The Scottish Parliament

Its Constitution and Procedure 1603–1707

With an Appendix of Documents

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James MacLehose and Sons

Publishers to the University

1905

PREFACE.

THIS treatise would not have been written if the information it endeavours to impart had been accessible elsewhere. But except in broadest outline no attempt hitherto has been made to elucidate the constitution and procedure of the Scottish Parliament between the Union of the Crowns and of the Parliaments. In consequence the significance and interest of the only period in which Parliament had much claim to pose as a representative institution have been almost entirely overlooked. So far from remaining, as is the general impression, a Chamber doomed to futility by the overshadowing Committee of the Articles, the following pages not only shew that the development of Parliament's powers and processes was striking and rapid within the period, but that by 1707 it had brought itself, both as a Chamber of debate and of legislation, to a reasonable level of procedure with the English Parliament of the day.

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KING'S COLLEGE,
OLD ABERDEEN,
9th November, 1905.

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COMPOSITION AND NUMERICAL STRENGTH.

During the period 1603-1707, and during the whole of its existence, the Scottish Parliament consisted of a single Chamber. Five clearly marked groups had constitutional access to it, (1) Officers of State, (2) Higher Clergy, (3) Nobility, (4) Barons of the Shires, (5) Burgesses of the Royal Burghs. Of these five groups, the Nobility, Barons, and Burgesses alone maintained an unbroken right of attendance. The Clergy were represented in and until the Parliament of 1633. They were restored to their place in 1662, and continued to attend until the Convention of 1689, when they appeared for the last time. The Officers of State held their places in and until the Parliament of 1639. They were restored in 1661, and save in the Convention and Parliament of 1689, maintained their right of attendance until the Union in 1707. The periods 1603-1633, 1662-1689 were therefore those only in which Parliament included the whole of its constitutional elements in the seventeenth century.

Both in the representation of its constituent groups, and in its total membership, Parliament varied very considerably in the period. The first Parliament of

which a roll is extant, that of 1612, consisted of 109 Members.[1] In 1633 183 Members were present. In April and May 1641 the number fell to 29 and 59. Not until the first session of the first Parliament of Anne (May, 1703) did the roll of Parliament exceed two hundred names (224). In the third session of that Parliament (June, 1705) it reached its highest number—232. Its lowest membership was 29, in April, 1641.

Of Parliament's five constituent groups, the representation of the Officers of State varied between 1 and 8. The Clergy numbered 14 in May, 1662, their highest total. In 1667 they numbered 2, their lowest. Fluctuation in the attendance of the Nobility, a body largely augmented in the period, is yet more marked. Forty-four Peers attended the Parliament of 1617, a number only equalled or exceeded on seven occasions before 1661. Between 1661 and 1707 the Nobility only on eleven occasions numbered less than 50, and in the Parliament of Anne averaged 67. Of the two elected groups, the Barons of the Shires exceeded 80 in the Parliament of Anne, and in the April, 1693, Parliament of William and Mary. But only on five other occasions in the whole period did their number touch or exceed 60. In thirty-two Parliaments less than 50 Barons were present. The Burgesses numbered 51 in the Parliament of 1612, and 63 in its successor in May, 1617. But the latter number was only reached or exceeded on nine occasions in the whole period. On twenty-three occasions the Burgesses mustered less

[1] Though they are not mentioned among the "Domini presentes," seven Officers of State attended this Parliament.

than 50. Their highest representation was 67, their lowest, 5.

In the seventeenth century, therefore, the Scottish Parliament was a not unwieldy and a manageable body in point of numbers. Prior to the Restoration its membership exceeded 150 only on six occasions, and never rose above 183. After the Restoration it exceeded 190 only twice before the Parliament of 1703-1706, in which it averaged 226.

OFFICERS OF STATE.

Of the five groups which formed the Scottish Parliament two only were elected and representative. The Higher Clergy and the Nobles sat in right of summons. The Officers of State attended as the nominees of the Crown, and constituted a group peculiar to the Scottish Parliament.[1] The English Parliament also included the Officers of State, the King's Ministers. But though they held office by royal appointment, a seat in Parliament was theirs by constitutional election if they were Commoners, by right of summons if they were Peers. Their official appointment in neither case conferred a right to attend. But in the Scottish Parliament a Peer nominated to act as an Officer of State sat in that capacity and not as a member of his Order. A Commoner, if he were already of the House by election, relinquished his constituency upon appointment to office, and held his seat thereafter as a nominee of the Crown.[2]

[1] For a suggestion as to the origin of this official group see below, p. 67.

[2] On 10th Sept., 1696, the burgh of Cullen was granted a warrant to elect a new Member "in the place of Sir James Ogilvie, appointed by His Majesty to have place and vote in Parliament as Secretary of State" (*Acts of the Parliaments of Scotland*, x. 11).

It is not possible to determine when the Officers of State first acquired an *ex officio* right to sit in Parliament. Before 1617, as Mr. Porritt remarks,[1] they probably held the privilege by usage and not enactment. It is a reasonable inference that the Court's departure from Scotland in 1603 accentuated the Crown's desire to give its Scottish executive place and influence in Parliament. In the Convention of May, 1608, the Officers of State numbered 7. In the Convention of the following year (Jan., 1609) 8 were present. Seven were upon the Articles in 1612. In the Parliament of 1617 the indefinite right of the Officers of State to attend was challenged for the first time. After representations to the King it was enacted (17th June, 1617) that for the future no more than eight Officers of State should be nominated to have place and vote in Parliament. The Act stated that the Officers of State sometimes had exceeded and sometimes had fallen below that number.[2] For so long as the right of Officers of State to sit in Parliament was allowed, their number as limited by the Act of 1617 was not exceeded. Indeed, though the Crown regularly claimed the power to appoint eight,[3] the full number was rarely nominated. After 1617, the Officers of State numbered six and upwards only on thirteen occasions.

[1] *The Unreformed House of Commons*, ii. 98.

[2] See Appendix xiii.

[3] A royal letter of 23rd March, 1693, admits that "by the Laws of that our Kingdom the number of our Officers of State who are to have vote and place in Parliament should not exceed the number of Eight, even though at any time there should be more persons employed in the executions of the said offices" (*A.P.S.* ix. 249).

While the Act of 1617 restricted their number, it remained competent to the Crown to select the particular Officers of State to act and vote as its nominees. In the Parliament of 1617 the Secretary of State, High Treasurer, Lord Privy Seal, Master of Requests, Lord Clerk Register, Advocate, Lord Justice-Clerk, and Treasurer-Depute were present. Of these officials, the High Treasurer, Privy Seal, Clerk Register, Advocate, Justice-Clerk, and Treasurer-Depute attended almost invariably. The Master of Requests appears on only four occasions (1617, 1621, 1625, 1633). The President of the Secret Council completed the number of the officials from whom the Crown made its choice.[1]

The precedence of the Officers of State was the frequent subject of protests and counter-protests in an Assembly whose members jealously regarded such matters.[2] The Secretary had precedence of the Clerk Register, Advocate, and Justice-Clerk. But the institution of a second Secretary, described on 9th July, 1631, as an official "which was never in Scotland before," called forth a protest against his receiving the precedence accorded to his colleague. It was contended on behalf of the second Secretary, that had the office been duplicated in 1623 when its ranking was ordained, both Secretaries would have been ranked together. The

[1] The Comptroller of the Household and the Collector appear twice only in the period, both of them in the Conventions of 1608 and 1609.

[2] The calling of the roll of Parliament was usually followed by protests on the part of such persons as had reason to maintain their precedence of others called before them. The representatives of the shires and burghs claimed precedence in the roll for their constituencies.

matter was remitted to the King's consideration,[1] and the principle was established, that "it belongs only to one of the two Secretaries indefinitely to have place and vote in Parliament as an Officer of State."[2] The Parliament of 1661, upon a report from the Lords of the Articles, established the precedence of the Lord President of Session, Clerk Register, Advocate, Treasurer-Depute in the order named,[3] though the Treasurer-Depute continued to claim precedence of the Clerk Register and Advocate,[4] and also of the Secretary.[5]

The inconsonance of a nominated official group with the spirit of a representative and constitutional Assembly needs no emphasis. It was but natural that Parliament, so soon as its issue with the Crown was clearly joined, should deprive the latter of so potent an influence upon its proceedings. Hence the Parliament of 1641, which excluded the Bishops, completed the reform of its constitution by excluding the Officers of State and by repealing the Act of 1617 which had given them a constitutional right to sit in it.[6] From 1641 to 1661 the Officers of State were excluded from Parliament.[7]

[1] *Register of the Privy Council*, 2nd series, iv. 273.

[2] *A.P.S.* ix. 245.

[3] *Ibid.* vii. 200.

[4] *Ibid.* viii. 99.

[5] *Ibid.* ix. 351.

[6] *Ibid.* v. 329. It may be noted that on 16th September, 1641, the King undertook to appoint his Officers of State "with the advice and approbation" of the Estates of Parliament, a condition which was repealed 11th January, 1661 (*Ibid.* v. 403; vii. 10).

