutely necessary for the respondents, or one of them, also to present an appeal against the same order or decree, and this is called a cross appeal, in order to distinguish it from the original appeal, and they together are called a double case. By the original appeal the appellant seeks redress from some decree, order or interlocutor, in some cause in the Court below; the appellant in the cross appeal, who is the respondent in the original appeal, also aims by his cross appeal to have reversed or varied some part of the same decree, order or interlocutor; and thus arises the necessity of cross appeals.

These cross appeals may become necessary in divers cases; for instance, suppose John Brown files his bill against Thomas Brown, to recover an estate, and avers that he is entitled to the same under the settlement of his grandfather George Brown, deceased, and also under the settlement of his father William; and charges that Thomas Brown is in possession of the same, and unlawfully withholds the estate; the defendant in possession claims the estate as the heir at law of his great grandfather, and maintains

that neither George nor William had power to make any such settlements under which the plaintiff claims. The Court decrees, that the plaintiff is entitled to the estate under the settlement of George, who was under no restraint from settling same, but not under the settlement of William, who had no power to settle. Thomas brings an appeal, complaining of the decree of the Court below, for decreeing that John was entitled to the estate under the settlement of the grandfather George; and in this appeal the whole argument would be, whether John would be entitled to the estate under that settlement or not; but the plaintiff John wishes to have the settlement of William also established, which the Court below has rejected, and he therefore brings a cross appeal, complaining of the said decree, for declaring the settlement made by William to be bad, and praying that such part of the decree may be reversed.

A cross appeal need only briefly state the facts of the case, and the proceedings in the cause in the Court below, in the same manner as has been mentioned respecting original appeals; but whether or not it is necessary to enter into recognizances, does not seem exactly settled in practice; for although recognizances are entered into in some cross appeals, still they

are omitted in others, and have not been required by the Clerk of the Parliaments. It would seem reasonable, however, that such recognizances were not absolutely necessary in cross appeals.

The order for the respondents to answer in a cross appeal should be served in like manner as in an original appeal, but generally the answer is put in by the respondent's solicitor forthwith, without waiting for the service of the order to answer. It should be observed, however, that the time for presenting a cross appeal is, by the standing order of the 8th March 1763, (Appendix, M.) limited to one week after the answer put in to the original appeal, otherwise it will not be received without a special application to the House for that purpose, and which should be by petition to the following purport; viz.

In the House of Lords:

John Armstrong, Appellant;
Henry Cave, Respondent.

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

The humble petition of the above-named Respondent,

Sheweth,—That the above-named appellant presented his petition of appeal to your Lord-

ships, against [here state the parts of the order, &c. appealed from] to which appeal your petitioner put in his answer, on the
day of .

That your petitioner has been advised by his counsel, that it becomes necessary that he also should appeal against the said order, inasmuch as the said order directs that [here state the part of the order objected to :]

That your petitioner's counsel being much pressed with business, your petitioner was unable to procure his opinion till the time limited by your Lordships standing order for presenting cross appeals had expired:

Your petitioner therefore humbly prays your Lordships will be pleased to order, that your petitioner may be at liberty to present a cross appeal against the said order, *nunc pro tunc*.

And your petitioner will ever pray, &c.

W. R. Sydney,
Agent for Petitioner.

The answer to a cross appeal should object to the same points appealed from by the original appeal (*a*); and the title should be as follows:

"The answer of Henry Cave, to the petition and *cross appeal* of John Armstrong."

(*a*) Vide page 93.

The same multiplicity of interests that may render a cross appeal necessary, may also make it proper that the respective respondents should defend some appeals separately, and particularly in cases where the respondents are infants, or their interests in any way clash with each other; but *it is said*, that to entitle respondents to defend by separate counsel, leave must be obtained by petition to the House, stating the particular circumstances of the case; when, if the House see fit, they will make an order to that effect. This was done in the case of *Nagle* and *Foot*, mentioned in Howard's book on the Irish Popery Laws, and also in the more recent case of *Gore* and *Stackpole*, in which cause, the House, on 6th May 1812, made an order, that the infant respondent might have separate counsel.

Scotch and Irish appeals are usually prepared by one of the counsel in the Court below, and they are usually presented to the House as sent up, without any alteration, except the correction of the provincial terms, and engrossing them on parchment; because it is presumed that the counsel in the cause in the Court below are better acquainted with the material points in the cause than the agent in London can be, who has generally no opportunity of

knowing the subject-matter, until the proceedings are laid before him *en masse*, with the draft appeal, and he often merely corrects the form and technical expressions.

Hence errors more frequently occur in these appeals, than in appeals prepared in London; they sometimes leave out an interested party, or they do not set forth correctly the *particular parts* of the orders and decrees appealed from; and sometimes one of the intermediate orders is entirely omitted.

When any of these errors are discovered, immediate application must be made to the House for leave to amend the appeal before it be too late; for if the cases are printed, and the cause likely to come on for argument, there will be danger of costs being given to the respondent. The application for leave to amend should be by petition, in the following form.

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave, Respondent.

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

The humble petition of the Appellant;
Sheweth,—That your petitioner has lately

discovered certain errors and defects in his appeal in this cause, which he is advised it is material should be rectified:

That Henry Brown and James Waller were interested parties to the cause below, as well as Henry Cave, the respondent, but are by mistake omitted to be made parties to the appeal:

That the decree of the Court below is imperfectly set forth in the said appeal, inasmuch as the words "that the same be carried into execution," are omitted after the words "that the same is hereby established;" and the same is also erroneous as to the date, the true date being 1820 instead of 1802.

Your petitioner therefore humbly prays your Lordships to order that he may have leave to amend his appeal in the particulars above set forth, he amending the Respondent's office copy.

And your petitioner shall ever pray, &c.

W. R. Sydney,
Agent for the Petitioner.

This petition must be moved by some noble Lord, in the same manner as before mentioned; and when it is moved, the respondent's agent ought to attend at the bar of the House, with the agent for the other party, in case it should

be inquired if there be any objection on the behalf of the respondent to the prayer of the petitioner being granted. To insure the attendance of the agent on the other side, he should be served two days before the presenting the petition, with a true copy thereof, and a notice which should shortly set forth the purport of the application, as follows:

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave, Respondent.

Take notice, that on the day of or so soon after as conveniently may be, a petition will be presented to the Right honourable the House of Lords, on behalf of the appellant, praying that he may have leave amend his appeal, by making Henry Brown and James Waller parties thereto, and by correcting the, &c. [stating the substance of the petition.]

W. R. Sydney,
Agent for the Appellant.

To Mr. R. W. Lloyd,
Agent for the Respondent.

The service of this notice on the agent of the adverse party, will render it his duty to attend at the bar of the House on the presenting the

petition. In case he should not attend, it would be proper to be prepared with an affidavit of the due service of the notice, when the House will, on the production thereof, probably grant the prayer of the petition: but the more ready way is to lodge the petition at the Parliament Office, which the Clerk-assistant will present for you to some Lord; it will then be referred to an appeal committee, and the Parliamentary Clerk will send notice to all parties when to attend.

It is generally equally the interest of the respondent, as of the appellant, to see that all the statements in the appeal are correct, and that the dates and material contents of the proceedings below are properly set out, and therefore either party may petition to amend the appeal; and the same forms of petition are observed for appellant and respondent, excepting that the petition of the respondent should pray that the appellant may be ordered forthwith to amend his appeal in the defective parts, and also to amend the respondent's office copy. Should an appeal be amended after the answer is filed, a new answer is requisite; but this cannot be put in without an order of leave of the House be obtained to withdraw the former answer, and put in a new one to the appeal

as amended. In either case the respondent ought to have the costs awarded him, because the neglect or errors are the faults of the appellant.

An order of leave to withdraw the former answer and put in a fresh one, must be obtained on petition, in the following form; which should be presented and moved as before mentioned:

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave, Respondent.

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

The humble petition of the Respondent,

Sheweth,—That the appellant having amended his appeal since your petitioner put in his answer thereto, it is necessary for him to withdraw that answer, and to put in an answer to the amended appeal.

He therefore humbly prays your Lordships will be pleased to order that he may be at liberty to withdraw his former answer, and to put in an answer to the amended appeal, and that the appellant may pay

him the costs occasioned thereby, and of this application.

And your petitioner shall ever pray, &c.

R. W. Lloyd,
Agent for the Respondent.

Should the respondent, however, omit to obtain such an order, and to put in his answer in due time, the appellant may, if he thinks a fresh answer requisite, proceed against him by a peremptory order, as before mentioned; and for want of an answer to the amended appeal, may set the cause down *ex parte*, and proceed to a hearing, in the same manner as before pointed out.

When an appeal has been once presented, it cannot be withdrawn but with leave of the House, which must be obtained by petition; but the House will not grant this indulgence unless particular reason is shewn, nor even then without ordering the appellant to pay the respondent his costs; and sometimes the House requires the consent of the respondent's agent to be given at the bar, or in writing, before it will assent to an appeal being withdrawn; because, as the appellant, by withdrawing his appeal, is not precluded from presenting another appeal,

it may cause great injury to the respondent, from some peculiar circumstances in the case, to permit such a delay in the final settlement of the matter to take place. In order, therefore, to obtain leave to withdraw an appeal, a petition should be presented in the following form:

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave, Respondent.

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

The humble petition of the Appellant,

Sheweth,—That your petitioner, by the advice of his counsel, finds it expedient and is desirous of withdrawing his appeal.

He therefore humbly prays your Lordships will be pleased to order that your petitioner may be at liberty to withdraw his appeal in this cause.

And your petitioner shall ever pray, &c.

W. R. Sydney,
Agent for the Appellant.

Two days previous notice of presenting the petition, should be served on the respondent's solicitor; and an affidavit of the service should be prepared, in case it should be called for by

the House, in the event of the non-appearance of the respondent's agent. The form of the notice and affidavit will be the same as those already set forth.

Should the parties mutually agree, by a final arrangement of the matters in difference, that the appeal shall be withdrawn, the respondent's agent should appear at the bar, and consent to the prayer of the appellant's petition; which petition will, in that case, be in the following form:

In the House of Lords:

Charles Armstrong, Appellant,
Henry Cave, Respondent.

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

The humble petition of the Appellant,

Sheweth,—That upon the 19th day of November 1820, your petitioner presented his appeal to your Lordships, against the said Henry Cave, complaining of a certain decree or decretal order of the High Court of Chancery, bearing date the 4th day of August in the same year, and made in a cause wherein the said Henry Cave was plaintiff and your petitioner defendant:

That your petitioner and the said respondent have since come to an agreement concerning the matters in question under the said appeal;

Your petitioner therefore humbly prays 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 shall ever pray, &c.

W. R. Sydney,
Agent for the Appellant.

When the answer is put in, either the appellant or respondent may make an application to the House, to have the cause appointed for hearing, after those already appointed; and in order to effect this, a motion must be given to a noble Lord to move, and which should be in the following form; viz.

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave, Respondent.

The Respondent in this cause having put in his answer to this appeal, your Lordship will please to move,

"That this cause may be appointed to "be heard next after those already ap- "pointed for hearing."

But the more easy way of doing this will be to request the Clerk-assistant to present the motion-paper for you.

Should the appellant or respondent die before the appeal is heard, it must be revived in the name of his heir at law, or personal representative, or it may become necessary to make them both parties to the appeal, according to the subject-matter in dispute; and this is regulated by the standing order of the House of 20th March 1823, (Appendix N.) which directs that the appeal shall be revived against the representative, or person standing in the place of the person dying, and that a supplemental case shall be delivered by the party reviving, stating the fact, and the order for reviving. It has been erroneously supposed that it is indispensably necessary the cause in the Court below should be revived, as well as the appeal cause; but it will be observed that the order of the House is silent as to this, and leaves the other Courts to regulate their own practice on this point; it being well known, that no proceedings can be had in the Court below, without first reviving the suit there. The general practice and understanding seems to be, however, where the cause abates *previously* to the appeal being presented, to *revive* the cause *before* you present the appeal.

Upon the death of a party in the appeal, therefore, a petition should be immediately presented, detailing the circumstances, in the following form:

In the House of Lords:

Between *William Armstrong*, Appellant;
Henry Cave, Respondent.

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

The humble petition of the above-named William Armstrong,

Sheweth,—That the appeal lately brought in this honourable House by Charles Armstrong, late of the parish of Yalding, in the county of Kent, Esq. now deceased, your petitioner's father, against Henry Cave respondent, and the proceedings had thereon in your petitioner's said father's life-time, are by his death abated:

That your petitioner is the sole executor of his said father's will, which he has duly proved in the Prerogative Court of the Archbishop of Canterbury, [or eldest son and heir at law, &c. &c.]

Your petitioner, therefore, humbly prays 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 Charles Armstrong his late father, in respect of this cause; 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 shall ever pray, &c.

W. R. Sydney,
Agent for Petitioner.

Upon this petition the House will make an order accordingly; and after such order of revival, the proceedings will go on as if the original appellant were living.

In like manner, where the respondent happens to die before the hearing, his heir at law, or personal representative, may petition the House to be put in his place in respect of the cause, or the appellant may obtain an order to make the representative a party, and so proceed against him; and the same proceedings and orders must be had and obtained to revive cross-appeals.

In all cases where the son or heir of an appellant or respondent, who applies for a revivor, is an infant under the age of twenty-one years, his or her prochein amy, or next friend; or, in

a Scotch case, his or her tutors, curators, or guardians, must be joined in the petition.

The supplemental case, directed by the standing order of 20th March 1823, (Appendix, N.) need be but very short, and merely set forth the different circumstances of the death of the party, his will, administration, &c. and the order of the House for the revival of the suit; and, provided it contain no observations, it is not necessary that it should be signed by counsel.

A supplemental appendix may also become necessary on these occasions, and both the case and appendix should be distinctly stated to be "*supplemental*," and should also be indorsed on the outside to that effect.

Supplemental cases must, by the last-mentioned order, also be delivered, where any person, party in the Court below, shall have been omitted to be made party to the appeal, and shall, by leave of the House, be added as party to the appeal, after the printed cases shall have been delivered.

Should the appellant or respondent not be ready for argument of the cause when the same is near coming on, he must apply to the House by petition to put off and delay the hearing of it; but previously to presenting the petition, he must give the adverse agent two days notice of

his intended application, agreeably to the standing order of the 22d December 1703 (Appendix, O.) This notice is in the following form:

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave - - Respondent.

Take notice, that on the day of or so soon after as conveniently may be, a petition will be presented to the Right honourable the House of Lords, on behalf of the respondent, praying that the hearing of this appeal may be put off till the day of

R. W. Lloyd,
Agent for the Respondent.

The standing order directs an oath to be made of the due service of this notice.

The petition for the putting off the cause should shortly state the reasons, in the following form:

In the House of Lords:

Charles Armstrong, Appellant;
Henry Cave - - Respondent.

The humble petition of the Respondent,

Sheweth,—That this appeal hath been appointed for hearing at your Lordships bar:

That the proceedings in the cause, in the Court below, are very long, and were but lately transmitted to your petitioner's agent, who cannot be prepared for the hearing by the day appointed.