[7] On the petition of the Advocate to be admitted to Parliament, "seeing also he is advocate employed by the Estates," Parliament on 9th August, 1641, found it "expedient to call the advocate into the

At the Restoration the Act of 1617 was revived,[1] and in and after the Parliament of 1661 the Officers of State resumed their attendance. Unlike the Bishops they survived the Revolution, and continued to sit throughout the remainder of Parliament's independent existence. But of the four groups which made up that body in 1707 (Officers of State, Nobility, Barons, Burgesses) the Officers of State alone, and for obvious reasons, failed to secure in the United Parliament that measure of representation which was accorded to the rest.

It was probably rather in theory than in practice that the non-elected group formed by the Officers of State clashed with the constitution of a representative Assembly. The fact that it survived the Revolution is evidence of its comparatively innocuous character.[2] Some of the members of it, in fact, were intimately connected with the routine business of the House. Others, being Peers, were eligible to sit in their own right, even if their status as nominated members was denied or withdrawn. In the case of Commoners the Crown undoubtedly had the advantage of securing in Parliament and upon its Committees the services

House to sit upon the foot of the Throne, covered with his hat upon his head, to answer what shall be demanded of him by the parliament, Who declares that these presents shall give no farther privilege to him, nor shall give him no voice in parliament, seeing he is only called by the parliament to sit and hear and answer when he is asked so long as they have to do with him" (*A.P.S.* v. 324).

[1] *Ibid.* vii. 10.

[2] The right of the Officers of State *ex officio* to a place upon the Committees of the House was, however, expressly withdrawn in 1690. See App. xxiv.

of persons who had not obtained the suffrages of any constituency. But it is exceedingly doubtful whether throughout the greater part of the period the abolition of nominated Members would have prevented the Crown from obtaining a seat in the constitutional manner for such Commoners as it desired to employ.

THE CLERGY.

When the seventeenth century opened the Clerical Estate had but recently regained the constitutional position of which the Reformation had deprived it, and upon its recovered status the political warfare of the period was chiefly directed. In 1597 an Act passed declaring that "all ministers provided to prelacies should have vote in Parliament."[1] On 9th July, 1606, an Act for the restitution of the Estate of Bishops rescinded the Act of 1587 by which ecclesiastical property had been annexed to the Crown.[2] Restored to their constitutional position the Higher Clergy attended the Parliaments and Conventions from 1608 to 1633 in numbers varying from 7 to 13, and recovered their representation as a separate Estate upon the important Committee of the Articles. But the bolder and less judicious ecclesiastical policy of Charles I. led to the temporary expulsion of the Clergy from Parliament. By an Act of 2nd June, 1640, the Estates ordained "all Parliaments hereafter to . . . consist only in all time coming of the Noblemen, Barons, and Burgesses as the members and three Estates of Parliament,

[1] See Appendix xii. [2] *A.P.S.* iv. 281.

and rescinds and annuls all former laws and Acts of Parliament made in favour of whatsoever Bishops, Archbishops, Abbots, Priors, or other prelates or churchmen whatsoever, for their riding, sitting, or voicing in Parliament."[1] At the Restoration the Clergy, like the Officers of State, recovered the Parliamentary status which had been withdrawn twenty years earlier. By an Act of 8th May, 1662,[2] the Bishops were restored to Parliament, and resumed their separate representation upon the Committee of the Articles. They continued to attend, in numbers varying from 2 to 14, until the Revolution. Nine Prelates were present in the Convention of March, 1689. It was their last appearance as an Estate of the Scottish Parliament.

[1] See Appendix xiv. [2] See Appendix xx.

THE NOBILITY.

"THE place of the greater lords in the Scottish Parliament has long been understood," Mr. Rait remarks.[1] "The brilliant pen of Professor Innes and the accurate investigations of Mr. Robertson have, in this respect, added little to the statement of the case made by George Wallace[2] more than a century ago. The earl or the duke had just the same right to sit in Parliament as the smaller freeholder. His title gave him only rank, not power. . . . The king in creating an earldom did not directly confer the title upon the new possessor. He created the lands into an earldom. When the lands were sold the title fell to the purchaser. Territorial honours could descend to a female—although no female might sit in the king's council—and could be borne by the husband of the female possessor. . . . Personal honours were certainly known in Scotland before 1587; but they were not peerages in the English sense. The bearers of these purely personal titles—the earliest of which belong to the fifteenth century—sat in Parliament

[1] *The Scottish Parliament before the Union of the Crowns*, 19.

[2] *Thoughts on the Origin of Feudal Tenures and the Descent of Ancient Peerages in Scotland* (1783).

in virtue of other claims. But, after the Act of 1587, all honours became personal, and the rules of descent were altered. In 1689 the Scottish nobles obtained a strictly legal recognition of their rights as possessors of peerages."[1] When the seventeenth century opened, therefore, the greater Barons, or Nobility, attended Parliament by virtue of the qualifications which entitled an English Peer to a seat in the House of Lords, and, like them, they received a personal writ of summons to Parliament, issued from the Chancery.[2]

Had the practice and procedure of the Scottish Parliament throughout the seventeenth century remained constant to the earlier methods which are supposed to have distinguished it throughout its whole career, consideration of the strength of the Nobility in relation to other Parliamentary groups would be irrelevant. In the early part of the period, admittedly, the Estates in full session were neither a deliberative Assembly, nor, in respect to legislative measures, were they a voting Assembly. Their constitutional functions were two—(1) to elect the Lords of the Articles, a Committee of the House in which was vested full power to draft and propose

[1] It should be observed that the 52nd Act of the Parliament of 1640 suggests that the Estate of the Nobility had been reinforced in Parliament by "strangers having titles of honour." The Act therefore restricted the Estate in Parliament to noblemen by birth, blood, or inheritance, who were possessed of at least 10,000 merks annual rent (*A.P.S.* v. 296). If the property qualification for noblemen was ever operative, it certainly did not survive the Restoration (see Appendix XXII.).

[2] *R.P.C.* 2nd series, i. 142.

measures for legislation; (2) to attend in full session when the Lords of the Articles had completed their labours, and to witness the Crown or its Commissioner's acceptance, by touch of the Sceptre, of the measures drafted by the Committee to which Parliament had delegated its powers. It is clear that so long as Parliament's functions were of this simple character, the only occasion upon which numerical strength would be of advantage to any Parliamentary group was at the election of the Committee of the Articles. But in point of fact, as will be shewn, the Committee of the Articles was constituted in such a way as to make the numerical strength of the several Estates represented upon it quite immaterial. Indeed, the smaller the numerical strength of any Estate the larger was its relative representation upon that all-important Committee. Had this curious and characteristic method of procedure held throughout the existence of the Scottish Parliament, it would not have mattered what was the numerical strength of one Parliamentary group or Estate in relation to its fellows, provided that it was sufficiently numerous to furnish its quota to the Committee of the Articles. It has been much too cursorily concluded that the procedure of the Scottish Parliament did not develop to a point beyond the simple delegation of its powers to a Committee. That careful investigator Mr. Porritt, for instance, remarks[1] that the Scottish Parliament was not a deliberative Assembly, like the English Parliament, except for the period 1689-1707. He adds, quite accurately, that it could not be so, so long as the Committee of the

[1] *Op. cit.* ii. 100.

Articles fulfilled its traditional functions. But he overlooks the fact, which a study of the Minutes of Parliament from 1640 reveals, that from that point onward the Estates increasingly placed the initiation, discussion, and conclusion of legislative business in the hands of the House in full session. Its constitutional development in the period may be expressed in the statement, that whereas at the beginning of the century the House was the servant of its Committee, a court of registration of public edicts, like the French *Parlements*, it had reduced the Committee to a subordinate and dependent place long before the century reached its close. It initiated, debated, and by open vote ratified or rejected measures of legislative and public import. Had the union of the Parliaments taken place in 1603 the Scottish representatives at Westminster would have found themselves members of an Assembly whose methods of procedure were mystifying and unfamiliar. But by 1707 the Scottish Parliament had so reformed its methods, and with such close approximation to the procedure of the English Parliament, that the Scottish representatives at Westminster must have found themselves in an atmosphere almost familiar.

It is evident, therefore, that the relative numerical strength of the several Parliamentary groups, immaterial so long as Parliament surrendered its legislative powers to the Committee of the Articles, becomes a matter of importance so soon as the House debated and voted in full session. From that point of view it is important to observe that neither directly nor indirectly had the Estate of Peers in the Scottish Parliament that

influence which distinguished their Order in the Parliament of England. In England the Peers formed a Chamber apart from the Commons, and, in respect to their constitutional sanction of legislation, stood upon an equality with it. In Scotland the Peers sat in the same Chamber with the Commons. Their influence in it depended solely upon their numerical strength on a division. Nor did the Scottish Peer stand in that relation to the representatives of the Commons which made so considerable a portion of the English House of Commons dependent upon the direction of its patrons in the House of Lords. In the shires the electors stood upon an equality with the Peers as freeholders of the Crown. The Peer's influence over his vassals was immaterial, for they had no vote in county elections.[1] His participation in or influence upon Parliamentary elections was as jealously guarded in Scotland as in England.[2] In regard to the burghs, they were equally removed from influence so familiar in England. The Pocket-Borough was unknown; for none but the Royal Burghs possessed the franchise, and representation of them was rigidly

[1] The Act of 30th May, 1661, which defined the county franchise, expressly excluded "all Noblemen and their vassals" (*A.P.S.* vii. 235).

[2] Peers were specifically forbidden to attend county elections by order of 4th March, 1648. Infringement of the order invalidated the election (*A.P.S.* vi. pt. ii. 6). The commission of those elected for Wigtonshire in 1700 was contested on the ground of "alledged encroachment made upon the freedom of the elections by the noblemen and others, their coming in and remaining in the room the time of election" (see Appendix xxxiii.).

closed to all but *bona fide* burgesses and trafficking merchants.[1]

It appears, therefore, that such influence as the Estate of Peers could exert upon the other constituent groups in Parliament depended solely upon its numerical strength in relation to them. But, in fact, at no period in the seventeenth century were the Peers in such numerical strength as to enable them to dominate and control the other groups. On no single occasion did their number equal or exceed the combined strength of the shires and burghs. On only fifteen occasions (1608, 1609, 1621, 1630, 1633, 1643, 8th July 1645, 1648, 1661, 1662, 1663, 1669, 1670, 1673, 1681) were the Nobility more numerous than each of the elected groups. In and from the first Parliament of James VII. (April, 1685) the representatives of the shires and burghs combined had an invariable majority, roughly as 2 to 1, over the Nobility in every Session. Even, as is reasonable,

[1] The Act of 1587 (see Appendix VIII.) forbade any person to represent other than "the place of that estate in which he commonly professes himself to live." The effect of the Act was to close both the shires and burghs to the children of Nobles. After the Restoration the eldest son of a Peer was expressly declared incapable of representing a Royal Burgh (*A.P.S.* ix. 11). In 1685 Viscount Tarbat's eldest son was declared disqualified to sit for Ross-shire (*Ibid.* viii. 457). On 16th May, 1690, it was moved that Peers' eldest sons, "being infeft as holding of the King in part of their father's estate may be capable to be elected for a shire." The objection was urged that that would increase the influence of the Nobility, since "the eldest son would incline against the interest of the Barons" (*Ibid.* ix. App. 145). The inability of the Nobility and their eldest sons to represent county and burgh constituencies was reaffirmed in 1707 (*Ibid.* xi. 418).

if the Officers of State be grouped with the Nobility, the latter were still incompetent numerically to control the House. It may be urged that in a single Chamber the Barons of the Shire would gravitate more naturally to the Nobility than to the Burgesses, and so tend to give to the House a consistently aristocratic majority. There is nothing to support such a contention, and even if there were, it is beside the present argument, which seeks to establish the fact that the Estate of Peers *per se* in the Scottish Parliament at no period in the seventeenth century possessed that measure of influence with which the English constitution invested it.

Denied the privilege of full membership, the eldest sons of Peers possessed intermittently in the period the right to be present at the meetings of Parliament, but without the privilege of voting or speaking. From 1641 to 1662 their right to attend was withdrawn. In the new Orders which the House adopted in 1641, no space was allotted to the eldest sons of Peers. On their behalf it was urged ineffectually that they possessed the right to sit uncovered "in a room appointed for them."[1] On 20th August, 1641, the excluded persons themselves presented a petition craving readmission, on the plausible ground that it was advisable for them to render themselves familiar with the procedure of an Assembly of which in the future they would be Members.[2] Not until 1662, under the new Orders of 13th May,[3] were the eldest sons of Peers restored to the privilege withdrawn in 1641.

[1] *A.P.S.* v. 625. [2] *Ibid.* v. 645. [3] See Appendix xxi.

BARONS OF THE SHIRES.

COUNTY representation in the Scottish Parliament embraced at its fullest extent thirty-three constituencies:

1. Edinburgh.
2. Haddington.
3. Berwick.
4. Roxburgh.
5. Selkirk.
6. Peebles.
7. Lanark.
8. Dumfries.
9. Wigton.
10. Ayr.
11. Dumbarton.
12. Bute.
13. Renfrew.
14. Stirling.
15. Linlithgow.
16. Perth.
17. Kincardine.
18. Aberdeen.
19. Inverness.
20. Nairn.
21. Cromarty.
22. Argyll.
23. Fife.
24. Forfar.
25. Banff.
26. Kirkcudbright.
27. Sutherland.
28. Caithness.
29. Elgin.
30. Orkney.
31. Clackmannan.
32. Ross.
33. Kinross.

While the names of the Commissioners of the Shires are not given in the rolls of Parliament before 1590, the names of their constituencies are indicated for the first time in the Convention of 1608.[1] The order of precedence varies considerably in the rolls. Perthshire and Fifeshire both claimed precedence of the other shires.[2] But by the last quarter of the century the

[1] Porritt, ii. 78.

[2] *A.P.S.* v. 254; ix. 6. On 11th September, 1641, an Act appointing Commissioners of the Shires to draw lots for place and precedence in each Parliament was read and adjourned (*Ibid.* v. 660).

order in which the county constituencies are named had settled down more or less into the sequence in which they are printed above.

County representation in the Scottish Parliament was not complete until so late as the Convention of 1681, when, for the first time, the county constituencies were all represented. Of the thirty-three counties so large a number as fifteen, nearly half of the total, were some certainly, some probably, represented for the first time after 1603. Stirlingshire (1607), Argyllshire (1630), Sutherland (1639), Orkney (1612), and Ross-shire (May, 1649) certainly appeared for the first time in the seventeenth century. Negative evidence supports the conclusion that Roxburgh (1608), Wigton (1617), Linlithgow (1612), Inverness (1617), Nairn (1617), Cromarty (1617), Banff (1621), Kirkcudbright (1612), Caithness (1644) were also strangers to Parliament before 1603. Kinross-shire resumed its attendance in the Convention of 1681.[1] But a full attendance of the shires was of exceeding rarity. Only on three occasions after 1681—in 1685, October 1700, and 1705—were

[1] On 18th August, 1681, a royal letter was recorded bearing that by the 101st Act of the 7th Parliament of James I., Kinross-shire had the right of representation in Parliament, and had been represented until "almost all the Shire (being a very small one)" had passed into the possession of the Earl of Morton and Lord Burleigh, who, being Noblemen, represented their own lands in Parliament; and seeing that Sir William Bruce of Balcaskie had acquired the Earl of Morton's interest, and had a commission from the other freeholders of the county to represent them, therefore the King ordered his name and constituency to be added to the roll of Parliament (*A.P.S.* viii. 239). On 13th June, 1685, the bounds of the shire were somewhat enlarged (*Ibid.* viii. 488).

all the counties represented. Out of fifty-one recorded rolls between 1603 and 1706, only two counties—Haddington and Perth—appear in all. Edinburgh and Fife are represented in all but one. Berwick, Lanark, Stirling, Linlithgow, appear in all but two. Roxburgh and Peebles made forty-eight appearances; Aberdeen and Forfar, forty-six; Dumfries and Ayr, forty-five; Selkirk, forty-four; Wigton, Renfrew, and Kincardine, forty-two; Kirkcudbright, forty-one; Dumbarton, forty; Inverness, thirty-nine; Argyll, thirty-eight; Nairn, thirty-six; Bute, Banff, and Elgin, thirty-four; Clackmannan, thirty-two; Sutherland, thirty-one; Ross, twenty-five; Caithness, twenty-three; Orkney, twenty-two; Cromarty, twenty-one; Kinross, eleven.

The organisation of county representation in the Scottish Parliament followed at a long interval after that of the burghs. The circumstance has been attributed to the fact that from early times the burghs had a Parliament of their own—the Convention of Royal Burghs, an institution which still survives. But the tardiness with which the representatives of the counties developed into a distinct and separate Estate of Parliament is probably due chiefly to a fact which has been noticed already, namely, that except in rank and title the Barons of the Shire were at one with the Nobility as tenants-in-chief of the Crown. There is no doubt that in early times they possessed the right to personally attend Parliament. Nor is it doubtful that the privilege was one which they did not grasp with avidity. But so long as they exercised their right, they attended not as representatives of a territorial constituency, but

by virtue of a personal privilege vested in each one of them individually. Nor was it until almost on the threshold of the seventeenth century that the Barons appeared otherwise than in a personal character, and as the representatives of a limited but definite body of constituents. Hence, as Mr. Porritt remarks:[1] "In the development of the Parliamentary system of England county and borough representation proceeded side by side. It was otherwise in Scotland. The representative system in the burghs had been long established before there was anything which had an organic similarity to the county franchise in England either before or after the Act of Henry VI. restricting the county franchise to forty-shilling freeholders."

It was not until 1427-8 that the first attempt was made to convert the neglected right of personal attendance possessed by the Barons into an organised scheme of county representation. In that year, following soon after James I.'s return from his English captivity, and no doubt inspired by his experience of the English constitution,[2] an Act was passed which freed the small Barons and free tenants of the Crown from the obligation to attend Parliament personally, on condition that they sent two or more of their number to represent them from each sheriffdom.[3] The Act, however, remained practically inoperative. Thirty years later, in 1457-8, a further Act was passed in relief of the smaller freeholders holding land below the value of £20. The Act exempted them from the obligation to attend

[1] *Op. cit.* ii. 38. [2] Porritt, ii. 74.