Your petitioner therefore humbly prays your Lordships to put off the hearing of this appeal until the day of or such other day as to your Lordships shall seem meet.

And your petitioner shall ever pray, &c.

R. W. Lloyd,
Agent for Petitioner.

When this petition is moved, the agent for the adverse party must attend at the House, to be called to the bar, or committee-room; and if desirous of opposing it, he will then be at liberty to state his reasons, which the petitioner's agent may answer; when the House, after weighing the matter, will make an order, either granting or dismissing the petition, according to the justice of the case.

There may occur divers reasons for postponing a cause; such as, that many causes preceding it have been unexpectedly put off, withdrawn, heard, or struck out; or that the party has not remitted money, or transmitted the exemplifi-

cation or office-copy of the decree or order, or some other part of the documents necessary for the instruction of counsel; or it may be necessary to produce some material deeds which were exhibited in the Court below, but which were afterwards withdrawn by some person having interest in them, and which you cannot come at without an order of the House; on which events, or either of them, happening, the House will, on application in proper time, postpone the cause, and will, in manner after mentioned, if necessary, enforce the production of all requisite and proper documents, by all parties, at the bar of the House, at the hearing of the cause; but which documents will be afterwards returned to the proper owners by the officer of the House, on application for the same at the Parliament Office. It must, however, be particularly observed, that when once a cause is set down for hearing in their Lordships paper, it cannot be adjourned, put off, or taken out of its course, without an order of the House being obtained for that purpose previous to the day appointed for hearing; and the standing order of the 8th June 1749 (Appendix, P.) expressly declares, that in case any appeal shall not be *so* adjourned, and *either* of the parties shall attend, by their counsel, on

the day appointed for the hearing thereof, such appeal shall be heard *ex parte*; and in case *neither* of the parties shall attend by their counsel, then such appeal shall stand absolutely dismissed; but without prejudice, in this last case, to the appellant presenting a new appeal thereafter.

We must next consider of the printed cases, which, by the standing order of the House of the 12th July 1811, (Appendix, Q.) must both (appellant's and respondent's) be laid upon the table of the House, or delivered 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 appeal; and in default of so doing by the appellant, the appeal shall stand dismissed, but without prejudice to his presenting a new appeal within the time limited for that purpose; and in case of default on the part of the respondent, the appellant shall be at liberty forthwith to set down his cause *ex parte*. Formerly, it appears by the standing order of the 12th January 1724, (Appendix, R.) it was sufficient if the printed cases were delivered four days previous to the hearing; but the practice is now altered.

It behoves the parties therefore, immediately

on the prospect of an appeal becoming necessary, to set about preparing their printed cases for the Lords.

The cases should, as briefly as possible, set forth the subject-matter of the proceedings in the Court below, without suppressing any material fact; and for the more ready reference, it should have short marginal notes, showing the different parts of the case; as, Bill, Answer, Replication, Deposition, Decree, &c. And, by the standing order of the 24th of February 1813, (Appendix, S.) there must be an appendix to each party's case, which must contain a copy of so much of the proofs taken in the Courts below, as the parties intend to rely on respectively on the hearing of the cause before the House (*d*), together with the references to the documents where the same may be found; but this appendix, if it contain *no observations*,

(*d*) In *Stackpole* v. *Stackpole*, 4 Dow's Rep. 222, it was objected at the bar to the reading of evidence *not* printed. Lord Eldon observed, "The rule of the House as to the "printing of evidence is made for the purpose of guarding "itself; but it is competent to the House to hear other "evidence, not printed, if it thinks proper. The parties "are to print what they think material; but in such a "case as this, it is rather too much to suppose that "any one can infallibly say what is and what is not "material."

need not be signed by counsel (*e*): it must, however, be printed in like form with the cases, and have the title of the cause indorsed on the back. In many cases the appellants and respondents join together in the appendix, and so print but one instead of two, which saves considerable expense, and prevents, in some degree, an increase of papers; it is therefore a desirable course to be pursued, where the parties can agree.

The case should be thus entitled:

IN THE HOUSE OF LORDS:

Between *Charles Armstrong*, Appellant;
and
Henry Cave - - Respondent.

In appeal from a decree [or an order] of the Court of Chancery [or Exchequer, &c.] of Great Britain [or Ireland, &c.]

THE RESPONDENTS CASE.

(*e*) An objection having been made to the printing observations without the signature of counsel, the Lord Chancellor (Eldon), in giving judgment on the 26th June 1816, adverted to the circumstance, and observed, that "in a case under the names of *Eamer* v. *Fisher*, or some "such names, the noble Lord then on the woolsack called "the agent to the bar, and censured him, for printing "observations without signature of counsel." *Stackpole* v. *Stackpole*, 4 Dow's Rep. 222.

Should there happen to be a cross-appeal, the words "ET E CONTRA" must be added under the title, and which are sufficient to show that there is a cross-appeal; and these two appeals together are called a double case.

The same title must be indorsed upon the outside of the case, with the addition of the agent's name at the bottom.

The agent having carefully prepared a draft of the case, according to the best of his judgment, causes a fair copy of it to be made for the junior counsel in the appeal, and leaves the same with him, together with a copy of the proofs intended to be used in the House, and comprised in the appendix; and who, after perusing and settling the same (or, if necessary, drawing a fresh case altogether), signs his name at the bottom of it, pursuant to the order of the House of 19th April 1698, (Appendix, T.) which order, after noticing that of late several scandalous and frivolous printed cases had been delivered to the Lords, directs that no person do presume to deliver any printed case to any Lord, unless the same 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 before the House (*f*).

(*f*) But in the case of *Hearn* v. *Cole*, Lord Eldon

In the case of *Hyndmarsh* v. *Everard*, the House took notice, that in the appellant's printed case there were reflecting words against the respondents; and being informed that Mr. Bendlowes had drawn the case, he was ordered to attend the next day, and was then reprimanded by the Lord Keeper, according to the order of the House (*g*).

When the junior counsel has settled and signed the case, it must be laid before the senior counsel, who also peruses and signs it; and the draft being returned, the case is ready for the press.

When the draft is left with counsel, all necessary papers and proceedings must be sent with it; such as briefs of the pleadings used below, copies of the depositions, exhibits and proofs, together with a copy of the appeal.

In Scotch causes, the proper materials to be laid before counsel are, a copy of the appeal, petition, and the pleadings or proceedings below, which are almost always in print, and of which several sets are commonly transmitted from Scotland to the agent in London concerned in the cause.

stated, that "if the counsel who signed the reasons were out of the way, the agents might employ others." 1 Dow's Rep. 463.

(g) Lords Jour. vol. 17, pp. 197, 198.

It certainly behoves an agent to pay the utmost attention to the preparation of the printed case; for it is of great importance to the interest of his client; and on this being clearly and concisely stated and set forth, frequently depends the success of the cause.

In settling a case, a counsel very often does no more than correct the language, without even considering the merits of it, which sometimes require more time than the multiplicity of his business could permit him to spare in its consideration; and sometimes he merely signs the case, and returns it without even reading it over; and thus, if the case be prepared by an agent who is unskilful, or who has not a sufficient knowledge of the points in the cause, or practice of the House, surplusage and improprieties creep into the case, and material facts are omitted without being noticed till too late to be rectified. And even if the draft of a Scotch case be prepared by a Scotch counsel, a great deal may be left out or put in by the English counsel, who are better acquainted with the technical language fit for the House of Lords.

In all intricate and difficult matters, therefore, it is much better that there should be a consultation between the counsel, on settling the

case, as to leaving out or relying on particular points; and thus most of the obscurities of language, and doubts observable in many cases, particularly in Irish appeals, may be avoided, and the merits and reasons properly stated, and brought under the consideration of the House. This consultation on the draft will necessarily be attended with an extra expense; but it is a course most desirable and prudent to be pursued by agents who have not been concerned in the cause below.

When the case is settled and signed by counsel, it should be widely fair-copied in a strong legible hand, without abbreviations, and sent to the press; and in the printing, the agent ought to be careful that there be no typographical or other errors, which, independently of appearing inattentive, would be disrespectful to the House; the examination should therefore be personally made, and not trusted to clerks. To obtain a correct proof, it is frequently necessary to have a first, second, third and even a fourth sheet corrected; and it should be observed, that the counsels names who signed the draft, must be printed at the bottom of the case.

It is usual to print off 500 copies, one dozen of which should be upon fine large paper; one of these should be given to each of your counsel,

and six or eight of them should be reserved to exchange with the adverse solicitors, for the like number of superior copies of their cases; as immediately after the case is printed, the agents should exchange some of their cases with each other, and for which purpose the appellant's agent sends notice to the respondent's agent as soon as he is ready; and until the exchange is made, it is a rule that neither party is to part with one of the cases to any person whomsoever, otherwise the adverse party might see it and amend his own, and thereby derive an advantage which ought to be carefully guarded against; for after a regular exchange, neither party will be allowed to alter his case. It is proper to notice here, that printers charge for the printed cases, in sets of 250 each; and therefore if you order but one more than 250, you must pay for 500.

If upon examining your opponent's appendix, you have reason to suspect or think that any of the proofs, deeds, or documents therein set forth are incorrectly stated, or are partial or garbled extracts, you must apply to the agent, for the purpose of being permitted to compare the appendix with the originals, and on his refusing or declining to permit you to do this, you must petition the House in the usual form

for an order for that purpose, giving your opponent two days notice of your intention to present the petition, when the House will make an order according to the merits of the case.

Should either party not be able to prepare his case within the time mentioned in the standing order, he must petition the House for further time for that purpose, stating the reason why his case is not ready, and the House will generally grant further time as prayed; but two days previous notice of presenting this petition must be given to the opponent's agent.

The petition is usually in the following form; but the statements must necessarily be varied to meet the facts of the case:

In the House of Lords:

Between *John D'Arcy*, Esq. Appellant;
John Kelly, Esq. Respondent.

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

The humble petition of the above-named Appellant;

Sheweth,—That your petitioner conceiving himself aggrieved by a decree made by the Right honourable the Lord Chancellor of Ireland, on or about the 14th day of December 1819, in a certain cause depending before him, wherein your

petitioner was plaintiff, and John Kelly, Esq. was defendant, your petitioner on the first day of February last, presented his petition of appeal to your Lordships against the said decree:

That the time allowed by the rules and orders of this honourable House, for laying your petitioner's printed cases on the table, expires on the 26th of this present month of March:

That the proceedings and pleadings in the cause in the Court below are very voluminous, being upwards of 900 brief sheets:

That your petitioner's case is very long and intricate, and on that account your petitioner's counsel and agent in London, who were not previously acquainted with the merits of your petitioner's case, have been unable to settle the same in time:

Your petitioner therefore, under the circumstances hereinbefore stated, most humbly prays your Lordships, that he may have six weeks further time to prepare his printed case.

And your petitioner shall ever pray, &c.

W. R. Sydney,
Agent for Petitioner.

Petitions of this nature are, on being moved in the House, usually referred to an appeal

committee; the Clerk-assistant of Parliaments gives the agents on both sides notice when the committee will sit, and they must attend at the door of the committee at the appointed time, when they will be called in before the Lords, questioned on the statements in the petition, and heard for and against it.

On the 26th March 1821, several petitions of this nature having been referred to an appeal committee, the Lord Chancellor Eldon ordered the agents presenting the petitions to be called in before the committee, and then informed them, that the House had resolved not to grant similar applications in future, without very special reasons; for his Lordship stated, that in almost every appeal, applications were made for further time for the preparation of printed cases; that the standing order of the House was treated as a mere nullity; and observed, that it was the duty of the agent to prepare the printed cases before he presented the appeal.

Under these circumstances, the agent will perceive, that dispatch should be used in the preparation of the printed case.

Besides laying the usual number (about 300) of the printed cases on the table, it is customary, though not necessary, to leave one copy of the Case and Appendix at the dwelling-house

of each law Lord, a day or two previous to the appeal cause coming on.

This is only a proper mark of respect to those great and learned men, who gratuitously devote so much of their time and attention to the administration of public justice.

We have now to consider of the brief to counsel, which ought to be so soon prepared, that the counsel may have sufficient time to make themselves perfectly masters of the case before the consultation takes place.

It is hardly necessary to describe the component parts of these briefs: they should set forth the substance of the proceedings in the cause below, together with the heads of the evidence.

In Scotch causes the brief should contain a short statement of the printed papers below; for the printed cases in the House of Lords being framed with brevity, cannot comprise the whole merits and facts necessary to be known by counsel; and hence arises the necessity of a manuscript brief, containing comments on your opponent's printed case, and reasons, and which observations cannot be made in your own printed case. These briefs are not always necessary; and the agent will exercise his own discretion on the point.

The usual method of preparing briefs on appeals, is to set forth shortly the pleadings below, the petition of appeal, and the answer thereto if it was special; otherwise you merely say, that the usual answer was put in for the respondent *A. B.* but the respondents *C. D.* and *E. F.* have not answered at all, although served with the peremptory order, and the cause will therefore be heard *ex parte* as to them. The brief should also contain the orders or decree appealed from, and the judgment or reasons of the Judge (verbatim, if taken in short-hand,) given on pronouncing the decree or order; but if this should not be taken in short-hand, it should be stated as well as can be collected; and there should be added a reference to any particular decisions he mentioned or relied on as precedents, or as bearing analogy; and the brief should conclude with such observations as may occur to the agent, with the names of such cases in point, as he may be able to find on searching the different Reports.

Previous to the cause being heard, it will be necessary to lay on the table of the House an examined office copy of the orders or decree appealed from, and also of so much of the proofs used in the Court below, as the parties intend to rely upon at the hearing of the appeal;

also such original deeds, writings and documents, as make out or are referred to in the printed case, or are contained in the appendix (*h*).

These copies must be carefully examined by the person who is to present them at the bar of the House; a schedule of them must be prepared and tied up with them, and a copy of the schedule made to keep.

When the person who is to present these documents and copies is in attendance with them, a minute of his name, and the title of the cause, must be made and handed to the Deputy or Yeoman Usher of the Black Rod; thus:

In the House of Lords:

Between *John D'Arcy*, Esq. Appellant;
John Kelly, Esq. Respondent.

"Mr. Donnelly, from the Court of Chancery "in Ireland, to present papers and documents "in this cause."

The Deputy Usher then advances to the bar of the House, and notifies this circum-

(*h*) In the course of the argument of an appeal the Lord Chancellor (Eldon,) censured the omission to furnish the instruments referred to in the printed papers. *Lidwell* v. *Holland*, 2 Bligh, 124.

stance to the Speaker, who thereupon orders the party to advance to the bar with the papers, and he is accordingly introduced by the Usher with the usual ceremonies.

The witness is then questioned by the House as to what he has got there? and on his informing the House, that he has the copies, or office copies of certain memorials, registries, orders, affidavits, decrees, or depositions, taken in the cause in the Court below, and intended to be used in the appeal depending before the House, he is questioned whether he has carefully compared and examined them with the originals, and on his answering in the affirmative, he is next questioned whether they are true and exact copies, and on his again answering in the affirmative, the Clerk receives them, and lays them on the table; should they be original deeds or documents, he will be also questioned as to where and from whom he obtained them, and if to the best of his knowledge and belief they are the original deeds, &c.? but it must be here observed, that none of the parties, in any way interested in the appeal, are competent to transact this business.

It is stated, that the Lord Chancellor (Eldon,) upon one occasion doubted whether the House ought to look at any evidence, or proofs that

were not *noticed* and *entered* in the *body* of the order or decree appealed from as having been *read* and used in the Court below: therefore, when there is a probability of an appeal from any order or decree, the solicitor should be careful that the registrar do not omit to mention therein the *reading* of such parts of the answer, depositions, proofs, deeds, papers and documents, as may be necessary to sustain the case in the House of Lords.

It should be observed, that the House will not proceed on the hearing of any appeal, unless the order or decree appealed from, or an office copy thereof, be previously laid upon the table, in proper form, and authenticated as before mentioned; and in one instance an appellant was ordered to pay the costs of the day, and the appeal to stand over till the decree, or an office copy thereof, was laid upon the table. In a cause about to be heard, where the party who had compared all the copies of the documents with the originals, for the purpose of presenting the same at the bar of the House, was ill and unable to attend, the following petition was presented:

In the House of Lords:

Between *Valentine O'Connor*, Esq. Appellant,
and
Joseph Kirwan, Esq. and others, Respondents.

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

The humble petition of the said Appellant and Respondents,

Sheweth,—That this appeal stands 20 in your Lordships paper for hearing:

That there are divers matters of record, deeds, papers, writings, and copies of documents, to be verified on the hearing thereof:

That the person residing in Ireland, who could have identified several of the documents, is in a state of ill health, and unable to travel:

That your petitioners are therefore desirous that such of the original documents, or copies necessary to be produced or referred to on the hearing of this appeal, as shall be duly endorsed and signed by the solicitors for your petitioners respectively in the cause in the Court below, authenticating the same to be originals, or true copies of originals, may be received and allowed by your Lordships on the hearing of the said appeal, without further proof of the same being originals and true copies:

Your petitioners therefore humbly pray your Lordships, that such of the original documents and copies produced or referred to on the hearing of this appeal, as shall be authenticated in manner aforesaid, may be received and allowed by your Lordships, without further proof of the same being such originals or true copies.

And your petitioners, &c.

Charles Addis,
Agent for the Appellant.

W. R. Sydney,
Agent for the Respondents.

On which petition the House graciously made the following order:

Die Mercurii, 18° *Februarii* 1824.

Upon report from the Lords Committee appointed to consider of the causes in which prints of the appellant's and respondents cases now depending in this House, in matters of appeals and writs of error, have not been delivered pursuant to the standing orders of this House, and to whom was referred the petition of both parties in the cause *O'Connor* v. *Kirwan*, praying their Lordships that such of the original documents and copies produced or referred to

on the hearing of this appeal as shall be authenticated by the solicitors for the petitioners respectively in the cause in the Court below, may be received and allowed by their Lordships, without further proof of the same being such originals or true copies; It is ordered by the Lords Spiritual and Temporal, in Parliament assembled, that such documents be received, on the same being identified and authenticated as stated in the petition, provided that all such copies be certified by the proper officers of the Court from whence they come.

Henry Cowper,
Dep. Cler. Parliamentor'.

In the event of its being necessary to produce some deed or document at the hearing of the cause, which was exhibited in the Court below, but which is in the possession of some party who will not produce or lay the same on the table of the House, a petition must be presented to the House, stating the facts, and praying that the party possessing this deed or document may be ordered, on or before a certain day, to deliver it to the Clerk-assistant of the Parliaments, for the purpose of being used on the hearing of the appeal at the bar of the House.

A copy of the petition, and two days notice of your intention to present it, must be given; and if the person possessing the instrument required be not a party in the appeal, it would be proper to serve him *personally* with the same. In case the party should not appear to this petition, the agent should be prepared with an affidavit of facts, that the party named is in possession of the document, and that the production of the same is material to support his client's case; and should also have ready an affidavit of the service of the notice and petition, when, if no cause is shown against granting the prayer of the petition, the House will make the order as prayed. The order being drawn up, must be personally served on the person named therein; and in the event of his disobeying it, the House will order the Serjeant at Arms to bring him to the bar.

If either party is desirous of being personally present at the hearing of the appeal, but is fearful of being arrested, the House will, on petition, grant him its protection, whereby he is free from arrest during the hearing of the appeal. The petition for this purpose should shortly state, that the petitioner is a party to *such* an appeal, which is expected to be in their Lordships paper for hearing on *such* a day, and

that the petitioner is desirous of attending the House during the argument thereof, but is fearful of being arrested for debt; and should pray that their Lordships will be graciously pleased to grant him their protection from arrest during the hearing of the appeal.

The House will, on hearing the petition read, grant an order of protection for the day the cause is in the paper; but should the cause occupy more than one day in hearing, a distinct order must be procured for each day, and which may be had at the Parliament Office, without a new petition being presented for that purpose.

Parties may be admitted to prosecute and defend in *formâ pauperis* in this great Court, as well as in the Courts below. In order to effect this, it will be necessary to present a petition to the House, accompanied (provided the party do not reside in London) by an affidavit as aftermentioned; there must also be a certificate of the truth of the statements contained in the petition and affidavit, under the hands of the minister and two of the churchwardens of the parish where the pauper resides: (should the parish be in Scotland, the churchwardens are called elders.)

The petition to the House should be in the following form:

In the House of Lords:

Between *Thomas Brown*, Appellant;
and *William Brown*, Respondent.

To the Right honourable the Lords Spiritual and Temporal, in Parliament assembled;

The humble petition of the above-named Respondent,

Sheweth,—That your petitioner is exceedingly poor, as by affidavit and certificate annexed appears; and by reason thereof is unable to make his defence to the said appeal, unless your Lordships shall permit him to do so in *formâ pauperis*.

Your petitioner, therefore, most humbly prays your Lordships will be pleased to order him to be admitted to defend, as respondent in this cause, in *formâ pauperis*, and to assign for his counsel Mr. Hart and Mr. Bligh, and for his solicitor Mr. Sydney.

And your petitioner shall ever pray, &c.

W. Brown.

The affidavit in support of this application must be in the following form:

In the House of Lords:

Between *Thomas Brown*, Appellant;
and *William Brown*, Respondent.

William Brown, of the parish of Linton, in the county of Kent, carpenter, the respondent above-named, maketh oath and saith, that he is not worth in all the world, the sum of 5*l.* in lands, tenements, goods or chattels, his wearing apparel, and the matters in question in this cause, only excepted.

William Brown.

Sworn at Linton, in the county of Kent, this 11th day of February, 1824, before me, *J. W.* one of the Justices of the Peace for the county of Kent.

The certificate of the minister and churchwardens, must be as follows:

These are to certify, to all to whom it may concern, that the above-named William Brown is a very poor man.

John Matthews, Minister of the parish of Linton, Kent.

John King, }
Henry Brooks, } Churchwardens.

The foregoing forms are for a respondent not resident in London; for should he reside in

London there will be no necessity for the written affidavit or certificate; he need only present the petition with this variation, viz. "that your "petitioner is ready to make affidavit of his "poverty at your Lordships bar;" and the House will, on the petition being moved and read, order him to be called to the bar and sworn to the truth of the petition, and then grant an order as prayed.

In the event of an appellant wishing to proceed *in formâ pauperis*, the like documents must be produced and forms observed; and it will also be necessary that the petitioner, or his agent, should be possessed of, and have ready to produce at the bar of the House, the original draft of appeal, signed by his counsel, with their certificate under written, as follows:

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

A. HART.

R. BLIGH.

Without this certificate the House will not grant the petition.

In regard to the amount of fees to be given to Counsel with their briefs, it is impossible to lay down any scale; it must depend on circumstances, viz. the length of the pleadings and

papers, the importance of the cause, the circumstances of the client, and the eminence of the counsel; as to all which the solicitor will exercise his discretion, observing, that on no case should less than fifteen guineas be given to a senior, nor less than ten guineas to a junior counsel; and that for each day a cause is in hearing, a refresher of ten guineas *per diem* is invariably given to each of them.

By the standing order of the 28th June 1715, (Appendix, V.) it is ordered, that the hearing of causes shall be proceeded in after prayers, and that no other business shall intervene; which order is still adhered to. And the standing order of the 8th June 1749, (Appendix, P.) directs that appeals shall be heard in regular course, in each session, until they shall be all heard and determined (*i*). In former times the House did not commence upon appeals till two o'clock in the afternoon; but on the 3d May 1813 their Lordships made an order to begin at ten in the morning and sit till four, and which is the course now pursued.

(*i*) Lord Eldon stated, "that the resolution of the "House to take the causes in their order, did not pre-"clude the discretionary power of calling at any time "causes which appeared to be carried there merely for "the purpose of delay."

Hearn v. *Cole*, 1 Dow's Rep. 463.

It is the agent's duty carefully to watch the cause list, and give his counsel the earliest notice when there is a probability of the cause being called on.

It is usual, and also useful, to engage a short-hand writer to take notes of the arguments and judgment delivered: he is generally paid at the joint expense of both parties, by a previous agreement between the agents, and which saves expense to each.

The standing order of 2d March 1727, (Appendix, U.) was made to regulate the manner in which counsel were to proceed at the hearing; but the mode being found inconvenient, is discontinued.

The standing order of 15th March 1697, (Appendix, W.) orders, that no proxy shall for the future be made use of in any judicial cause.

And the standing order of 14th January 1694, (Appendix, X.) orders that, upon giving judgment in any case of appeal, the question shall be put for reversing, and not for affirming.

When the hearing is finished, the counsel withdraw from the bar, and the House then takes time to consider of its judgment; affirming, reversing or varying the decree, order or interlocutor complained of, as there may be

occasion, and with or without costs against the appellant, as they think proper; but the Editor is not aware of the existence of any judgment of the House giving costs against a respondent, who being brought before the House by the appellant, and not coming there of his own accord, does not enter into any recognizance to answer costs, and there would be not only hardship in making any order against him to that effect, but also difficulty in enforcing it.

After the cause has been argued and stands for judgment, it is a rule that no person must give or send any papers, documents, or statements concerning the cause (although true) to any Lord; this has been sometimes attempted, but it is a breach of privilege; and in one instance an agent was reprimanded by the House for so doing.

In some cases where the House has a difficulty on some point, they order one counsel on each side to be further heard thereon, and at other times they direct an issue at law as to some facts (*k*), and that the verdict to be given on such trial shall be certified and returned by the Court into the House.

Sometimes, in intricate cases, when the Lords

(*k*) Lords Journ. 12 Feb. 1702, vol. 17, p. 277; and *ante*, p. 35.

have prepared drafts of their judgments, (to guard against errors,) they order copies of them to be delivered to the agents and counsel of the parties for their consideration. When this is the case, the agent should immediately have a consultation with the counsel; and if at such consultation the counsel should suggest any amendment in the draft, the House will condescend to consider of the proposed alteration, and very often adopt it.

When the draft of the judgment is finally settled, it is fair-copied by the Clerk-assistant of the Parliaments, and is the next day read to, and settled by, the House; after which it is entered in the Journals, and is then final and conclusive.

The agent must then apply to the Clerk-assistant of Parliaments for a copy of it, who will deliver him a signed copy thereof; and which, when so signed, is authentic.

The next step is to apply at the Parliament Office for your deeds and documents laid on the table; and as these may be of great importance, and inasmuch as they are liable to be mislaid and lost amongst the multiplicity of papers in the Parliament Office, (without responsibility attaching to any person), no time should be lost after the appeal is heard in obtaining

them ; and upon re-delivery of them you will be required to sign a receipt for the same.

The cause being finally ended, it is customary for each party to present the Clerk-assistant of the Parliaments with a gratuity, exclusive of his bill of fees ; the successful party generally giving ten guineas, and the unsuccessful five guineas.

Indeed, the politeness and attention paid to suitors and their agents, through all the stages of an appeal by this gentleman, and the whole establishment, and the cheerfulness and alacrity with which all inquiries are answered, even amidst the pressure of important business, justly entitle them to the thanks of the Profession.

PART III.

OF PROCEEDINGS IN CLAIMS TO DORMANT PEERAGES.

THE Editor having been solicited by some professional friends to add a few practical directions on this subject, he submits the following, which he hopes may prove acceptable to the practitioner.

In the first instance, Mr. Cruise's Treatise on Dignities ought to be carefully perused by the agent, before any difficult or intricate case is taken in hand.

Should the last Peer have been dead a long time, leaving no direct descendant of himself or family, clearly entitled to the honour, or should it have been in abeyance by non-usage, or non-enjoyment, or if it be doubtful which branch or which person is entitled to the dignity, the Lord Chancellor will not issue his writ of summons to the party claiming, without an examination of his title; and the person who apprehends himself best entitled, to the same, must present a petition to His Majesty, stating the original creation and constitution of the Peer-

age, and the enjoyment had thereof, and by whom. The petition should also state, shortly, the petitioner's pedigree; that he is able to prove and make out the same; and that he is advised, and apprehends himself entitled to the Peerage, and should pray His Majesty that it may be adjudged to him, and that he may have a writ of summons to Parliament, by the distinction and dignity he claims.

The petition is in the following form:

To the King's Most Excellent Majesty.

The humble petition of *A. B.* of in the county of Esq.

Sheweth,—That by letters patent, bearing date the day of in the first year of the reign of Edward the Sixth, the title, dignity and peerage of Baron or Lord *W.* of *P.* was created in the person of Sir *W. W.* to him and the heirs of his body:

That accordingly the said *W. W.* and the heirs male of his body, in consequence of the said letters patent, sat in Parliament, and otherwise professed, exercised and enjoyed the said title, dignity or 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 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, it appears that the said Lord *C.* had a second son Sir *A. W.* the elder brother of the said *T. W.* and which said Sir *A. W.* did not die without issue, but 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.* and who, as aforesaid, was created Lord *W.* of *P.* the male line of the eldest son of the said Lord *W.* of *P.* having, as before stated, failed on or before the said year 1680.

Your petitioner, therefore, most humbly prays your Most Excellent Majesty, that the said title, dignity and peerage, or honour, may be declared and adjudged to belong to your petitioner, and that he may have a writ of summons to Parliament directed to him accordingly.

And your petitioner will ever pray, &c.

W. R. S. Agent for Petitioner.

The above form will suit for any Peerage, stating the special circumstances occurring in the case, as they really are. It may, however, be useful to give the form of a petition on a Scotch Peerage; and the following is one that was presented to the King some years ago.

To the King's Most Excellent Majesty.

The humble petition of *W. S.* of *R.* Esq.

Sheweth,—That *W. S.* Earl of eldest son of *H.* Earl of by a daughter of *W. D.* Lord *N.* 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 William, whose son *H.* 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 honours pertaining to that Earldom; and was, upon his decease, 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 hæredibus suis masculis et assignatis tenend', in libero comitatu et domino*; and which charter bears date the 2d October 1545:

That the said John Lord *B.* had three sons, his eldest son George, 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, 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 *J.* 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 honours 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 *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 in 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 November 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 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 Most Excellent Majesty, that it may be declared and adjudged, that your petitioner is entitled to the 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 shall ever pray, &c.