[3] See Appendix 1. Clackmannan and Kinross were restricted to one Member.

Parliament personally unless they were specially summoned.[1] Again, nearly half a century later, an Act of 1503-4[2] exempted from attendance, unless specially summoned, all freeholders owning land of less than 100 merks of new extent.[3] They were empowered to send procurators or representatives. But freeholders above 100 merks value were still required to attend "under the pain of the old unlaw." As Mr. Rait suggests,[4] the Acts of 1427, 1457, and 1503, were framed less with the object of disfranchising the freeholders whose status they touched than of protecting them from the occasional and arbitrary exaction of penalties for absence. So much at least is clear, that down to the beginning of the sixteenth century county representation was still unorganised and chaotic. It combined the characteristics of the period before 1427 with the promise, and no more, of the uniform representative system which the seventeenth century saw established. The better-to-do freeholders were still required to give personal attendance. The less wealthy of their rank were relieved of that duty, and were allowed to send procurators. Here there is a suggestion of a scheme of representation. But it seems highly improbable that these procurators were other than the personal proxies of individual freeholders, as at one time was the practice in the Shire Courts when the Barons sought an easy method of escaping from irksome county duties.

[1] See Appendix II. [2] See Appendix IV.

[3] This new mode of assessment dated from 1474 (Porritt, ii. 75).

[4] *Op. cit.* 23.

Not until 1567 was it attempted to rescue the representation of the small Barons from the condition of chaos which legislation since 1427 had produced. As has been observed, the effect of that legislation had been merely to relieve certain of the less well-to-do freeholders from the obligation of attendance at Parliament. At the same time, the fact that the better-to-do freeholders were still under the obligation of personal attendance prevented the emergence of a general and embracing system of county representation. To that critical point the Act of 1567[1] was directed. The effect of it was to reduce all county freeholders other than Nobles to a uniform status, to constitute them generally a body of *electors* in the several shires, and to place upon them the duty of sending representatives of the whole shire to Parliament. The Act ordered the election in each shire of "one or two of the most qualified and wise Barons within the Shire" to represent the freeholders of the Crown. Subsequent legislation proves that the Act of 1567 was inconclusive, both as to the qualification of the electors, and also as to the method by which their powers of election were to be exercised.

The next step in the development of the county franchise is the Act of 1585.[2] By it[3] the county

[1] See Appendix v.

[2] Mr. Rait (*op. cit.* 25) regards the Act of 1567 and its successor of 1585 as party moves by the party then dominant, and by no means as indications of an enlightened desire for constitutional development. The criticism is possibly sound. But of the importance of the Acts of 1567 and 1585 in the development of county representation there can be no question.

[3] See Appendix vii.

franchise was confirmed and restricted to all freeholders of the Crown, below the degree of Nobles and Prelates, holding land in free tenandry of forty shillings' value, and having their "actual dwelling and residence within the same shire." In each shire the freeholders were required to elect "two wise men, being the King's freeholders, resident indwellers of the shire, of good rent and well-esteemed." In addition to its precise definition of the qualifications of the electors and their representatives, the Act of 1585 is important also as indicating the tardy growth of central direction and supervision in regard to county elections. Whereas the Act of 1567 had directed the electors to assemble upon eight days' warning at the summons of the Sheriff, the Act of 1585 enjoined that precepts of summons should be issued from the Chancery, to be directed in the first ensuing election to "a baron of each shire to convene the freeholders," and thereafter "to the last commissioners," that is, to the retiring Members for the same purpose. As Mr. Porritt points out,[1] the Act of 1585 was of permanent importance in the regulation of the county franchise. It established the residential qualification for county representatives, which remained operative until the Act of 1669,[2] and also their property qualification, which survived the Reform Act of 1832.

The Act of 1585 placed the county franchise upon a uniform though restricted basis. It remained to co-ordinate the methods by which the shire elections were to be conducted. An Act of 1587 dealt with the matter, and, like its predecessor of 1585, was of

[1] *Op. cit.* ii. 76. [2] See Appendix xxiii.

permanent effect. The Act[1] appointed the Barons of the Shire to elect their two Commissioners to Parliament at the Head or Michaelmas Court of the Shire. The Commissioners were to fulfil the qualifications established by the Act of 1567, and their names were, upon their election, to be communicated to the Chancery, so that writs of summons might be issued to them when a Parliament or Convention demanded their attendance.[2] The Act also made the Barons of the Shire liable for the expenses incurred by their Commissioners attending Parliament or Convention.[3] It definitely established six as the minimum of voting electors necessary to constitute a valid election.[4] It modified the Act of 1585, however, in that it empowered the Lords of Council and Sessions, in lieu of the Chancery, to issue annual precepts to the shires to hold Parliamentary elections, while leaving it to the Chancery to summon to Parliament those elected.[5]

[1] See Appendix x.

[2] As an illustration of the haphazard methods which still persisted, an Act of Council of 30th April, 1616, remarking that the practice had fallen into desuetude, directed the Commissioners of Shires elected in one year to intimate to the Chancery the names of the persons elected to succeed them at the next court of election. Failure to observe the rule, the Council added, had often resulted in the Chancery not knowing to whom to address writs of summons (*R.P.C.* x. 503). For this reason, probably, the more direct method was established by which writs of summons were addressed through the Sheriff to the Commissioners elected at the last Shire Head Court (*Ibid.* second series, i. 142).

[3] On this subject see below.

[4] By the Act of 1567 four or six electors were required. See Appendix v.

[5] See Appendices vii., x.

The Act of 1587 completed what may be called the formative period in the history of Scottish Parliamentary development. It is worth noticing that that period closed so late as within twenty years of the union of the Crowns. But from 1587 the county franchise was settled upon foundations which were not materially disturbed so long as Parliament maintained its independent existence. The franchise was uniform throughout the shires. The electors were restricted to the vassals of the Crown, other than Peers and Prelates, holding freehold of forty-shilling value and upwards. The representation of the shires was uniformly settled at two Members for each, and the county Members were required to be resident in the county which they represented, and identical in status with their constituents. In all the counties, again, the Head Court or Michaelmas session of the Shire Court, when the Barons of the Shire attended, or were required to attend, for the conduct of county business, was the occasion upon which the Commissioners of the Shires were elected.

It must be pointed out here that the English system of holding General Elections at irregular intervals was entirely unknown in Scotland. The representatives of both shires and burghs were elected annually, and quite irrespective of whether a Parliament or Convention was summoned or imminent. A Scottish M.P. was normally the representative of his constituents for a period of twelve months only. He might be, and frequently was, re-elected year after year. But the span of his commission was limited to the period between the annual courts of election. A minute of the Aberdeenshire Sheriff Court, dated 31st January, 1595-6,

illustrates this characteristic of Scottish Parliamentary practice: "The said day the whole barons within the Sheriffdom of Aberdeen for the most part being convened within the Tolbooth of the said burgh for choosing of Commissioners to Parliaments and Conventions for this present year, All in one voice elected and chose John Leslie of Balquhain and Sir Alexr. Fraser of Fraserburgh, knight, persons most meet to keep and pass to the said parliaments and conventions whatsoever *until Michaelmas next to come* in the year of God one thousand five hundred fourscore and sixteen years inclusive."[1]

In so far as the practice was not rescinded by legislation, the representatives of both shires and burghs continued to be elected annually so long as the Scottish Parliament existed. But in practice the custom cannot be said to have survived the Restoration. The MS. minutes of the Aberdeenshire Sheriff Court show only four elections of Commissioners to Parliament between 1669 and the Union of 1707. It is possible that if the Diet Books were complete the number would be somewhat augmented. But in any case the number of elections would be found to be but a fraction of the number of Parliamentary sessions in the period 1660–1707. The minute of the election of Commissioners for Aberdeenshire at the Head Court of 1669 is significant and explanatory. As on no previous occasion the Commissioners were specifically appointed to serve in "his Majesty's ensueing parliament to be kept at Edinburgh the nineteenth day of October instant."

[1] Littlejohn, *Records of the Sheriff Court of Aberdeen* (New Spalding Club), i. 372.