W. R. S. Agent for the Petitioner.

These petitions should be lodged at the Secretary of State's Office for the Home Department, signed by the petitioner, or his agent living in London; but a petition will be received though not signed at all; there being many instances in the books of the office of unsigned petitions being received and referred.

When the petition is fairly transcribed and signed, the agent goes with it to the Secretary of State's Office, and there lodges it with the Secretary, who presents it to His Majesty; and then, if no objection occurs in point of form, or otherwise, a reference is written at the foot of the petition, or indorsed, and is signed by the Secretary of State, whereby the petition is referred to the Attorney General, who is to examine the allegations and claim of the petitioner to the dignity, and to make his report to the King.

It is now the usual practice to refer all these petitions to the Attorney General in the first instance, which was not formerly the course; these claims being anciently referred to the High Constable and Earl Marshal.

When this reference is made to the Attorney General, the agent should immediately wait upon him, and procure an appointment for the investigation of the matter, and the whole will be proceeded in before him, according to the strictest rules of legal evidence and proceedings in Courts of Law; in most cases it is prudent to attend him by counsel; but previously the agent should furnish him with a copy of the petition, and a proper statement of the case and pedigree, accompanied by a list of proofs distinctly numbered in the margin, to correspond with every allegation stated in the case, in this manner: suppose the case stated *inter alia*, as under:

"Vide proofs, "Nos. 71, 72, "and 73."

"The said John, third Earl of *W.* died on "the 3d day of July 1781, without issue, and "was thereupon succeeded by his eldest bro- "ther Philip, who enjoyed the said dignity:"

Then the statement in the list of proofs, to correspond with the above allegation and marginal note, would be thus:

"No. 71. Register of burials for the parish "of Saint James, in the liberty of Westminster "for 1781, containing the following entry: "John Earl of *W.* buried 15th July."

"No. 72. Parol evidence will be adduced to "show he died without issue."

" No. 73. Lords Journals, Die Jovis 10° De-
" cembris 1783. This day Philip Earl of *W.* sat
" first in Parliament, upon the death of his
" brother John Earl of *W.*"

It frequently happens when a Peerage has lain dormant, or been some time in abeyance, that there are several persons claiming, or who suppose themselves entitled to the dignity. In this event, when a claimant finds that some other person has previously presented a petition to the King, and obtained a reference to the Attorney General, he should immediately lodge a caveat with the Attorney General, and he will thereupon be allowed to attend, either by counsel or otherwise, upon the investigation of the claim to the title; but generally where it appears to the Attorney General that there are other persons claiming the same dignity, he will order notices to be served on them, of his intention to proceed thereon in order that they may be present, by counsel or otherwise, if they think proper.

After the matter has been thoroughly gone into, the Attorney General prepares his report to the King; wherein he sets forth, in due and proper order, the evidence laid before him in support of and against the claim.

In order to show the practitioner the *great nicety* requisite in bringing all necessary proofs before the Attorney General, the Editor has thought it useful to set forth, *verbatim*, the report of the Attorney General to the Prince Regent, on the claim of the Earl of Huntingdon to that ancient Peerage; which is as follows:

To His Royal Highness George Prince Regent, acting for and on the behalf of His Majesty;

May it therefore please your Royal Highness;

In obedience to your Royal Highness's commands, signified to me the twenty-second day of January last by the Viscount Sidmouth, one of His Majesty's principal Secretaries of State, referring to me the consideration of the petition of Hans Francis Hastings, Esq. claiming the Earldom of Huntingdon, and praying that your Royal Highness 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 Townsend, Esq. Windsor Herald; and I have received evidence in support of the allegations therein contained.

Before I proceed to state the substance of this petition, and the evidence produced to me

in support of this claim, it is necessary I should state, after I had been attended several times by the solicitor of the said Hans Francis Hastings, and had heard part of the evidence in support of his claim, that a petition on behalf of George Hastings, of Killaloo, in the county of Clare, in the kingdom of Ireland, Esq. claiming to be entitled to the titles, honours and dignities of Earl of Huntingdon, presented by Messrs. Evans and Bartram as solicitors and agents of the said George Hastings, praying that no further proceedings on the petition of the said Hans Francis Hastings might take place until the said George Hastings should be able to sign and present his petition asserting his claim; and that he should be allowed to adduce his proofs in support thereof, in order that the conflicting claims to the said honours and dignities might be considered together, was, on the 6th of June, transmitted to me for my consideration by the Viscount Sidmouth. This petition, however, has since been withdrawn by Mr. George Hastings, who, on the 17th of August, served me with a notice, of which the following is a copy:

"Earldom of Huntingdon.

"Sir,

"Take notice that I withdraw the caveat "entered by Messrs. Evans and Bartram my "solicitors, and my petition in my claim to "the above Peerage, and that I no longer "authorize Messrs. Evans and Bartram, or any "other person or persons, to proceed for me, or "in my name, in claiming the above Earldom. "—London, 17th August 1818.

"*George Hastings*, of Killaloo, County of "Clare, Ireland, the Petitioner.

"To His Majesty's Attorney General,
"Serjeant's-Inn, Chancery-lane."

I will therefore now proceed to state the petition of Hans Francis Hastings, and the evidence adduced in support of the same.

The Earldom of Huntingdon, claimed by the petitioner Hans Francis Hastings, is stated to have been created by certain letters patent under the Great Seal of England, dated the 8th day of December, in the 21st year of King Henry the Eighth, advancing George, who appears by the enrolment of the letters patent to have formerly been George Lord Hastings, to the dignity of an Earl, by creating him Earl of

Huntingdon, with limitation to the heirs male of his body; and the petition states, that under such letters patent, the petitioner is entitled to said Earldom, as the surviving heir male of the body of the said George the first Earl.

This petition then states that George, so created Earl of Huntingdon, married Anne, daughter of Henry Stafford, Duke of Buckingham, and left issue five sons; namely, Sir Francis, his eldest son and heir, and four younger sons:

That Sir Francis, the eldest son of Earl George, became, on the death of his father, second Earl of Huntingdon, and on the 3d June 1554, married Catherine, grand-daughter of George Plantagenet, Duke of Clarence, by whom he had six sons; namely, Henry, his eldest son; George, his second son; William, his third son, who died without issue; Sir Edward Hastings, his fourth son, the ancestor of the petitioner Hans Francis Hastings, and two younger sons: That Henry, the first son of Francis Earl of Huntingdon, on the death of his father, became third Earl of Huntingdon, and married Catherine, daughter of John Dudley, Duke of Northumberland, and died without issue, 14th of November 1595; whereupon his brother George succeeded to the title as fourth Earl of Huntingdon, and that he mar-

ried Dorothy, daughter of Sir John Port, of Etwall, in the county of Derby.

The petition states that the title descended to the male issue of George, the fourth Earl of Huntingdon, till the death of Francis, the late Earl, in October 1789, when the male issue of George, the fourth Earl of Huntingdon, became extinct.

The petition states that George, the fourth Earl of Huntingdon, had three sons; Francis Lord Hastings; the honourable Henry Hastings, described as Sir Henry Hastings of Woodlands; and Sir Edward Hastings, Knight, who died unmarried.

The petition states that Francis Lord Hastings, the eldest son of George, fourth Earl of Huntingdon, died in the lifetime of his father, leaving issue by his wife Sarah, daughter of Sir James Harrington, four sons; namely, Henry, his first son; Sir George, his second son, who married Seymour, daughter of Sir Gilbert Prinn, and had by her issue four sons; George, born April 22d 1621, died June 1627, aged six years; Charles, born 29th November 1623, stated to have died without issue in 1656; Ferdinando, born the 19th January 1626, stated to have died without issue in 1654; and Francis his fourth son, stated to have been born on the

10th December 1628, and to have died at Weybridge in 1631, aged three years. Edward Hastings, the third son of Lord Francis Hastings, is stated in the petition of Hans Francis Hastings to have died without ever having been married, in the year 1617, a Captain at sea, under the command of Sir Walter Raleigh; and Francis, the fourth son of Francis Lord Hastings, is stated to have died an infant.

* * * * * * *

The Report after reciting the petition at considerable length proceeds thus:

The said petition states, that George, the second son of said Henry Hastings, was a Lieutenant-colonel of the 3d regiment of guards, and married a Miss Sarah Hodges, on the 2d April 1769, by whom it is stated he left issue four sons; namely, Francis, his first son, stated to have been born in April 1770, and to have died at the age of six years; Henry Hastings, his second son, born 22d July 1774, stated to have died without ever having been married; Ferdinando, his third son, also stated to have died without ever having been married; and Hans Francis Hastings, his fourth son, the petitioner, born August the 14th, 1779, who thus states himself to be the heir male of the body of George, the first Earl of Huntingdon; and

humbly prays your Royal Highness will take his case into consideration, and direct that a writ of summons may issue to summon him to Parliament, under and by virtue of the terms of the patent, by the title of Earl of Huntingdon.

Having thus stated the matter alleged in the petition of the claimant, Hans Francis Hastings, Esq. and what the petitioner prays from your Royal Highness, I shall proceed to state the substance of the evidence laid before me in support of it.

* * * * * * *

The Report then proceeds to state a most multifarious mass of evidence, adduced in support of the petition, which it is not requisite to trouble the reader with, it consisting chiefly of registers and wills. Some of the proofs being argumentative, the Editor has selected the passages which he thinks may be useful: viz.

As a further proof that John Hastings, son of Sir George Hastings of Woodlands, died without issue, there was exhibited to me, from the Prerogative Office of Doctor's Commons, the original will of John Roy, the son of Frances Roy, and the nephew of the last-mentioned Edward Hastings; it is dated the 11th of March 1667, and proved in 1668. He describes him-

self as John Roy of Westminster, junior, and devises all his estates of Woodlands, with all its manors and lordships, together with all its parks, farms and demesne lands, and all its appurtenances whatsoever, lying and being in the county of Dorset, to his father John Roy, for life, that he might "reimburse himself all such "sums of money whatsoever, which he hath "at any time since the year 1656 expended, "paid, or in any ways laid out" for him the testator. He gives 500 *l.* to his wife Elizabeth, and appoints his father John Roy, guardian to any child he might have by his wife; gives 100 *l.* to the poor of the parishes in which his estates are situated, and names his friend Henry Eyre, who, by the unsigned pedigree, appears to have been married to his aunt Dorothy. This will shows that he was in possession of Woodlands, and that, therefore, some part of it had vested in him, as one of the right heirs of Edward Hastings, on the death of John Hastings, his uncle.

It is true that whilst his aunt Dorothy was alive, who did not die till 1670, he was not entitled to the whole of this estate; he was entitled to such share as came to him through his mother, who appears by his will to have been dead before, as he names his mother-in-

law Dorothy. And if he was seised of any part which came to him as one of the right heirs of the testator, it equally proves that John Hastings was dead without issue; for neither his mother nor his aunts could be entitled, till the brothers of the testator Edward were all dead without issue; and as Dorothy his aunt afterwards died without issue, her estate would vest in John Roy, or his heir, on her death, inasmuch as she made no devise of any real estate. Whether she had conveyed her share or portion of the estate of Woodlands to her nephew John Roy, in his life-time, does not appear.

* * * * * * *

To prove that Theophilus Henry Hastings, who is stated in said petition to have been the eldest son of Henry Hastings, aud Elizabeth his wife, was his eldest son, and that he died without issue, there was exhibited to me, by Mr. Richard Mills, the original register of baptisms from Lutterworth aforesaid, in which there appears this entry of his baptism: "1728: "Theophilus Henry, the son of Henry Hastings, "baptized October the 7th." There was also laid before me an affidavit, sworn by George Needham, who states himself to be of Belton, in the county of Leicester, Gentleman, and to

be about fifty-three years of age, and states that he is the son of Thomas Needham, of Lutterworth, by Sarah his wife, who was one of the daughters of Henry Hastings, late of Lutterwerth: That the said Henry Hastings was his grandfather, and that he was intimately acquainted with him for the last twenty-one years of his life. The deponent further saith, that the said Henry Hastings had issue by Elizabeth Hastings, his wife, (whose maiden name was Hudson,) three sons and two daughters, and that he died in or about the year 1786: That of the three sons of the said Henry Hastings, Theophilus Henry Hastings was the eldest son; that he was a clergyman, Rector of Great and Little Leke, in the county of Nottingham; that he married Elizabeth Warner, when he the said Theophilus Henry Hastings was upwards of seventy years of age; and that the said Elizabeth Warner was, at the time of such marriage, fifty years old, as the deponent heard and believes: That the said Theophilus Henry Hastings had been married twice, but died without leaving issue by either of his said wives, as he the deponent has always heard and believes: That the said Theophilus Henry Hastings was the deponent's uncle, and that he was well acquainted with him: States, that he also knew Colonel George Hastings, the

second son of Henry Hastings, and Elizabeth his wife: That he heard and believes that he married and had issue by Sarah, his wife, four sons, of whom Francis, the eldest, died at the age of six years, as he, the deponent, has always understood from the parents of the said Francis, and other members of his family: Says he was well acquainted with his cousins, Henry Hastings and Ferdinando Hastings, (the second and third sons of his uncle George,) who died without ever having been married, to the best of the deponent's knowledge and belief; and says that Hans Francis Hastings, the fourth and youngest son of his uncle George Hastings, is now, as he, this deponent, has heard and believes, claiming the Earldom of Huntingdon: And the said deponent further states, that his grandfather, Henry Hastings, was called Lord Hastings. This affidavit appears to have been sworn at Castle Donnington, the 22d April 1818.

* * * * * * *

To prove that Henry Hastings, who is stated in the said petition to have been the second son of Colonel George Hastings, and Sarah his wife, was his second son, and that he died without leaving issue, there was exhibited to me the original register of baptisms from the parish of St. James's, Westminster, in which there is an

entry of his baptism, thus: "1774: Henry "Hastings, S. of George and Sarah, born "22d July, baptized 4th August"

There was also exhibited to me, by Mr. Bell, a certificate from the War Office, signed by the Deputy Secretary of War, bearing the office seal, and dated 16th February 1818, which states, that Captain Henry Hastings, of the third West India Regiment, is dead, and was succeeded in his commission on the 26th November 1796. There was also laid before me, an affidavit, sworn by Samuel Pryer, of Gray's-Inn, Solicitor, on the 6th of April 1818, in which he states he was personally acquainted with Henry Hastings and Ferdinando Hastings, two of the sons of Colonel George Hastings, of the third regiment of Foot Guards, who were, as he believes, officers in His Majesty's service, in the West Indies; and further states, that he has heard from their mother, who is now dead, and other branches of the family, who are also dead, and verily believes that they both died in the West Indies, without ever having been married; and that he knows the petitioner, Hans Francis Hastings, and verily believes he is the brother of the said Henry and Ferdinando Hastings, and son of Colonel George Hastings, and Sarah his wife, both deceased.

To prove that Ferdinando Hastings, who is stated in said petition to have been the third son of Colonel George Hastings, and Sarah his wife, was his son, and that he died without ever having been married, there was again exhibited to me, by Mr. Bell, the affidavit of George Needham, sworn at Castle Donnington, in the county of Leicester, the 22d April 1818; in which he states, that this Ferdinando Hastings was his cousin, and that he has always heard, and believes, he died in the West Indies, without ever having been married. There was also again laid before me, the affidavit of Samuel Pryer, of Gray's-Inn, in the city of London, Solicitor, sworn the 6th of April 1818; in which he also states, that this Ferdinando Hastings was the son of Colonel George Hastings, and Sarah his wife, and that he died (as the deponent has heard from the mother of the said Ferdinando, who is now dead, and verily believes) in the West Indies, without ever having been married. There was also produced to me, by Mr. Bell, a certificate from the War Office, dated the 16th February 1818, signed by the Deputy Secretary of War, bearing the seal of the War Office, which states, that Ferdinando Hastings was a Captain in the eleventh West India Regiment: that he died the 22d day of

February 1801, and was succeeded in his commission in the month of April following.

To prove that the petitioner Hans Francis Hastings, is the fourth son of George and Sarah Hastings, as stated in his petition, there was exhibited to me, by the Reverend Robert Chapman, curate, the original registry of baptisms, from the parish of Saint Mary-le-bone, in the county of Middlesex; in which there appears an entry of his baptism thus: "11th Sept. "Hans Francis Hastings,—of George and Sarah, "b. 14th ult." To prove that he, the petitioner, is the only surviving son of his father George Hastings, there was again exhibited to me by Mr. Bell, the affidavit of Selina Eliza Hastings, sister of the petitioner, in which she states, that Francis Hastings, the son of George and Sarah, was her brother, and the brother of Hans Francis Hastings, the claimant and petitioner, and that he died at the age of six years; and that Henry Hastings and Ferdinando Hastings, Captains in the West India regiments, were her brothers; that they died in the West Indies, and that they had never been married. There was also again laid before me the affidavit of Samuel Pryer, Esq. who swears in said affidavit, that he knows the petitioner, Hans Francis Hastings, and verily believes him to be son of Colonel

George Hastings and Sarah his wife, deceased. And there was further exhibited to me, by the said Samuel Pryer, (who stated to me that he has been solicitor to the mother of the petitioner, Hans Francis Hastings, and her family, upwards of forty years,) indentures of lease and release, dated respectively the 4th and 5th days of August 1816, the release being of five parts, and made between Thomas Fowler Esq. and Lucy his wife of the first part, Hans Francis Hastings, the petitioner, (therein described to be the only surviving son and heir of Sarah Hastings, deceased, by George Hastings, Esq. her husband, also deceased,) of the second part; Samuel Church, Gentleman, of the third part; Samuel Pryer, Gentleman, of the fourth part; and John Dickinson of the fifth part; whereby certain estates of the county of Radnor, therein described, were conveyed by the said Thomas Fowler and Hans Francis Hastings, to the said Samuel Church, (in his actual possession, &c.) to hold the same unto and to the use of the said Samuel Church, to the intent that he might become a good tenant to the freehold, so that one or more common recovery or recoveries might be suffered thereof, in manner hereinafter expressed, in which the said Samuel Pryer was the demandant, the said Samuel Church

tenant, and the said Hans Francis Hastings vouchee; such recovery in the first place to confirm the life estate of the said Thomas Fowler, and the remainder to his first and other sons, and subject thereto to the use of the said John Dickinson, his heirs and assigns for ever. And there was also exhibited to me, the recovery suffered accordingly, at the summer great sessions of 1816, at Presteign, for the county of Radnor, outh Wales. And there was further produced to me, a similar recovery, suffered at the summer great sessions for 1817, of other parts of the said estate, and exemplifications of the said recoveries, wherein the petitioner, Hans Francis Hastings, was vouched to warranty, as the tenant in tail of the said estates, in consequence of his being the only surviving son of the said George and Sarah Hastings.

* * * * * * *

There was also exhibited to me by Mr. Bell, a letter stated to be in the hand-writing of the late Countess of Moira, mother of the present Marquis of Hastings, eldest sister of Francis, the tenth and late Earl of Huntingdon, dated the 18th of April 1803, addressed to Archdeacon Hastings, on which is indorsed the affidavit of the Reverend Anthony Hastings, who

swears himself to be the son of the said Archdeacon Hastings; and swears that the said letter so produced to me, is the hand-writing of the late Countess of Moira. In this letter the Countess states in the most positive manner, that the petitioner's uncle, Theophilus Henry Hastings, was next heir to the Earldom of Huntingdon, and that in failure of issue male in the said Theophilus, the title of Earl of Huntingdon would devolve on his brother George Hastings, the father of the petitioner Hans Francis Hastings. She enters into a very extensive detail of the pedigree of her family; and I found her statement correspond with the evidence laid before me in support of the claim of the petitioner Hans Francis Hastings. As this letter is dated 18th April 1803, in the life-time of Theophilus Hastings, the uncle of the claimant, and as it states the reputation of the family on the subject, it may be material to state parts of it. The following passage is extracted from it: "A gentleman who holds a living on my son's "estate, is most undoubtedly the next heir to "the Earldom; he was educated for the church "by Mr. Wheeler," &c. "His brother was "educated with a younger brother of mine, "and then went from serving in a marching "regiment into the Guards; and he (though

" confined by ill health, and thus obliged to " sell out of the army,) has several sons in the " army and navy. The claims of this branch " were acknowledged by my father and all my " family, and the proofs were delivered to my " late brother Francis, last Earl of Huntingdon; " but they are not able to bring forward any " claim, and I am in no ways able to assist them, " though convinced of their just right. They " are the descendants, it is said, of Edward " Hastings and Barbara Devereux, but I never " saw the statement of their claim; but my " aunt, Lady Anne Hastings, told me she had " given the proofs to my deceased brother, and " my father always assented to their having " the claim of presumptive heirs."

In another part of this letter, she mentions the descendants of a Walter Hastings, the sixth son of Francis, second Earl of Huntingdon, who having expressed a wish to claim the Earldom, applied to her to support such claim by her evidence; to which she states she made the following reply: " I informed them that I wished " well to that branch of the family, more so " than to that of the true claimants, but that " my information would go to show that they " could not have any manner of right till it was " proved that all the descendants of Edward

" Hastings and Francis Hastings, fourth and " fifth sons of Francis Earl of Huntingdon were " extinct. (The eldest son, William, supposed " to die young.")

And in this letter there is also the following remarkable passage: " In the line of Edward " Hastings, the claim to the title without doubt " now rests; and I have not a doubt, from all " that I have heard affirmed by my father and " aunts, that the clergyman, Mr. Theophilus " Hastings, is the heir to the title, and after " him his brother, and that brother's children " are the presumptive heirs." This letter does not appear to have been written by the desire, or upon the application of the petitioner, or of his uncle Theophilus, or of any person under whom he claims, but in consequence of an application of a descendant of a younger branch of the family of Sir Edward Hastings, who supposed the right to the Earldom might be vested in him.

* * * * * * *

There was also exhibited to me the respective affidavits of Joseph Vicars of Loughborough, William Toone of Belton, Christopher Hickey of same, all in the county of Leicester, and the affidavit of Thomas Platts of Little Leke, in the county of Nottingham, who respectively state

that the reputation of the county of Leicester was, that Theophilus Henry Hastings, the uncle of the petitioner, would be entitled to the Earldom of Huntingdon in failure of issue of Francis, the late Earl of Huntingdon.

* * * * * * *

There were also produced to me several letters, written by Selina, late Countess of Huntingdon, wife of Theophilus, ninth Earl, directed to Colonel George Hastings, the father of the petitioner; in which she addresses him as "my "dear George," and concludes with "ever, "my dear George, your most faithful friend;" and, "as ever, my dear George, your truly "faithful and affectionate friend." Those letters, the arms of Stanley and Hastings, the original will of Francis late Earl of Huntingdon, and his letters, and the original will of his aunt, Lady Ann Hastings, and the letter of his sister, the late Countess of Moira, showing the sense and opinion of her family concerning Theophilus Hastings, the uncle of the petitioner, and his family, and the hereinbefore-recited affidavits of those several persons, stating the general reputation of the county of Leicester to have been, that the petitioner's uncle, the Reverend Theophilus Henry Hastings, would be entitled

to the Earldom of Huntingdon, in failure of issue of Francis, the tenth and late of Earl of Huntingdon, were all used as so many further very material facts, to prove the truth of the pedigree of the petitioner, Hans Francis Hastings.

* * * * * * *

In tracing the pedigree stated in the petition of Hans Francis Hastings, I have examined all the original documents which have been produced, and which appear to be genuine and free from suspicion; and in the few instances in which I have received copies of registers of baptism or burial, I have not relied upon such as evidence; the facts therein stated having been proved by other sufficient testimony; and the non-production of the originals, in these instances, has been fully accounted for, by the positive refusal of the persons, in whose custody they were, to attend with them before me.

Upon the whole of this case I am humbly of opinion that the petitioner, Hans Francis Hastings, has sufficiently proved his right to the title of Earl of Huntingdon; and that it may be advisable, if your Royal Highness shall be graciously pleased so to do, to order a writ of

summons to pass the Great Seal, to summon the said petitioner to sit in Parliament, and there to enjoy the rank and privileges to the said title belonging.

S. SHEPHERD.

29th October 1818.

This Report is of considerable length, and an excellent precedent, almost every part of it being capable of furnishing some useful hint to the practitioner; but the Editor did not feel justified in giving larger extracts.

In instances like the foregoing, where the Attorney General is satisfied, from the evidence, that the claimants have duly made out their titles to the dignities, he reports accordingly; and if the Lord Chancellor be of the same opinion, writs of summons are forthwith issued to the claimants, as was the case in the above matter, and also in the Marquisate of Winchester and the Barony of Hastings; but if the Attorney General feel confident that the claimant has no right, and report against his claim, no reference is made to the House by the King: should he, however, have doubts in any case, he recommends His Majesty to refer the claim to the House of Peers, and which is generally there-

upon immediately done. This reference to the House is, however, discretionary in the Crown: in one case (c) the King refused to refer it to the Lords; and without such a reference the House cannot take cognizance of a claim.

When the claim is referred to the Lords, a member of the House of Lords carries the reference down, and moves it there; whereupon their Lordships make an order upon it, referring the matter and all papers relating to it to the consideration of the Lords Committee of Privileges.

The King's reference to the House of Lords is commonly in the words following: "15th "January 1824. His Majesty is graciously "pleased to refer this petition, together 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 their "Lordships.

"LIVERPOOL."

After the Attorney General's report, and the reference to the House, the petitioner may drop and relinquish his claim; or, if he thinks upon the previous investigation there is a chance of success, he may pursue it.

(c) Earl of Banbury, 1727.

As soon as the petition is moved in the House, an order is made thereon, which is commonly in the words or to the effect following:

" Die Martis 5° Februarii 1824.

" Upon reading the petition of *A. B.* to " His Majesty, claiming the title and dignity " of ——— with His Majesty's reference there- " to, to this House, It is ordered by the Lords " Spiritual and Temporal, in Parliament as- " sembled, that the said petition and reference " be referred to the consideration of the Lords " Committee of Privileges.

" *H. C.* Dep. Cler. Parliamentor."

By the above order the claim is fairly before the Lords Committee of Privileges; and the claimant's case, drawn up as before mentioned, must now be printed, together with his pedigree. The case should fully set forth the creation of the dignity, and the title of the claimant, and must contain an abstract of the proofs and authorities on which the claim is founded, with the dates and references where the same may be found: it ought to be settled and signed by counsel, and indorsed as follows:

"THE CASE of *A. B.* Esq. claimant of the
"Peerage of ———

"To be heard at the bar of the House of "Lords, before the Lords Committee of Pri- "vileges, on the day of "1824."

The printed cases must then be taken to the Clerk of Parliament, to be laid on the table and distributed to the Lords; and fourteen days afterwards the claimant may apply to the House, by petition, for a day to be appointed for the consideration of his claim; which petition is 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 duly laid on your Lordships table, pursuant to your Lordships standing order;

He therefore humbly prays your Lordships will be pleased to order the Lords Committee of Privileges to 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 shall ever pray, &c.

W. R. S. Agent for Petitioner.

When this petition is moved, an order is made as prayed; but the House will not name a day earlier than at the distance of a fortnight at least from the day on which the printed cases were delivered; for in regard to this, there is the following standing order, dated 20th March 1767, and amended by order of 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 time for hearing is usually in the words following:

"Die Mercurii, 26th Februarii 1824."

"Upon reading the petition of *A. B.* claim-
"ant of the Peerage of ——— praying, in
"regard the petitioner hath delivered his
"printed cases, that the Lords Committee for
"Privileges may be ordered to meet, to con-
"sider 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.

"*H. C.* Dep. Cler. Parliamentor."

In order to give notice to the Attorney General or Lord Advocate, you must send them, each, copies of the printed case, proofs and appendix, accompanied with a copy of the order of the House; and these must be delivered to

each, at his chambers, or left with his clerk or servant, with the following writing annexed to or indorsed on each copy, and signed; viz.

"To His Majesty's Attorney General.

"By this copy delivered to you, [or left for "you, with your clerk or servant, as the case "is,] I give you notice of the order of the House "of Lords made in this behalf.

"*W. R. S.* Agent for the Claimant.

"27th Feb. 1824."

The Attorney General or Lord Advocate, upon receiving the notice, sends it to the Solicitor for the Treasury, who will prepare and deliver to the Attorney General, or Lord Advocate, the proper instructions or brief in the matter, containing any objections that may occur to him against the claim, either on the claimant's pedigree, or otherwise, before the day of hearing, to enable him to prepare himself for the hearing; and on such occasions the fees paid to the King's Counsel, and other charges incurred to the King's Agent, are paid from the public treasury.

Some time previous to the day appointed for the hearing, the claimant's agent having prepared his briefs for his counsel, and delivered the same, gets a consultation on the case with

them. They meet accordingly, read over all the documents, and determine what is to be read for evidence at the bar, or to be proved there by parol evidence. Parol evidence is now become necessary to be adduced in almost all claims, by reason of the order of the House that all parish registers given in evidence shall be produced by the rector, vicar or curate of the parish, or by some person entitled to the custody of them: it therefore behoves the claimant's agent, a day or two before the day of hearing, to get his witnesses to attend at the House of Lords, to be sworn at the bar, as witnesses, to give evidence on the claim at the hearing: to effect this he writes down on a slip of paper the name of the claim of Peerage, thus: "*A. B.* claimant of the Peerage of——." And underneath, "Witnesses to be sworn to "give evidence on this claim.

"*C. D.* of	Esquire,
"*E. F.* of	Gentleman,
"*G. H.* of	Spinster,
"*I. K.* of	Widow."