Again in 1702 the Commissioners were appointed to serve in the "next ensueing Parliament." In the interval, however, in 1680 and 1681, the appointment of the Commissioners was in the terms of that of 1595, quoted above—that is, the Commissioners were strictly limited to a period of service "betwixt and Michaelmas next."[1]

While the minutes of 1680 and 1681 prove that under normal conditions the rule of annual elections still obtained, those of 1669 and 1702 shew that the Members' commissions were coextensive with the duration of the Parliament to which they were sent, and terminated only with their death or resignation, or with the dissolution of the Parliament. If one turns to the register of Parliamentary meetings, the differing terms of appointment of the Aberdeenshire Commissioners become clear. Neither in 1680 nor in 1681 was a Parliament in immediate contemplation. In July, 1681, a Convention was summoned, which the Commissioners appointed in 1680 would attend. But neither Convention nor Parliament fell within the terms of the Commissioners appointed in 1681. On the other hand, both in 1669 and 1702 a Parliament was specifically summoned. Its duration depended upon the royal pleasure, and the Parliament of 1669 extended over four years, and that of 1702 over as long a period. Until Parliament was regularly dissolved, the commissions of those appointed to attend its first session required no renewal. So long, therefore, as Parliament

[1] Dr. David Littlejohn has very kindly allowed me to make use of his careful transcripts of the records of the Aberdeenshire Sheriff Court. From them the statements in my text are taken.

was prorogued from year to year, and its elected Members were continued from session to session, the constitutional practice of annual elections was in abeyance.[1]

The extended commission conveyed in the Aberdeenshire minutes of 1669 and 1702 is explained by the form of Parliamentary adjournment after the Restoration. In 1661, at the close of the first session of Charles II.'s first Parliament, the Act adjourning the Parliament to a specific date enjoined for the first time "that there be no new Elections in Shires or Burghs except upon the death of any of the present Commissioners."[2] The instruction became thenceforward permanent, and no general election took place so long as the Crown preferred to "continue" an old Parliament rather than to summon a new one. The Parliament which met in June, 1689, for instance, met in its ninth session in October, 1700, and during the years which covered the reigns of William and Mary, and William, no appeal to the constituencies was made.[3] In regard

[1] In 1640 the Estates passed an Act ordaining that Parliament should be summoned at least once in every three years (see Appendix xvi.). The Act was practically inoperative. In the reign of Anne the proposal was revived. On 7th August, 1705, an "Overture for a triennial Parliament" was ordered to be printed (*A.P.S.* xi. 219). It was read on 15th August, 1705 (*Ibid.* 222), and it was agreed on 22nd August, 1705, that the operation of the Act should not be delayed, but should take effect in the Queen's reign (*Ibid.* 223). On the same date, however, Parliament voted that its own existence should "continue for three years" (*Ibid.* 223). Before that period elapsed the Scottish Parliament had ceased to exist.

[2] *A.P.S.* vii. 367.

[3] It should be stated, however, that the Act of Adjournment of the eighth session does not specifically order no fresh elections to be

to the innovation, it is easy to understand that it was in the interests of the Crown, which, having exerted pressure upon the constituencies to provide sympathetic representatives, was anxious to be relieved of the necessity to exert that pressure annually. On the other hand, it may be granted that the House gained in efficiency, and that the systematising of its procedure in the period was due in some measure to the fact that its composition was more permanent and continuous than had been the case in the earlier part of the century. It may be added that the greater deliberation which marked the procedure of debate in the House, and the elaboration of Committee work after the Restoration, tended to recommend the prolongation of Members' commissions after 1661, even though it was gained at the expense of the constitutional rights of the constituencies.

It remains to consider in what other direction the county franchise and the status of the Commissioners elected upon it were modified by the legislation or practice of the seventeenth century. Four Acts, all of them within the post-Restoration period, modified or added to the body of legislation regulating county representation before 1603. An Act of 1661[1] extended the county franchise somewhat beyond the narrow

made (*A.P.S.* x. 195). It is worthy of notice that the electors of Aberdeenshire instructed their representatives in 1702 to endeavour to obtain "annual elections of Commissioners to parliament," and that on 26th June, 1703, a motion in favour of annual elections of Commissioners of the Shires was read in Parliament and ordered to lie on the table (*Ibid.* xi. 64).

[1] See Appendix XIX.

bounds in which the Act of 1585 had confined it. The Act ordained: "That beside all heritors who hold a forty shilling land of the King's Majesty *in capite*, That also all heritors, liferenters, and wadsetters, holding of the King, and others who held their lands formerly of the Bishops or Abbots and now hold of the King, and whose yearly rent doth amount to ten chalder of victual or one thousand pounds, All feu duties being deducted, shall be and are capable to vote in the election of Commissioners to Parliaments and to be elected Commissioners to Parliaments, Excepting always from this Act all Noblemen and their vassals." The effect of the Act, while retaining the essential characteristic of the county franchise, namely, tenure of the Crown, was to extend the franchise to a body of freeholders whose property qualification had not come within the scope of the Act of 1585. To what extent the number of electors in the counties was enlarged by the Act of 1661 it is impossible to closely determine.

The county franchise, as defined by the Acts of 1585 and 1661, was the subject of only one other Act before 1707. The Act of 1681[1] established two alternative qualifications: (1) the familiar qualification of 1585, forty-shilling freeholders of land "of old extent" held of the Crown, and (2), in the case of lands whose "old extent" could not be determined, freeholders of the Crown whose lands bore a taxable rental of £400.[2] So long as, and for long after, the Scottish Parliament

[1] See App. xxiv.

[2] Mr. Porritt (*op. cit.* ii. 81) remarks that this is the first instance of a tax-paying qualification being attached to the exercise of the franchise.

continued to exist, the county franchise remained as the Act of 1681 established it.[1]

The Act of 1681 is of importance from another point of view. The Minutes of Parliament after 1661 prove the existence of astonishing laxity in the methods by which the county elections were conducted. In consequence the number of controverted elections became for the first time considerable.[2] The Act of 1681,[3] in addition to defining the qualification for the county franchise, laid down clearly the rules which for the future were to regulate the constitution and procedure of the Head Courts of the Shire at which the county elections were made. With the object of "clearing the orderly way of election of the said Commissioners [of Shires] in time coming," the Act directed the freeholders of each shire to convene at their Head Burgh on the first Tuesday in May, 1682, in order to draw up a roll of those qualified for the franchise as defined in the Act of 1661. The roll was to be subject to annual revision at the Michaelmas Courts thereafter, and was to be regularly recorded in the books of the Sheriff Court. At the annual meetings of the Head Courts for the election of Parliamentary Commissioners, the electors (the Barons of the Shire) were directed to assemble between the hours of noon and two o'clock

[1] The conditions of the county franchise are exactly and concisely described by an objection against an elector in the Aberdeenshire Head Court of 1708, as one who "neither had four hundred pounds of valued rent holden of Her Majesty nor a forty Shilling Land of old extent so holden."

[2] The subject of controverted elections is dealt with in a separate section.

[3] See Appendix xxiv.

in the afternoon in the room used for the sessions of the Sheriff Court, "which room shall be patent to them, and all others removed but whom they call."[1] So soon as the electors were assembled, one or other of the Commissioners appointed at the last court of election, or in their absence the Sheriff-Clerk of the county, was directed to put it to the meeting, who should preside, and who should act as Clerk. After the appointment of those officials, persons claiming to be put upon the roll of electors were required to make and substantiate their claim. In the event of their claim being objected to, the objector was directed to "take instruments," that is, to have his objection formally recorded before the court proceeded to the election of Commissioners. After the election no objection was valid. If the objector carried his plea beyond the Head Court, no grounds other than those urged and recorded at the time could be advanced. Normally the objection would be heard and sustained or rejected in Parliament or Convention. But in case neither were imminent, the contested claim would be adjudicated upon in the Court of Session. The party which failed to establish its case was liable to pay the expenses of the other side, in addition to a fine of 500 merks—a safeguard both against the advancing of unsubstantial claims and also against a captious challenging of them. As to the grounds, other than the property qualifi-

[1] Though the Act of 1681 does not mention the fact, absent Barons were fined for non-attendance. At the Aberdeenshire Head Court in 1616 absent Barons and freeholders, "being three times called at the tolbooth window and not compearing lawful time of day being bidden," were fined £50 Scots.

cation, upon which a claim might be protested, the Act declared the minority of the claimant a conclusive bar to the exercise of a vote.[1] Failure to take the Test Act recently passed was also declared a valid objection. Horning for a civil cause, or non-residence, were not deemed sufficient to invalidate a claim. The Act further directed, that for the information of the electors the Sheriffs were to publish on a market day between 10 a.m. and 12 noon the date of the Parliament or Convention to which Commissioners were bidden, and also the date upon which the Head Court of election was summoned to meet. On the first Sunday thereafter a similar notice was to be given at each parish church of the shire. The Head Court was directed to meet at least twelve days before the date for which a Parliament or Convention was summoned, and the names of the Commissioners elected to serve therein were to be communicated to the Lord Clerk Register. The Act continued to regulate the procedure of the shire courts of election until and after the Union of 1707. In the Aberdeenshire Sheriff Court Minutes it is referred to in 1743 as authoritative. The record of controverted elections subsequent to 1681 sufficiently proves, however, that the Act was not effective in "clearing the orderly way of election" to secure which it had been framed.[2]

[1] It may be noticed that on 6th August, 1649, the Estates ordained "that no person of whatsoever quality or degree shall be admitted to sit and voice in Parliament or Privy Council unless he be of the age of twenty-one years at least" (*A.P.S.* vi. pt. ii. 527). The same rule applied to Justices of the Peace (Terry, *Claverhouse*, 13).

[2] See Appendix xxxii.

In addition to the Acts of 1661 and 1681, others of 1669 and 1690 completed the legislation bearing on the county franchise in the century preceding the union of the Parliaments. The Act of 1669[1] rescinded the residential qualification which the legislation of the sixteenth century had imposed both on electors and their Parliamentary representatives. Henceforward neither elector nor elected was required to be an "indweller" of his constituency, a fact which testifies to the increasing interest in county elections in the post-Restoration period. An Act of 1690 points to the same conclusion. Ever since the Act of 1567 the representatives of the shires had been limited to two Members each. The Act of 1690,[2] which was to take effect "in the next Session of this Parliament and in all Parliaments and Conventions of Estates thereafter," increased the voting power of the shires by twenty-six. The Act added two Members to the representation of the following shires: Edinburgh, Haddington, Berwick, Roxburgh, Lanark, Dumfries, Ayr, Perth, Aberdeen, Fife, Forfar. Four counties—Kirkcudbright, Stirling, Argyll, and Renfrew—were given one additional Member each. The Act came into operation in the third session of William and Mary's Parliament in 1693, and until the Union was generally taken advantage of by all the counties named, except Kirkcudbright.

The Act of 1690 failed to satisfy the claims of the county constituencies. On 19th August, 1704, an "Act for an additional representation of

[1] See Appendix xxiii.

[2] See Appendix xxx.

Commissioners of Barons to the Parliament" was introduced, debated, and read a first time.[1] No further steps were taken in the matter, and up to the Union the representatives of the shires remained at the maximum total of 92 allowed by the Act of 1690. By the Act of Union their representation in the United Parliament was reduced to thirty, less than a third of the number to which they were entitled between 1690 and 1707. It may be observed, however, that the average representation of the shires in the Parliaments and Conventions between 1603 and 1707 was only a fraction over 48.

The chief fact that strikes one in following the development of county representation in the Scottish Parliament is the lateness of its initiation and the tardiness of its completion. It was barely organised until within a generation preceding the union of the Crowns in 1603. Up to that point, as has been shewn, little more than half of the county constituencies had regularly or intermittently taken advantage of the Acts which permitted them to send representatives to Parliament. It has been also remarked that not until 1681 were representatives of all the shires present, and how very rarely thereafter that experience was repeated. Not even in the critical times when the Act of Union was under discussion were the shires represented in their full strength. Over the whole period 1603-1707 only two of the thirty-three constituencies were present in every Parliament or Convention. In fact, the apathy which had distinguished the shires in the sixteenth century was continued into and beyond the first half of

[1] *A.P.S.* xi. 174.

the seventeenth.[1] As Mr. Porritt has justly observed, it was not until the reign of Charles II. that "seats in the Scotch Parliament first began to be in demand, and to be the subject of contests in the constituencies and before committees on controverted elections. Even in the reigns of Charles II. and James II. seats in the Parliament which met at Edinburgh were never as generally objects of desire as they were at this and at a much earlier period in the Parliament of Westminster."[2] The fact is perhaps explainable upon two grounds: (1) the comparative modernity of county representation, and the lack of continuous tradition in support of it in the seventeenth century; (2) the purely routine character of Parliamentary work until the reforms of the seventeenth century offered scope for Parliamentary debate, for individual weight in argument and in the division list. Whatever the explanation, the

[1] On 17th December, 1629, Privy Council, in view of the fact that at the preceding Michaelmas Courts, the shires of Lanark, Ayr, Haddington, Dumfries, Wigton, and Fife had made no election of Commissioners, ordered them to do so before 7th January, 1630 (*R.P.C.* second series, iii. 384). On 26th March, 1633, Fifeshire was ordered to proceed to an election of Commissioners before 24th April, 1633. The shire had made no election on the plea that the Sheriff of the County was absent at Court (*Ibid.* v. 54). On 10th September, 1690, the shires of Dumfries, Aberdeen, Forfar, and Argyll, having failed to increase their representatives to the number allowed by the recent Act of 1690, were ordered to do so (*A.P.S.* ix. 237). On 25th April, 1693, the electors of Forfarshire were cited to appear before the Estates for their failure to elect Commissioners to represent them, and on 19th May, 1693, the shire was ordered to proceed on 30th May, 1693, to the election of three Members (*Ibid.* ix. 250, 262).

[2] *Op. cit.* ii. 33.

comparative weakness of county representation in the Scottish Parliament is a characteristic which presents it in suggestive contrast to the Parliament into which by the Union of 1707 it was merged.

The modifications which the legislation of the seventeenth century introduced into the county franchise still left the county electors a small and exclusive body. What their number was it is not possible to say. But some indication of its smallness is offered in the fact that in 1788 the county electorate in the thirty-three Scottish shires numbered only 2631 votes. The electors varied from 12 in Buteshire to 205 in Ayrshire, and the average number of electors in each county was only a fraction under 80.[1]

Small as was the number entitled to vote, the number of electors who availed themselves of their privilege was certainly smaller. The Aberdeenshire Head Court records invariably present a long list of absent electors. At the Head Court in January 1558-9, for instance, 17 Barons were present, 61 were fined as absent.[2] At the Head Court in October, 1576, 21 were present, 75 were absent.[3] On 30th September, 1595, 123 Barons were absent, and only 17 were present.[4] The MS. Minutes for the seventeenth century lend no support to the inference that the recent organisation of the county franchise drew a larger attendance of electors. At the Aberdeenshire Head Court in October, 1616, only twenty-two Barons took part in the election of Commissioners to Parliament. The Minutes of that Court in part explain the meagre attendance. "It is ordained

[1] Porritt, ii. 15, 83.
[2] Littlejohn, *op. cit.* i. 132, 188.
[3] *Ibid.* 252, 291.
[4] *Ibid.* 338, 367.

in all time coming," the Minute runs, "that no member of Court be a suitor; and that no man compear as suitor but for three barons at the most: and that they be sufficient qualified persons able to pass upon an assize." The practice of appointing proxies or "suitors," it is clear, had become so prevalent that a Jury of Assize was difficult to get together. The fact that no Baron was henceforth to act as proxy for another Baron, and that no qualified "suitor" was henceforth to act for more than three Barons, sufficiently shews that in the past both injunctions had been disobeyed. It is at any rate certain that so long as a Baron could perform vicariously the judicial duties of the Shire Court, the exercise of his responsibility as an elector was not likely to tempt his personal attendance. It may be suggested that in a shire like Aberdeen, whose Head Burgh was at the extreme boundary of the county, there were geographical reasons which favoured the development of a proxy system. But the system was not confined to Aberdeenshire, and though the law forbade proxies, it may be certainly held that the injunction was not invariably obeyed.[1] The present point is, however, that if the qualified electorate in the shires was small, the effective electorate was infinitely smaller, partly owing to the political apathy of the Barons, partly to the facilities they possessed for vicariously performing the duties which called them to the annual court of election. In fact, the Act of 1587 empowered a

[1] See *A.P.S.* x. 209 for a case in which, upon the ground that the law "allows of no proxies" the Estates ordered the deletion of a proxy's name from the commission presented by a Member before allowing him to take his seat.

county Member to be elected by so few as six freeholders,[1] and there is a case in which his commission bore the signatures of only three.[2]

The paucity of county electors bears upon a point of constitutional importance. It could not fail to facilitate the exercise of royal influence upon the constituencies in times of crisis. There is clear evidence, at least in the pre-Restoration period, of the exercise of such influence. A royal letter to Privy Council of 21st July, 1628, sent instruction, that seeing Parliament was summoned for 15th September, 1628, and might continue to sit after Michaelmas, "which is the usual time of the next election of Commissioners for shires," and that it would be inconvenient if the Members present at the outset were not in attendance throughout the session, therefore the Council was ordered to instruct the Sheriffs to convene the Barons and to secure the re-election of the Commissioners to Parliament appointed at Michaelmas, 1627.[3] On 5th September, 1629, the Michaelmas elections being imminent, the King ordered his Council to "deal with the sheriffs" and "such others whose power may procure most voices," with a view to securing the election of well-affected persons.[4] On 19th February of the same year (1629) the Council ordered the Sheriff of Roxburghshire to convene the electors and to impart to them the King's "pleasure and direction" to elect certain specified persons "recommended by his Majesty." Apparently the electors failed to obey the royal

[1] See App. x.
[2] *A.P.S.* viii. 218.
[3] Stirling, *Register of Royal Letters*, i. 301.
[4] *Ibid.* i. 376.

injunction, for on the following 24th March the Council quashed the election of one of the Commissioners for Roxburgh on the ground that his "great age" unfitted him for the position, and ordered a new election.[1] On the same date (24th March, 1629) the electors of Ayrshire, having disregarded the persons nominated for their choice, were ordered to convene again to elect them.[2] Of another character, but equally illustrative of royal influence exerted upon the constituencies, are the following cases. On 24th February, 1629, the Council "liberated" one of the Commissioners for Haddingtonshire from fulfilling his commission, on the ground of the necessity for his "attendance upon his Majesty's service."[3] On 14th March, 1633, a Commissioner who had been elected for two constituencies, Dumbartonshire and Renfrewshire, was directed to sit for the former, and a new election was ordered for the latter, on the ground that there was "great scarcity of freeholders" in Dumbartonshire and "great plenty" in Renfrewshire.[4] On 26th March, 1633, the Council

[1] *R.P.C.* second series, iii. 54, 105.

[2] *Ibid.* second series, iii. 104. See *Ibid.* 434, 439.

[3] *Ibid.* iii. 61.