This being given to the Clerk-assistant, when the House is sitting, and the witnesses attending at the door, the Clerk, as soon as he can, comes to the bar with the list in his hand, and calls

over the names, when they severally answering, are sworn to give true evidence on the matter of the claim. The agent must take care to do this a day or two before the day of meeting of the Committee; for on that day, before the Committee meet and go into the hearing, there is no sitting of the House, and consequently no witnesses can be sworn. It is a rule in all cases, that witnesses can only be sworn before the House of Lords, and not before a Committee; and this shows the necessity of swearing the witnesses on a claim of Peerage at the bar of the House some time before the meeting of the Committee, in order that they may be ready to be examined when they are wanted. Should it appear to the Committee that there are any parties besides the claimant who may be affected by the result of the reference, or may be interested in it, they will require it to be shown distinctly, by evidence at the bar, that all such parties have had due and proper notice of the proceedings of the claimant, and have had a copy of the printed case, proofs and appendix delivered to them. A case was recently adjourned solely on this account: the agent will therefore be careful to have his witnesses duly sworn to give such evidence, if necessary. Should either of the witnesses be infirm or

unable to travel to the House to give his testimony, the House, on petition, will grant a commission to certain magistrates, or other respectable persons, authorizing them to attend the witness and take his examination, and transmit the same to the House. In the year 1819 the House, on petition, made an order, in the case of Lord Viscount Northland, authorizing certain of the Irish Judges to attend upon a witness, and take his examination upon oath.

And the like circumstance occurred in 1823, in the claim of Baron Dunsany, when, on the 19th April, the House made an order, authorizing the Chief Justice of the Court of King's Bench in Ireland, and two other Judges, to attend upon Miss Shee, a witness far advanced in years, and take her examination on oath, as to the marriage of the claimant's father and mother.

The Chief Justice, and one of the other Judges named in the order, in pursuance thereof, waited on the witness, and took her examination upon oath, and transmitted a report thereof to the House of Lords.

This report was, on the 7th May, delivered in at the bar of the House of Lords upon oath, by Mr. Corlet, the person who received the same from the Judges, and who deposed that

the same was the identical document he received from the Judges, and that it had not been altered, or once out of his custody since he received it.

It should be observed, that the House will not go into a Committee of Privileges on any claim to a title of honour, unless seven Lords be present; nor will they commence the investigation after eleven o'clock in the forenoon.

When, therefore, a day is appointed for hearing, the claimant and his agent should use all their exertions and interest to procure the attendance of a sufficient number of Lords in the House by the hour appointed, otherwise the expenses of that day will have been incurred to no purpose.

On the day appointed for hearing, the counsel, with the claimant's witnesses, and the Attorney General, or the Lord Advocate, on behalf of the King, should always attend. Being called in before the Committee of Privileges, the senior counsel for the claimant opens the case, by stating it and the evidence at full length. Then the evidence is read, and witnesses examined by the claimant's junior counsel, who makes observations, and states the arguments arising in favour of the claimant. Then the Attorney General (or Lord Advocate) states

any objection against the claim, it being his duty to inspect scrupulously all the evidence adduced, in order to guard the rights of the Crown, and of the Peerage, from the frequent impositions attempted to be practised to obtain those high and desirable distinctions (*d*); but if no objection occur, and the claim appear clear and well founded, he will candidly admit and declare so. If any objections or difficulties are stated, either by the counsel for the King, or by any member of the Committee, it will be the duty of the senior counsel for the claimant to answer them, and to reply thereto, as well as to reply to the whole case, and to draw the most favourable and conclusive arguments for the claimant, that the nature of the claim and proofs will admit of.

When the counsel have finished, the Chairman of the Committee delivers his opinion, that the claimant is, or is not entitled; and if the rest of the Committee agree with the opinion, the Committee report accordingly to the House; and as soon as can be thereafter, the House sitting, the Lord who was Chairman of the Committee

(*a*) In a recent case, Lord Redesdale observed, that there was great diligence always used on behalf of claimants, but unfortunately there was not the same diligence used on behalf of the Crown.

makes his report to the House; whereupon the House comes to a resolution upon the case; but these resolutions of the Peers do not appear to be, in any case, absolutely and finally binding and conclusive on the claimant. The resolution or judgment of the House is commonly in the words, or to the effect following:

"Die Jovis, 17° Maii 1824.

"Upon the report from the Lords Committee for Privileges, to whom it was referred "to consider the petition of *A. B.* of ——, "Esquire, to His Majesty, claiming the titles, "honours and dignities of Earl *C.* Lord or "Baron of *B.* and such other honours and "dignities as are in the family, with His Majesty's reference to this House; it is resolved "and adjudged by the Lords Spiritual and "Temporal, in Parliament assembled, that the "claimant *A. B.* of ——, Esquire, 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.

"*H. C.* Dep. Cler. Parliamentor."

The foregoing are the proceedings on a clear case in a claim of Peerage, from the petition to

His Majesty to the final judgment of the House of Lords, inclusive; and will serve as a guide to the agent for all other claims of Peerage, however difficult and particular the circumstances may happen to be: some claims must of course occasion a greater variety of incidents, by petitions, motions and orders than are here stated: but from the general tenor and course of proceeding, the intelligent practitioner will readily be able to proceed with propriety in every other case.

It sometimes happens that there are several claimants; in the case of the Scotch Peerage of Cassilis, there were two; and in the case of the Peerage of Sutherland, there were three; but where there are several claimants to compete, each prefers his petition to His Majesty, and obtains a reference to the Attorney General and his report, and the House of Lords will make their respective orders, referring each petition to the Lords Committee of Privileges. Each claimant prepares and lodges his or her printed cases; and the claimant who is most forward, and prepared for the hearing, may obtain an order, appointing a day for that purpose; the other claimants if not ready by that day must prefer their petition to the House for further time, and

therein state their reasons, and the House will grant it, if no inconvenience is likely to ensue from it to any other party. In these contested or double claims two days previous notice must be given of every petition to the House of Lords, to the agent for every other claimant.

In those cases where there are several claimants, and the several printed cases are delivered, each claimant is often anxious to deliver a supplemental case; (there being no standing order of the House, as in appeals, confining a claimant to one printed case:) and these supplemental cases have sometimes occasioned much inconvenience; as was witnessed in the before-mentioned claims to the Peerage of Sutherland, where the female claimant exhibited and delivered, by her guardians, the longest and most voluminous case that ever appeared, and the other claimants were under the necessity of carefully perusing and considering it, and of having it perused by their respective counsel, which occasioned a very heavy expense and loss of time.

Should it happen that the investigation is postponed till a subsequent Session, or the Session of Parliament determines previous to the day appointed for the hearing before the Committee, then the claimant must, at the next

Session of Parliament, apply by petition to the House, in the form or to the effect following:

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 of Privileges of that Session; but not having been heard or determined in that Session,

Your petitioner therefore humbly prays your Lordships will be pleased to order, that his claim may be and stand referred to the Lords Committees for Privileges for the present Session.

And your petitioner shall ever pray, &c.

W. R. S. Agent to the Petitioner.

An order is made on this petition as a matter of course, and the agent concerned has only to send the petition to the Clerk-assistant, who will get it moved by some Lord at the table: but though this is a matter of course, the presenting of such a petition, and obtaining an order thereupon, appears necessary because it seems to be the prevalent opinion, that where a claim of Peerage stands referred by the House

to the Committee of Privileges of that Session, and it goes over to a subsequent Session, the Committee of Privileges for the former Session being determined and at an end with that Session, the reference to them is also at an end; and that on this account a fresh reference by the House to the Committee of Privileges of a subsequent Session must be made, it therefore behoves us to consider what constitutes a Session of Parliament. In 4 Inst. 27, it is thus defined:

1st. "The passing of any bill or bills, by "giving the Royal assent thereunto, or the "giving any judgment in Parliament, doth "not make a Session; but the Session doth "tinue until that Session be prorogued or dis- "solved."

2dly. "The diversity between a prorogation "and an adjournment or continuance of the "Parliament, is, that by the prorogation in "open Court there is a Session; and then "such bills as passed in either House, or both "Houses, and had no Royal assent to them, "must at the next assembly be begun *de novo*; "for every several Session of Parliament is in "law a several Parliament; but if it be but "adjourned or continued, then there is no Ses- "sion; and consequently all things continue

" in the same state they were in before the " adjournment."

The reader is referred to the 2d volume of Mr. Hatsell's Precedents, where this subject is elaborately discussed. Vide also 5 Comyns's Digest, title *Parliament*.

On the 6th March 1678, the Parliament met: on the 13th it was found necessary to prorogue the Parliament for *two* days. When the Parliament met again on the 15th, a question was moved in the House of Lords, to consider " Whether the last prorogation made a Session?"

" Resolved, That it was a Session in relation " to the Acts of Judicature of this House, but " not as to the determining of laws determin- " able upon the end of a Session of Parliament." 2 Hatsell, 288.

The other standing order, relating to matters of Peerage, is as follows:

" Die Lunæ, 11° Maii 1767.

" Upon report from the Lords Committees " appointed to consider of the most 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 infor- " mation thereof.

" Ordered, by the Lords Spiritual and Tem- " poral, in Parliament assembled, that the " 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 " if 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 said 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 immediately 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 descend-
" ants, in like form and manner 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 herein
" 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 Tem- " poral, in Parliament assembled, that every " Peer and Peeress, in her own right, be at " liberty to make proof of his or her pedi- " gree before the Committee of Privileges, and " obtain the like entry thereof.

" Ordered, by the Lords Spiritual and Tem- " poral, in Parliament assembled, that the " Heralds may demand, as a reasonable fee, " the sum of 20*l.* for their care, expenses, " trouble and attendance, in collecting, pre- " paring, 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 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."

When the claimant has once taken his seat, the writ of summons has its full effect, and cannot afterwards be avoided, even though errors or misrepresentation be discovered, or even if it should afterwards appear that the person seated is not the right heir to the dignity (*e*).

The writ of summons has the effect of conferring the dignity claimed or one of the same name, and this is an indefeasible title by operation of law, as soon as the person named has taken his seat.

The last-mentioned standing order is therefore of much importance in every point of view.

(*e*) Vide Lord Willoughby of Parham.

APPENDIX.

Appendix (A.)

As to Petitions for Rehearing.

14th Feb. 1694.

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.

Appendix (B.)

The Time within which an Appeal must be made.

24th March 1725.

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, or

be hereafter signed and enrolled or extracted, be received by this House after five years from the signing and enrolling 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, discoverture, coming of sound mind, enlargement out of a 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.

Appendix (C.)

The Attorney General, nor any assistant of the House, to be of Counsel at the bar of the House.

13 June 1685.

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.

Appendix (D.)

Counsel to sign Certificate of Leave (or Difference of Opinion) of Lords of Session in Scotland.

9 April 1812.

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.

Notice of presenting Appeal to be given to Respondent.

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.

Appendix (E.)

Appeals to be signed by Counsel, who must certify there is cause of appeal.

3d March 1697; amended by Order of 9th April 1812.

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.

Appendix (F.)

The times limited for presenting Appeals in each Session.

13th July 1678.

ORDERED, That all persons who shall be desirous to exhibit to this House any petitions 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 of equity in Ireland.

Appendix (G.)

Recognizance to answer Costs.

27th January 1710; amended 6th August 1807.

WHEREAS, by order of the 20th of November 1680 it is ordered, that 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 100*l.*, 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 the courts in Westminster-hall, North Britain or 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 penalty of 400*l.*, 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.

Appendix (H.)

Peremptory day to be appointed to answer Appeals.

19th January 1719.

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.

Appendix (I.)

The time of filing the Answers to be indorsed on the backs, and entered on the Journals.

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 Journal of this House.

Appendix (K).

Of answering Appeals after the Determination of the Session of Parliament, when the Order for answering was made.

28th March 1735.

UPON report from the Lords 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.

Appendix (L.)

Appeals to stand dismissed for not being answered or prosecuted.

5th April 1720.

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.

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 nor 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 appellants presenting any new appeals thereafter, as they shall be advised.

Appendix (M.)

The Time limited for bringing in Cross Appeals.

8th March 1763.

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.

Appendix (N.)

Supplemental Cases to be delivered in case of death.

20th March 1823.

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.

And where Parties are added after printed Cases delivered.

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.

Ordered, That the said order be declared a standing order; and that it be entered on the roll of standing orders of this House, and printed and published, to the end all persons concerned may the better take notice of the same.

Appendix (O.)

Notice to be given of putting off Causes.

22d December 1703.

UPON consideration of the great inconveniencies 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.*

Appendix (P.)

Appeals to be heard in course in the beginning of every Session.

8th June 1749.

UPON report from the Lords committees appointed to consider of the standing order of this House of the 5th 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 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.

Appendix (Q.)

As to delivery of Printed Cases.

12th July 1811.

ORDERED, That when any appeal shall be presented to this House, on or after the 1st 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 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, N° 118, for presenting appeals to this House: and in case of default on the part of the respondent, the appellant shall be at liberty forthwith to set down his cause *ex parte*.

Appendix (R.)

Printed Cases to be delivered to the Lords four days before hearing.

12th January 1724.

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 other different cases in any such causes be at any time afterwards printed or delivered.

Appendix (S.)

Printed Cases to contain Proofs taken in the Courts below.

24th February 1813.

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.

Ordered, That the said order be declared a standing order, and that it be entered on the roll of standing orders of this House, and printed and published, to the end all persons concerned may the better take notice of the same.

Appendix (T.)

Cases must be signed by Counsel.

19th April 1698.

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 this day 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 (V.)

Causes to be the first Business.

28th June 1715.

ORDERED, That on the days causes are appointed to be heard, the causes be the first business proceeded on after prayers, and no other business to intervene.

Appendix (U.)

Of the manner of Counsel's proceeding at the hearing of Causes.

2d March 1727.

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 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.

Appendix (W.)

Proxies not allowed in Judicial proceedings.

15th March 1697.

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.

Appendix (X.)

As to Questions to be put for Reversing.

14th January 1694.

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.

Table of Fees to Counsel and their Clerks.

	£.	s.	d.
Retainer - - - - - - -	2	2	0
Clerk - - - - - - -	0	5	0
To settle and sign petition of appeal where of course, and no extra trouble	2	2	0
Clerk - - - - - - -	0	5	0
To settle and sign case, where no extra trouble imposed - - - -	5	5	0
Clerk - - - - - - -	0	10	6
Consultation fee - - - -	5	5	0
Senior counsel's clerk - - - -	0	10	6
Junior - - ditto - - - -	0	7	6
Fee on brief, according to length and the eminence of the counsel, from and upwards of - - - - -	10	10	0
Senior counsel's clerk - - - -	0	10	6
Junior - - ditto - - - -	0	7	0
Refresher, every day the cause is in hearing, after the first day - - -	10	10	0
Clerk - - - - - -	0	10	6

Table of Agent's Fees, as charged by eminent Solicitors in London.

	£.	s.	d.
Agent's retaining fee	1	1	0
Instructions for every appeal, special answer, and case	2	2	0
Instructions for every special affidavit and petition	1	1	0
For drawing appeals, cases, special answers, affidavits and petitions, for every folio of 72 words	0	2	0
And for all fair copies, per folio of 72 words,	0	0	8
For preparing and engrossing general answers	1	1	0
For drawing and fair copy of common petitions and affidavits, if only one brief sheet, or per folio as above	1	1	0
For preparing a motion	0	13	4
For preparing a special notice	1	1	0
For a common notice	0	10	6
For drawing briefs to counsel, each brief sheet containing from 5 to 7 folios	0	13	4
Fair copies thereof	0	6	8
For every attendance on the House of Lords, on motions and petitions	2	2	0
For every other attendance there on matters of course	1	1	0
For attending consultations	1	11	6
For every other attendance on counsel	0	13	4
For service of a notice or petition on an agent	0	13	4
For personal service on a party	1	1	0

	£.	s.	d.
For each day the cause is in hearing -	5	5	0
Sessions fee, where it includes the agent's correspondence with and attendances on his client - - - - - -	21	0	0
Where it does not include them - -	10	10	0

Table of Fees to the Clerk of the Parliaments and other Officers; extracted from the Lords Journals, vol. 22, p. 628; viz.