[4] *Ibid.* v. 48. It may be observed that the Commissioner in question was legally disqualified to sit for one or other of the two constituencies. The paucity of freeholders and their disinclination to serve occasionally led to the election of one who was not qualified. On 12th March, 1633, the Commissioner for Buteshire petitioned Council to rescind his commission, since he asserted that he was "neither a baron nor freeholder of his Majesty in any of his lands within that sheriffdom and so cannot be a commissioner for the Parliament" (*Ibid.* v. 45).

quashed the commission of the Member for Stirlingshire, seeing that he was "heavily diseased with infirmity and sickness, and being upon the point of his departing forth of this kingdom for recovering of his health." On 15th May, 1633, the Privy Council decided in regard to one of the Commissioners for Perthshire, that "upon good considerations it is not thought fit that he shall supply that charge at this time," and ordered a new election.[2]

From the above illustrations a fact of importance emerges. Apart from the intermittent pressure which the Crown exerted upon the county constituencies, it is clear that the Council exercised a general authority in ordering county elections to take place, in establishing the validity of the elections made, in releasing the persons elected from their commission, whether on the score of age, illness, or other grounds, and, as will appear later, in deciding controverted elections. In a word, the Council exerted that control which a representative Assembly itself prefers to exercise over its membership. Before the century reached its close the Scottish Parliament had in this matter, as in its procedure, brought itself into close harmony of practice with the English Parliament, to which it was so shortly to be united.

There remains for consideration a characteristic of Scottish county representation which in itself supports the conclusion already arrived at, that until comparatively late in the seventeenth century county seats in the Scottish Parliament were not the object of eager competition. From the Act of 1567 down to the

[1] *R.P.C.* v. 54. [2] *Ibid.* v. 100.

Union of 1707 the representatives of the shires were entitled to payment for their Parliamentary services. The Act of 1567 made the freeholders of the shires liable for the expenses involved in the Parliamentary attendance of their Commissioners.[1] But in this particular, as in its permissive grant of representation to the shires, the Act was certainly evaded. On 24th April, 1633, Privy Council found it necessary to insist that Commissioners of the Shire were entitled to their expenses, and to remark that the non-observance of this statutory right had caused many to evade an honourable position which otherwise they would have been willing to fill. The Council therefore ordained that Commissioners of the Shire should receive three hundred merks for their Parliamentary services, and also be provided at the expense of their constituents with "a footmantle of velvet passmented" for ceremonial use in the "riding" of Parliament, trappings which, with shrewd economy, the Commissioners were directed to hand on to their successors upon the termination of their commission.[2] Eight years later Parliament confirmed the right of Commissioners of Shires to receive their "expenses" from their constituents. The Act of 1641 ordained that each county Commissioner was entitled to £5 Scots *per diem* during his attendance at Parliaments or Conventions, and for the time occupied by him in proceeding to and from the appointed place of meeting. The travelling allowance for each shire was carefully determined by the Act, and varied from £5 Scots (one day) for the representatives of Edinburghshire, to £150 Scots (thirty days) for the representatives

[1] See Appendix v. [2] *R.P.C.* second series, v. 66.

of Orkney.[1] The Act of 1661 confirmed that of 1641 in regard to the amount which Commissioners of the Shire were entitled to receive during their attendance at Parliament and their journey to and from it.[2] By an Act of 1690 Commissioners of Shires and Burghs were allowed to claim from the Clerk Register certificates of attendance at Parliament on which to base their claim for expenses against their constituents.[3] But it is clear from the Act that the receiving of tickets of attendance was permissive and not compulsory, and that those only who desired to recover their expenses were expected to make use of them.[4]

Before the end of the seventeenth century the payment of county Members in the Scottish Parliament had certainly ceased to be a uniform custom, if indeed it had ever been adopted generally and invariably. The electors might, and indeed did, make their own terms with their representatives. At the Aberdeenshire Head Court of 1702, for instance, "it was agreed to by the said whole barons and freeholders before proceeding to elect commissioners, That whosoever should be elected Commissioners for this ensuing parliament should serve in the said station upon their own charges and not upon the charges and expenses of the shire, and the barons to be elected should subscribe an act for that effect before receiving

[1] See Appendix xviii. The MS. Minutes of the Aberdeenshire Head Courts shew that the sum allowed the Commissioners before the Act of 1641 varied from 600 to 400 merks for attendance at Parliaments, and from 300 to 200 merks for attendance at Conventions.

[2] See Appendix xix. [3] *A.P.S.* ix. 236. [4] Porritt, ii. 35.

of their Commissions from the Clerk." A similar "band" had been entered into by the electors of Dumfriesshire in 1660. Upon the appeal of their Commissioner in 1681, it had been declared illegal by the Estates.[1] The Commissioners of Stirlingshire and Wigtonshire in 1634 were both compelled to resort to the Council for permission to sue their constituents for payment of the Parliamentary expenses which the law allowed them.[2] Further, the MS. Minutes of the Aberdeenshire Head Court shew that the elected Commissioners were themselves required to bear the cost of collecting the allowance which their constituents granted them.[3] It may be fairly concluded, therefore, that if the payment of county Members tended to be discontinued from the last quarter of the century, when county seats for the first time were eagerly sought after,[4] the disinclination of the constituencies to meet their liability, and the difficulty with which the Commissioners at their own charges were able to collect their expenses, contributed not inconsiderably to the same result. The resolution of the Estates not to pay the representative Commissioners to the United Parliament, though contrary to the sanctioned usage of the Scottish Parliament, was certainly in keeping with the developing traditions of the last generation of its independent existence.

[1] *A.P.S.* viii. 359.
[2] *R.P.C.* second series, v. 269, 611.
[3] Minute of 6th Oct., 1629.
[4] Porritt, ii. 36.

COMMISSIONERS OF THE BURGHS.

In the seventeenth century, the burghs possessing the privilege to send Commissioners to Parliament numbered 67 constituencies :

1. Edinburgh.
2. Perth.
3. Dundee.
4. Aberdeen.
5. Stirling.
6. Linlithgow.
7. St. Andrews.
8. Glasgow.
9. Ayr.
10. Haddington.
11. Dysart.
12. Kirkcaldy.
13. Montrose.
14. Cupar-Fife.
15. Anstruther Easter
16. Dumfries.
17. Inverness.
18. Burntisland.
19. Inverkeithing.
20. Kinghorn.
21. Brechin.
22. Irvine.
23. Jedburgh.
24. Kirkcudbright.
25. Wigton.
26. Dunfermline.
27. Pittenweem.
28. Selkirk.
29. Dumbarton.
30. Renfrew.
31. Dunbar.
32. Lanark.
33. Arbroath.
34. Elgin.
35. Peebles.
36. Crail.
37. Tain.
38. Culross.
39. Banff.
40. Whithorn.
41. Forfar.
42. Rothesay.
43. Nairn.
44. Forres.
45. Rutherglen.
46. North Berwick.
47. Anstruther Wester.
48. Cullen.
49. Lauder.
50. Kintore.
51. Annan.
52. Lochmaben.
53. Sanquhar.
54. New Galloway.
55. Kilrenny.
56. Fortrose (or Rosemarkie).
57. Dingwall.
58. Dornoch.
59. Queensferry.
60. Inveraray.
61. Inverurie.
62. Wick.
63. Kirkwall.
64. Inverbervie (or Bervie).
65. Stranraer.
66. Campbeltown.
67. Cromarty.

As in the case of the shires, precedence in the roll of Parliament was the subject of contention and protest among the burghs. Inverkeithing claimed precedence of all.[1] Glasgow claimed precedence of St. Andrews. Stirling and Linlithgow also contested the place assigned to them, and with Glasgow and St. Andrews refused to submit their opposing claims to the decision of the Convention of Royal Burghs in December, 1660.[2] Haddington and Inverness contested precedence, and the Commissioner of the latter in 1663 refused to take part in the "riding" of Parliament, partly on the ground that the seniority of his constituency was not admitted.[3] The order in which the burghs appear in the roll of Parliament varied considerably, but the above list represents the customary order of precedence towards the close of the period.

Of the above 67 constituencies, 17, nearly one-quarter of the total, were not represented in the Scottish Parliament before 1603.[4] Their names, with the date of their first appearance, are as follows:

Whithorn (1641).
Annan (1612).
Lochmaben (1612).
Sanquhar (1621).
New Galloway (1633).[5]
Kilrenny (1612).
Fortrose (1661).[6]
Dornoch (1639).
Queensferry (1639).
Inveraray (1661).
Inverurie (1612).
Wick (1661).
Kirkwall (1670).
Bervie (1670).
Stranraer (1685).[7]
Campbeltown (1700).[8]
Cromarty (1661).[6]

[1] *A.P.S.* xi. 33.

[2] *Records of the Convention of Royal Burghs*, iii. 530.

[3] *Ibid.* iii. 568.

The attendance of the burghs, like that of the shires, at the Parliaments and Conventions of the period was exceedingly irregular. Of the burghs represented before 1603, out of 52 recorded rolls, Edinburgh was represented in 51. Stirling and Ayr made 50 appearances; Perth, Dundee, Aberdeen, St. Andrews, 49; Glasgow, Culross, 48; Linlithgow, Cupar, 47; Burntisland, 45; Dumfries, Jedburgh, Selkirk, 44; Haddington, Montrose, Dumbarton, 43; Dysart, Kirkcaldy, Kinghorn, Dunbar, 42; Peebles, 41; Kirkcudbright, Pittenweem, Lanark, 40; Inverkeithing, Irvine, Dunfermline, Elgin, Crail, 39; Wigton, 38; Anstruther Easter, Inverness, Renfrew, North Berwick,

[4] In the Parliament of 1597 the burghs represented numbered 8 (*A.P.S.* iv. 118).