" On hearing of appeals at the bar of this House:
" the following fees ought to be allowed by *both* " parties;

	£.	s.	d.
" To the Black Rod - -	2	0	0
" To the Yeoman Usher - -	1	0	0
" To the Doorkeepers - - -	4	0	0

" But if the cause be adjourned, and not decided, " or adjudged in one day, no fees are to be " paid on any other days of hearing than on " the first; and the doorkeepers, in considera- " tion of this fee allowed to them, are to receive " the printed cases from the solicitors, and " leave them at every Lord's house, without " any other fee or reward, either for their re- " ceiving or delivering the said cases.

(*N. B. Each party's share of the above Fees is* - - - - - - - 3 10 0)

" For the copy of a judgment on an appeal, 2 0 0
" To be divided between the Clerk of the Parlia- " ments and Clerk-assistant.

	£.	s.	d.
"For any order made in an appeal depending, whether by petition or otherwise, if such order be taken out by either party, and signed by the Clerk of the Parliaments - -	0	14	6
"For entering into recognizance - -	1	0	0
"To the Clerk of the Parliaments, for searching for a record in the office -	0	2	6
"For ditto to the Clerk-assistant - -	0	1	0
"For the copy of each sheet - - -	0	1	0
"For the Clerk's hand to a copy of a record - - - - - -	0	2	0

"These are all the fees the Committee are of "opinion ought to be allowed to the clerks or other "officers of this House, for any business done in "Parliament; and that, if the said officers or clerks "should demand, take or receive any higher fee or "other gratuity, they ought to incur the displeasure "of this House."

INDEX.

Page.

ADVOCATE, LORD,
should attend on hearing of claims to Scotch dignities - - - - - - - - 181
form of notice to attend - - - - 183

AFFIDAVIT,
to be made by pauper, form of - - - 140
of service of an order, form of - - - 88
before whom to be sworn - - - - ib.
should be made immediately - - - - 89

AGENT,
required to make affidavit - - - - - 85
sometimes questioned on truth of allegations in petition - - - - - - - - ib.
should appear and consent in case of compromise - - - - - - - - 108

AMENDMENT,
to appeal, may be made by either party - - 104
costs of, should be paid to respondent - - 105

ANSWER,
to appeal, form of - - - - - - 92
time limited for putting in - - - - 82
should be engrossed on parchment - - 94
should be signed by respondent or his agent - ib.
may be withdrawn and new one put in - - 104
peremptory order to put in same - - - 89
regulations for filing of, in a subsequent session - - - - - - - - 95
cannot be too general - - - - - 93

Page.

ANSWER,—*continued.*
special, in what cases necessary - - - 93
variations in, necessary where cross appeals are intended - - - - - - - ib.
to a cross appeal different to answer to an original appeal - - - - - - - 99

ANSWERING APPEALS,
order for - - - - - - - - - 82

APPEAL,
in the time of Alfred - - - - - - 3
lies from a decree or order of a court of equity to the House of Lords - - - - - 29
how it differs from a writ of error - - - 43
does not lie for costs only - - - - - 29
does not lie to the Lords from decrees made in the Plantations - - - - - - 44
nor against an order awarding a commission of lunacy or idiotcy - - - - - ib.
nor against any procedings touching the awarding or refusing such commission - ib.
nor from ecclesiastical decrees - - ib.
nor from orders in maritime or prize causes ib.
nor from orders in bankruptcy - - - 45
nor from orders in proceedings on writs of extent - - - - - - - - ib.
lies from a general order, though not made in any cause - - - - - - - - ib.
lies from orders of the Lords of Session - - ib.
void if security not given for costs - - - 86
does not stay execution of a decree - - 68
forms of - - - - - - - - 74, 76
must be brought within five years from the signing and enrolling the decree or order appealed from - - - - - - - - 71
previous notice of intention to present same, necessary - - - - - - - - 72
must be moved by a Peer - - - - - 81

Page.

APPEAL,
how to get it moved - - - - - - - 82
should be presented within the first fourteen days of the session - - - - - - 83
in what cases received after time expired - ib.
should be engrossed on parchment - - - 81
may be dismissed for want of prosecution - 95
when once presented cannot be withdrawn without leave - - - - - - - - 106
leave to withdraw, how obtained - - - 107
when withdrawn by mutual consent, how effected 108
must be revived in case of death - - - - 110
must be signed by two counsel - - - - - 80

APPELLANT,
dying, appeal must be revived - - - 110
must enter into recognizance for costs - - 85

APPENDIX,
of proofs must be affixed to each party's case - 118
supplemental, when necessary - - - - 113
joint, desirable - - - - - - - 119
need not be signed by counsel - - - 118
documents referred to by, must be laid upon the table - - - - - - - - 129, 130

APPLICATION
may be made to stay execution of decree after appeal brought - - - - - - - 68
may be made by either party to have cause appointed for hearing - - - - - - 109

APPOINTING CAUSES FOR HEARING,
how effected - - - - - - - - ib.
may be effected by either party - - - ib.

ARGUMENT,
new grounds of, not permitted in the House of Lords - - - - - - - - - 42

ATTORNEY GENERAL,
cannot be of counsel in appeals for a private person, without leave of the House - - - 72

Page.

ATTORNEY-GENERAL,—*continued.*
petitions for writs of summons referred to him 153
orders notices to be served on the different claimants - - - - - - - - 155
style of his report to the King on a claim to Peerage - - - - - - - - - 156
if he report against a claim, no reference is made to the House of Lords - - - 177
should have notice of Committee of Privileges investigating a claim to a title of honour - 182
form of notice - - - - - - - ib.
how given - - - - - - - ib.
should attend the House on the investigation - 187
AULA REGIA - - - - - - - - - 2

BANKRUPTCY,
no appeal lies from orders in - - - - 45
BILL OF REVIEW,
permitted after an affirmance of decree in Parliament - - - - - - - - - 70
BOURCHIER, Sir John,
his case - - - - - - - - - 5
Lord Hale's observations on - - - - - ib.
BREACH OF PRIVILEGE,
to deliver papers to a Lord pending judgment 143
BRIEF,
how to be prepared - - - - - - 129

CASES,
must be signed by two counsel - - - 120
supplemental, when necessary - - - 113
exchange of - - - - - - - - 124
further time to prepare, how obtained - - 125
in Claims to Peerages, how prepared - - 154
must contain pedigree - - - - - 181
must be printed - - - - - - 179
must be signed by counsel - - - ib.

Page.

CASES,—*continued.*
in Claims to Peerages, how indorsed - - 180
must be laid on the table fourteen days before the day of hearing - - - 181
in Appeals, time for laying same on the table of the House - - - - - - 117
how to be prepared - - - - 118
how to be entitled - - - - 119
if scandalous, reprehensible - - - 121
consultation often necessary on settling draft of - - - - - - 122

CAVEAT,
may be entered with Attorney General against allowance of claim to Peerage - - - 155

CAUSES,
not suspended by appeal, only as to matter appealed from - - - - - - 68
need not be revived in Court below - - 110
are to be heard in regular course - - - 141
may be called on out of course, when brought for mere delay - - - - - - ib.
will not be twice entertained by the Lords 30, 32

CHANCELLOR,
his jurisdiction not suspended by appeal - 68
Lord Eldon's observations on effect of appeal 68, 69
Lord Apsley's - - ditto - - - - - 67
will not issue writ of summons, if title to the honour doubtful - - - - - 146

CHARITABLE USES,
orders relating to, may be appealed from - 28

CHAUNTRIES,
decrees made for the dissolution of, may be appealed from - - - - - - ib.

CHURCHWARDENS,
certificates of, in cases of pauperism - - 139

CLAIMANTS
of dignities, not confined to one printed case - 191

Page.

CLAIMS TO PEERAGES,
standing orders relating to - - - 181, 194
if more than one, each referred to the Attorney General - - - - - - - - 190

CLERK OF PARLIAMENTS,
to take security for costs - - - - - 85
is to inform the House if same not given - ib.

CLERK ASSISTANT, gratuity to - - - 145

COMMISSIONS
to examine witnesses, in what cases granted - 186

COMMITTEE
of the House of Lords, petitions in appeals referred to - - - - - - - - - 85
cannot administer an oath - - - - - 185
of Privileges will not commence business in Peerages after eleven o'clock in the forenoon 187
number of Peers necessary to form - - ib.

COMMONS, HOUSE OF,
disputed the right of the Lords to receive appeals - - - - - - - - - 23
its resolution against persons prosecuting appeals against its members - - - - - 26
its resolution against the Lords jurisdiction in original causes - - - - - - - - 64

COMPROMISE,
when effected, appeal should be withdrawn - 108

CONSENT,
decrees made by, cannot be appealed from - 44
should be given by agent, in case of compromise - - - - - - - - - - - 108

CONSULTATION,
advisable in settling difficult printed cases - 123

COPIES, &c.
laid upon the Lords table, must be carefully examined - - - - - - - - - 130

Page.

COSTS,
no appeal lies for - - - - - - - 29
but may be taken into consideration in an appeal for other matter - - - ib.
not given against the Crown - - - - 87
not given against a respondent - - - 143
appellant must give security for - - - 85
on amendment of appeal, should be paid to respondent - - - - - - - 105

COUNSEL,
members of the House of Commons, ordered not to plead at the bar of the Lords without leave - - - - - - - - - 18
should be retained - - - - - - 71
King's, cannot argue against the Crown without license - - - - - - - - 72
who sign appeals, must have been of counsel in the Court below, or attend at the bar when appeals heard - - - - - - 80
must certify there is ground of appeal - - ib.
who sign cases, if out of the way, agent may employ others - - - - - - - 121
must certify that leave was given by Lords of Session to appeal, or that there was a difference of opinion amongst the Judges - - 80
fees of - - - - - - - - - - 141
table of their fees - - - - - - - 215
names of, must be printed to the case - - 123
committed to the Tower, for pleading in the House of Lords without leave of the Commons - - - - - - - - - 24

COURTS BELOW,
left to regulate their own practice - - - 110

CROSS-APPEAL,
what it need state - - - - - - 96
recognizance in, not *absolutely* necessary - 97

Page.

CROSS-APPEAL,—*continued.*
within what time to be presented - - - 98
may be brought *nunc pro tunc* - - - ib.
form of petition for that purpose - - - ib.
CROWN,
no words in a grant from the, can take away right of appeal - - - - - 45

DEATH,
in case of, appeal to be revived - - - 110
DECREES,
not to be reversed in Parliament without hearing counsel on both sides - - - - - 6
made by consent, cannot be reversed - - 44
bills brought into Parliament to reverse - - 6
after enrolment of, cause cannot be reheard - 67
execution of, not stayed by appeal - - 68
care requisite in drawing up of - - - 132
application to stay execution of, after appeal brought, should be made to House of Lords, or Court below - - - - - - - 68
affirmed for long acquiescence - - - 71
exemplification or office copy of, must be laid on the table of the House - - - 129, 132
DEEDS, &c.
relating to an appeal, mode of laying them on the table of the House - - - - - 130
witness questioned concerning of - - - 131
should be obtained from Parliament Office, when cause ended - - - - - - 144
mode of compelling production of, on hearing of appeal - - - - - - - - 135
DELAY,
appeals appearing to be brought merely for, may be heard out of their course - - - 141
DISMISSAL OF APPEAL - - - - 95
effected by petition - - - - - - 108

Page.

ERRORS,
in appeals, may be amended before hearing - 94
reasons of their frequency in Scotch and Irish appeals - - - - - - - - 101
petition to rectify - - - - - - - ib.
ERROR, WRIT OF,
jurisdiction of the Lords in a - - - 28
its difference from an appeal - - - - 43
EVIDENCE,
new, not admitted in the House of Lords - 42
Lord Eldon's observations on - - 118, 132
in claims to Peerages - - - - 154, 184
EXCHANGE
of cases, how effected - - - - - 124
EXECUTION
of decree, after appeal brought, may be stayed by proper application - - - - 68
EXHIBITS,
and proofs of opponent, may be inspected - ib.
set forth in appendix, should be laid on the Lords table - - - - - - 129
schedule of, must be made - - - - 130
how laid on the table - - - - - ib.
omission to furnish, censured - - - - ib.
EX PARTE PROCEEDINGS - - - 91, 117
EXTENT,
appeal arising from case under an - - - 66

FAGG, SIR JOHN,
petitions the House of Commons against the jurisdiction of the Lords - - - - 23
is committed by the House of Commons - 24
FEES,
to counsel - - - - - - - - 141
to counsel for the Crown, paid by Treasury - 183
of counsel, table of - - - - - - 215

Page.

FEES,—*continued.*
of agents, table of - - - - - - 216
of officers of House, table of - - - - 217

FEME COVERT,
may appeal five years after discoverture - - 71

FORMA PAUPERIS,
appeals may be prosecuted or defended in - 137
form of proceeding in - - - - - 138

GRATUITY,
to Clerk-assistant - - - - 145

GUARDIANS,
in what cases necessary parties to appeal - 113

HEARING,
in what cases ex parte - - - - 91, 117
when put off - - - - - 91
how effected - - - - - - 113
cannot be postponed without an order of the House - - - - - - - 116
of causes to proceed in regular course - - 141
may be out of course if appeal brought for mere delay - - - - - - ib.
when ended, no papers to be delivered to any Lord - - - - - - - 143

HOUSE OF PEERS,
its jurisdiction in appeals - - - - - 1
Lord Hale's observations on - - 1, 2, 23
has original jurisdiction in breach of privilege 1
and in cases of trials of Peers - - - ib.
its controversy with the Commons, as to original jurisdiction in causes - - - - 6
its judgments not subject to re-examination - 30

HOUSE OF COMMONS,
committed Skinner for breach of privilege - 15

Page.

HOUSE OF COMMONS,—*continued.*
its protest against the Lords claim to original jurisdiction in causes - - - - - 64
its resolution against persons prosecuting appeals against its members - - - - - 26

INFANTS,
may bring an appeal five years after attaining twenty-one - - - - - - - - 71

ISSUES,
directed by the House, to ascertain matters of fact - - - - - - - - 35, 63, 143

JOURNALS, LORDS,
time of filing answer to be entered on - - 94

JUDGMENT,
of the Lords not subject to re-examination - 30
final when read - - - - - - - 32, 38
no review or alteration of, allowed - - - - 32
when fraudulently obtained, treated as a nullity ib.
if pronounced in the absence of a material party, rehearing permitted as to that party - - 38
clerical errors in, may be rectified - - 33, 35
when inoperative, amended - - - - - 37
minutes of, delivered to agents and counsel 33, 144

JUDGES,
called in to aid the Lords - - - - - 42

JURISDICTION,
objections to, may be urged on the hearing - 94

KING,
recognizance to answer costs not necessary in appeals brought on his behalf - - - 87
claimants of dignities must petition him - - 146
form of petition to the, in an English Peerage - 147
the like in a Scotch Peerage - - - 149
refers petitions to Attorney General - - 153
form of his reference to the House of a claim - 178

Page.

KING,—*continued.*
his reference to the House is optional - - 178
instance of his refusal to refer - - - ib.

LICENSE,
for King's counsel to argue against the Crown, how obtained - - - - - - - 72
granted of course, on payment of usual fees - ib.

LORDS, HOUSE OF,
is the supreme Court of Judicature of the United Kingdom - - - - - - - 1
is not confined to rules - - - - ib.
but does not dispense with them, except on particular occasions - - - - - ib.
has no jurisdiction over original causes - - 1, 22
rectifies the judgments of the Courts below - 1
cannot take cognizance of a claim to a dignity, without a reference from the King - - 178
protest against original jurisdiction - - 59
See HOUSE OF PEERS.

LUNATICS,
may bring appeal five years after coming of sound mind - - - - - - - 71

MINUTES,
of the judgments of the House delivered to the agents and counsel - - - - 33, 144

MOTION,
for peremptory order, form of - - - 90
to set down appeal - - - - - 109

NOTICE,
of presenting appeal, form of - - - 73
service of, to be indorsed on back of appeal - ib.
of a petition for leave to withdraw appeal - 107
to postpone hearing of appeal - - - 114

Page.

NOTICE,—*continued.*
need not be given, of peremptory order to answer - - - - - - - - 89
of petition to amend, form of - - - 103
affidavit of service of, when necessary - - 104
should be given to adverse claimants of dignities, of intention to proceed before Attorney General - - - - - - - 155
should be given of intention to proceed before the Committee of Privileges - - - 185

NOTTINGHAM, LORD,
was against the appellant jurisdiction of the Lords - - - - - - - - 27

OATH
required of service of notice to postpone hearing - - - - - - - - - 114

OBJECTION
to jurisdiction of the House, may be urged on the hearing - - - - - - - 94

OBSERVATIONS,
printed, should be signed by counsel - - 119

OFFICE COPIES,
laid upon the Lords table, should be carefully examined - - - - - - - 130
witnesses questioned concerning their correctness - - - - - - - - 131
instance of receiving without proof at the bar 134

OFFICERS
of the House of Lords, their fees - - - 217

ORDER,
of Exchequer, in the case of Lord Wharton and Squire - - - - - - - - 46
of the House, for respondent to answer - - 82
how to be served - - - - - - - 87
indorsement upon - - - - - - 88
affidavit of service of - - - - - ib.

Page.

ORDER,—*continued.*
peremptory, for respondents to answer, how obtained - - - - - - - 89, 90
to answer a cross appeal - - - - - 98
to withdraw answer, and put in another, how obtained - - - - - - - 105
when minutes of, have been read, considered final - - - - - - - - 32
appealed from, or an office copy thereof, must be laid upon the table - - - - - 132
when made under a statute, no appeal lies from - - - - - - - 66, 67
of the House, how served - - - - - 87
peremptory, for respondent to answer, how obtained - - - - - - - - 89

ORDERS, STANDING,
no proceedings allowed contrary to, without leave of the House - - - - - - 83
petition to dispense with, form of - - - 84

ORIGINAL JURISDICTION,
exercised by the Lords - - - - 4, 7, 14
protest against, by Lords, in 1702 - - - 59
protest against, by the Commons - - - 64

PAPERS
not to be delivered to any Lord after cause heard, and pending judgment - - - 143

PARLIAMENT,
printed rolls of - - - - - - - - 3
receivers and triers of petitions appointed at beginning of each - - - - - - 4

PARTIES
may be added to appeal, after printed cases delivered - - - - - - 94, 113

PAUPERS. *See* FORMA PAUPERIS.

PEERS. *See* HOUSE OF PEERS.

Page.

PEDIGREE,
should be stated in petition for writ of summons - - - - - - - - 147
standing order relating to - - - - - 194
must be inserted in the cases on claims of Peerages - - - - - - - 181

PEMBERTON, Mr. SERJEANT,
committed by House of Commons for breach of privilege - - - - - - - - 24

PEREMPTORY ORDER TO ANSWER,
how obtained - - - - - - 89
no notice of, need be given - - - - ib.

PETITION. *See* APPEAL.

PETITION,
of appeal, indorsement on - - - - - 73
form of - - - - - - - - - ib.
should be ingrossed on parchment - - 81
from Court of Session in Scotland, form of - 76
must be signed by counsel - - - - - 80
how presented - - - - - - 81
for leave to present appeal after time expired - 84
must be presented by a member of the House of Lords - - - - - - - - 85
for leave for agent to sign recognizance - - 86
for leave to present cross appeal - - - 98
for leave to amend appeal - - - - 101
notice of presenting must be given - - 103
must be moved by a Lord - - - - - 102
for leave to withdraw answer and put in another 105
for leave to withdraw appeal - - - - 107
for leave to dismiss appeal by mutual consent - 108
to dispense with standing orders - - - 84
should be signed by the petitioner or his agent 85
to revive appeal, form of - - - - - 111
to postpone hearing - - - - - 114
for protection from arrests - - - - 136

Page.

PETITION,—*continued.*
to be allowed to proceed in *formâ pauperis* - 138
alteration in, where the party resides in London 140
to revive, in case of death - - - - - 111
to lay papers on the table, without the usual proof of their authenticity - - - - 133
to His Majesty for writ of summons on an English Peerage - - - - - 147
the like in a Scotch Peerage - - - 149
for a day of hearing of a claim to a dignity - 180
for a reference of a claim in a new session - 192

PRAYERS,
appeals to be proceeded in, immediately after - 141

POSTPONING HEARING,
reasons for - - - - - - - - 115
cannot be effected without leave - - - 116

PRINTED CASES,
Lord Eldon's observation as to dispatch in preparing of - - - - - - - 127
should be left at the houses of the law Lords - 128
time limited for laying same on the table - 117
further time for preparing may be obtained - 125
how to be prepared - - - - - 118
how to be intitled - - - - - 119
proof sheets of, should be carefully examined - 123
containing reflecting words, censured by the House - - - - - - - - 121
great attention necessary in preparation of - 122
Vide CASES.

PRINTERS,
their mode of charging for printed cases - - 124

PRISONERS,
may bring appeal five years after enlargement 71

PRIVILEGE, COMMITTEES OF,
claims of titles of honour referred to - - 179

Page.

PRIVILEGE, COMMITTEES OF,—*continued.*
number of Peers necessary to form - - 187
will not commence business after 11 o'clock in the forenoon - - - - - - - 187
form of their report to the House - - - 189

PROCEEDINGS,
if not in a cause, doubtful if the House will entertain jurisdiction over - - - - - 66

PRODUCTION,
of necessary deeds and papers, how enforced - 135

PROOFS,
must be contained in appendix - - - 118

PROTECTION,
from arrest during hearing - - - - 136
order for, must be renewed *de die in diem* - 137

PROXIES,
not allowed in judicial proceedings - - 142

QUESTION,
to be put for reversing and not for affirming - ib.

RECOGNIZANCE,
to answer costs, must be entered into in eight days after appeal brought - - - - - 85
may be signed by some other person by leave of the House - - - - - - - 86
is not necessary in appeals on behalf of the Crown - - - - - - - - 87
is prepared by Clerk of Parliaments - - ib.
is not absolutely necessary in cross appeals - 97

REFRESHERS to counsel - - - - 141

REHEARING,
of an appeal on merits, not permitted by the Lords - - - - - - - - 30, 41
permitted in cases of fraud or surprise - - 32

Page.

REHEARING,—*continued.*
shall not stop proceedings on an order or decree appealed from, without a special order - 68

REPORT,
of Attorney-General on a claim to a Peerage, style of - - - - - - - - - 156

RESPONDENTS,
may defend appeals separately - - - 100

RETAINERS to Counsel - - - - - 71

REVIEW,
bill of, necessary, when decree signed and enrolled - - - - - - - - 67
permitted, after affirmance of decree in Parliament - - - - - - - - 70

REVIVOR,
of appeal, in case of death - - - - 110
of cause below, not necessary - - - ib.

SEAT,
of a Peer, when once taken, cannot be avoided 198

SECURITY,
for costs, must be given by appellant - - 85
consequence of not giving same - - - 86
may be signed by agent - - - - ib.

SEPARATE DEFENCES,
when necessary - - - - - - - 100
can be made by leave of the House - - ib.

SESSION OF PARLIAMENT,
what it is - - - - - - - - 193

SETTING DOWN APPEAL,
how effected - - - - - - - 109

SHIRLEY, DR.
committed for breach of privilege - - - 24

Page.

SPECIAL ANSWERS,
when necessary - - - - - - - 93

SUITORS
have a right to the judgment of every Court - 69

SUPPLEMENTAL APPENDIX,
when necessary - - - - - - - 113

SUPPLEMENTAL CASE,
when necessary - - - - - 110, 113
allowed in claims to dignities - - - 191
what it should state - - - - - 113

SURPRISE,
relieved against - - - - - 32, 92

TIME,
limited for answering an appeal from any Court in England - - - - - - 82
from a Court in Ireland - - - - ib.
from a Court in Scotland - - - ib.
for presenting a cross-appeal - - - - 98
limited by peremptory order for answering - 90

TITLES,
in abeyance or dormant, petition for writ of summons must be to the King - - - 147

WILLIAMS, WALTER, Esq.
petitions for rehearing his appeal - - - 30

WITNESSES,
examined as to office copies and original documents laid upon the table - - - - 131
must not be parties to the appeal - - - ib.
in claims to Peerages, how sworn - - - 184
must be sworn before day of hearing - - 185

WRIT OF ERROR,
how different from appeal - - - - 43

Page.

WRIT OF SUMMONS,
- is not issued in doubtful cases - - - 146
- has its full effect when seat taken under it - 198
- cannot be recalled for mistake - - - ib.
- confers an indefeasible title - - - - ib.

THE END.

Luke Hansard & Sons,
near Lincoln's-Inn Fields.

Law Books, published by J. & W. T. Clarke.

APPEAL CASES.

In two volumes, royal 8vo.; *(to be continued.)*

REPORTS of CASES heard in the HOUSE of LORDS, upon Appeals or Writs of Error, and decided during the Session 1820. By *Richard Bligh*, of Lincoln's-Inn, Esq. Barrister at Law.

In a pocket volume, price 3 *s.* 6 *d.*

A NEW CATALOGUE of such LAW BOOKS as are of general Use and of the best Editions, with their Prices, including the Modern Publications. Intended as a Guide to the Purchasers of Legal Works.

BUTLER's COKE UPON LITTLETON.

Handsomely printed, complete in two very large vols. royal 8vo. *with a new and comprehensive Index, price* 3 *l.* 3 *s. in boards.*

LORD COKE's FIRST PART of the INSTITUTES of the LAWS of ENGLAND; or, a Commentary on Littleton; with Notes, by *F. Hargrave*, and *C. Butler*, *Esqrs.* of Lincoln's-Inn.

Including also the Notes of Lord Hale and Lord Chancellor Nottingham. The 18th Edition, with additional Notes and Corrections, by *Charles Butler*, *Esq.* to which is added, a new and comprehensive Index to the Notes.

*** *An improvement has been effected, by placing the Notes under the Text, and a regular System of paging and reference adopted; the want of which in the former octavo edition was much felt and generally complained of.*

N. B. This is the Edition that contains Mr. Butler's Notes.

PRESTON's SHEPPARD's TOUCHSTONE.

Closely printed, in 2 *vols. royal* 8vo. *price* 3 *l.* 3 *s. boards.*

The TOUCHSTONE of COMMON ASSURANCES; or, a plain and familiar Treatise, opening the Learning of the Common Assurances or Conveyances of the Kingdom. By *William Sheppard*, *Esq.* The Seventh Edition, including all the Notes and additional References in the former editions, and in the improved MS. Copy of *Edward Hilliard*, *Esq.*; also, an Enlargement of the Text, &c. by the Addition of various Criticisms, Distinctions, &c. &c. and a copious Index. By *Richard Preston*, *Esq.* of the Inner Temple.

†‡† This work treats of a Fine—Common Recovery—of a Deed—of a Warranty—of a Feoffment—of a Bargain and Sale—of a Gift—of a Grant—of an Attornment—of a Lease—of a Feoffment Gift—Grant and Lease—of an Exchange—of a Surrender—of a Confirmation—of a Release—of a Statute—of an Obligation—of a Defeasance—of a Testament—of an Use.

In royal 8vo. *price* 19*s. boards.*

A DIGESTED INDEX to the Nineteen Volumes of Mr. Vesey's REPORTS of CASES in the HIGH COURT of CHANCERY, with a Table of the Names of the Cases.

*** *Mr. Vesey having now, at the close of the Nineteenth Volume of his Reports, concluded his valuable labours, the Publishers considered that they should render an acceptable service to the Profession by a General Index to the whole work, digested and arranged in as simple and yet comprehensive a form as possible. They have been induced to do this, because they considered that a publication extending over so wide a field of legal authority, and embracing so considerable a period of time, might be deemed incomplete without such an appendage.*

GILBERT's TENURES.

In 8vo. *price* 15*s. boards.*

The LAW of TENURES, including the THEORY and PRACTICE of COPYHOLDS, by LORD CH. BARON GILBERT; with an Historical Introduction on the Feudal System, and copious Notes, by *Charles Watkins, Esq.* Fifth Edition, with Additions, by *R. S. Vidal, Esq.*

In two vols. royal 8vo. *price* 1*l.* 18*s.*

A DIGEST of PLEADINGS in EQUITY, with Notes of the Cases decided in the Courts of Equity. By *Basil Montagu, Esq.*

In 8vo. *price* 18*s. boards.*

A COMPENDIUM of the LAW of EVIDENCE, Fifth Edition, with large Additions. By *Thomas Peake*, Serjeant at Law.

In 8vo. *price* 12*s. boards.*

A PRACTICAL TREATISE on the LAW of LEGACIES. By *W. S. Preston, Esq.*

In royal 8vo. *price* 13*s. boards.*

A TREATISE on the LAW relative to SALES of PERSONAL PROPERTY. By *George Long, Esq.* Barrister at Law.

Of the Parties to the Sale—of the manner in which a valid Sale may be made, and of Circumstances which invalidate the Sale—on the Construction of Contracts of Sale—of Warranties—of Sales by Auction—of rescinding Contract—of the Transfer of the Property in the thing sold from the Vendor to the Vendee—of Stopping in Transitu—of Bankruptcy, as affecting the Sale of Personal Property—of Sales and Purchases by Agents, Brokers, and Factors—of Payments.

In two vols. royal 8vo. *price* 2*l.* 16*s. in boards.*

A TREATISE on the PRINCIPLES and PRACTICE of the COURT of CHANCERY, under the following Heads:—1. Common Law Jurisdiction of the Chancellor; 2. Equity Jurisdiction of the Chancellor; 3. Statutory Jurisdiction of the Chancellor; and 4. Specially delegated Jurisdiction of the Chancellor. The 2d Edition, with great Additions. By *Henry Maddock Esq.* Barrister at Law.