[5] The charter of erection was dated 19th Nov., 1630. It was not ratified in Parliament until 28th June, 1633 (*A.P.S.* v. 101).

[6] The right of Fortrose and Cromarty to be represented as Royal Burghs was contested by Inverness in Parliament on 8th January, 1661. Their right to sit and vote in that Parliament was allowed, but without prejudice to Inverness (*A.P.S.* vii. 10). Rosemarkie and Fortrose had been incorporated together as a Royal Burgh since 14th November, 1592. At the Restoration Rosemarkie was in a ruined condition (*Ibid.* vii. 224).

[7] Stranraer, on 28th June, 1633, petitioned for a charter of erection as a Royal Burgh. The petition was opposed by Wigton, and the matter was remitted to the Secret Council (*A.P.S.* v. 53). On 11th February, 1634, the Council agreed to cite the Provost and Bailies of Wigton to witness the ratification of Stranraer's charter of erection. The grant of erection had been obtained from James VI. (*R.P.C.* second series, v. 594).

[8] The ratification of Campbeltown's charter of erection as a Royal Burgh was recorded on 11th November, 1700, the date on which its first representative took his seat (*A.P.S.* x. 204).

Lauder, 37 ; Brechin, Tain, Banff, 36 ; Arbroath, 35 ; Forfar, Rutherglen, 33 ; Forres, 32 ; Anstruther Wester, 31 ; Nairn, 29 ; Cullen, 28 ; Kintore, 27 ; Rothesay, 26 ; Dingwall, 21.

Anstruther Wester on 23rd August, 1672, was relieved of its duty to send representatives as a Royal Burgh on the ground of its impoverished condition,[1] but resumed its attendance in and after the Convention of 1689. Kilrenny, on 23rd August, 1672, was allowed to discontinue its attendance on the grounds of poverty, and that its privileges as a Royal Burgh lacked confirmation.[2] It resumed its attendance in and after the Convention of 1689. Cromarty, whose charter of erection had been ratified so recently as 1661, ceased to be a Royal Burgh in 1672,[3] and never resumed its attendance in the Scottish Parliament. The number of burgh constituencies at the Union was therefore 66.

While the roll of shires having representation in the Scottish Parliament was complete in 1681, that of the burghs was not complete until the inclusion of Campbeltown in 1700. On the other hand, not only was burgh representation in 1603 proportionally more complete than that of the shires,[4] but as an organised factor in the constitution of Parliament its antiquity was much more remote. Its continuous traditions

[1] *A.P.S.* viii. 78.

[2] *Ibid.* viii. 77 ; App. 16. The excision of its name from the roll of Parliament was ordered on 23rd April, 1685 (*Ibid.* viii. 455).

[3] *Ibid.* viii. 68, 564.

[4] Roughly, the proportional increase of shire and burgh representation between 1603 and 1707 stood as $\frac{1}{2}$ to $\frac{1}{4}$.

as a separate Estate of Parliament, however, were less ancient than has sometimes been stated. Cosmo Innes averred that from the reign of David I. (1124-1153) the burghs "took their place as recognised members of the body politic of a feudal kingdom," and that in and after Bruce's Parliament of 1326 "undoubtedly the representatives of the Burghs formed the Third Estate and an essential part of all Parliaments and General Councils."[1] It is true that the Parliament of 1326 was the first complete Parliament, containing lords and commons.[2] But as in the case of the English Third Estate, the date of its earliest summons cannot be regarded as that of the commencement of a continuous and recognised right to attend. "It is possible," as Mr. Rait remarks,[3] "that from the end of the fourteenth century the burgesses took their place in every parliament; but there are many instances between 1372 and 1455 in which we cannot trace their presence. From 1455 onwards they are found in every parliament and on the regular committees." It may be safely asserted that the Estate of the Burghs was a permanent and recognised factor of Parliament at the period in which the organisation of the Estate of the Barons was being attempted for the first time.

The comparatively early appearance of the Scottish burghs as a recognised constituent of Parliament was due in some degree to the fact that they had developed a separate representative institution of their own by the period in which they secured recognition as an

[1] *A.P.S.* i., Introd. 6, 8. [2] Rait, *op. cit.* 18.
[3] *Ibid.* 30.

Estate of the National Parliament. A Court of Four Burghs is mentioned in 1405. An Act of 1454 widened its constitution to include all Royal Burghs, and ordained it to meet annually. An Act of 1487 specified the scope of its interests, and imposed a fine on Royal Burghs that failed to attend. "Thus," Mr. Porritt concludes,[1] "before the end of the fifteenth century, and before the principle of Parliamentary representation was well established in the shires, the Convention of Burghs was thoroughly representative in character; it was in possession of power to secure its continuity, and to deal with almost any question which concerned the politics or economy of the royal burghs." To what extent the Convention of Royal Burghs continued to guide the interests of their Estate in Parliament will appear later. The present point is merely, that in their annual Convention the Royal Burghs had developed those representative traditions the lack of which so greatly retarded the organised representation of the shires. At the same time, from the point of view of the Crown, whose interest in the matter was largely financial, the necessity to get into touch with the wealthy communities of the kingdom, and the facilities to that end which their established Convention offered, explain the priority of the burghs over the shires in the date of their organisation as a Parliamentary Estate.

It must be clearly borne in mind that throughout the whole existence of the Scottish Parliament, and until the reform of Parliament in the nineteenth century, the burgh franchise was confined exclusively to the Royal

[1] *Op. cit.* ii. 43.

Burghs—burghs, that is, which had received or were deemed to have received a royal charter of erection. The effect of this restriction was to exclude the ordinary Burghs of Barony or Regality from representation in Parliament. The qualification for the representation of the burghs was in fact identical with that of the Nobility and Barons of the shires. All three were either directly or vicariously representative of the freeholders of the Crown. In other words, throughout its whole existence the Scottish Parliament remained rigidly feudal in its composition.

While the Royal or Free Burghs alone possessed the right to be represented in the Scottish Parliament, it is important to remember that they alone shared the financial burdens which attendance in Parliament entailed. In England, whether a borough was represented or not, it was equally liable to contribute to the national exchequer. But in Scotland that was not the case. One-sixth of the Cess was the proportion which the Third Estate was required to bear; but only the Royal Burghs were liable to the providing of it.[1] It follows, therefore, that unless the status of a Royal Burgh was arbitrarily imposed, which was by no means the case, the privileges which the position conveyed outweighed its liabilities. They did do so, in fact—at least down to 1672. For the burgesses of the Royal or Free Burghs enjoyed a practical monopoly of the trade of the kingdom. That monopoly, conveyed in Acts of 1466, 1503, and 1592, was amply confirmed in the Act of 1633, which declared that "the said liberties and privileges mentioned in the said acts are only

[1] Porritt, ii. 67.

proper and competent to the free burghs royal that have vote in parliament and bear burden with the rest of the burghs, and to no others, prohibiting and discharging all persons who are not burgesses of the said free royal burghs, and bear not burden with the rest, of all using and exercising of the liberties and privileges forsaid in all time coming." Until 1672 these exclusive privileges continued. In that year an Act of Parliament seriously curtailed the monopoly which the Act of 1633 had confirmed. The Act of 1672 was protested upon the ground, that while the Royal and Free Burghs were still liable to their proportion of the Public Cess, Burghs of Barony and Regality were exempt, though now admitted to the privileges of the former. The Act of 1672, in fact, was directly responsible for the tendency, exemplified in the case of Cromarty, Kilrenny, and Anstruther Wester, for Royal Burghs to seek release from the obligations of their position so soon as the trade monopoly which had rendered them tolerable was withdrawn.[1]

Jealously as the Royal Burghs contested the Act of 1672, with equal jealousy they had in the past viewed any addition to their privileged rank. If Wigton opposed Stranraer's erection into a Royal Burgh, and Inverness Fortrose's elevation, as has been remarked, a reason is at once patent why the ranks of the Royal Burghs, and therefore of Parliamentary constituencies, remained exclusive and comparatively unexpanding to the last days of the Scottish Parliament's existence. It was due not so much to the fact that, as in the

[1] On the whole subject, see *Miscellany of the Scottish Burgh Records Society* (1881), xxv. *et seq.*

case of the shires, seats in Parliament were not prized until the last quarter of the seventeenth century, but rather to the fact that the Royal Burghs represented a close commercial oligarchy which was averse to widen its representation in Parliament because its commercial interests were identical with its Parliamentary monopoly.[1]

If the number of burgh constituencies was limited and exclusive, the franchise upon which burgh Commissioners to Parliament were elected was equally so. It has been suggested that originally it was competent for every burgess of a Free or Royal Burgh to attend Parliament personally if he chose. Mr. Rait[2] instances the Parliament of 1367, which was so numerously attended that the harvest was endangered by lack of workers, a fact which induced the majority to return to their homes, leaving behind them a Committee delegated to act for them. Mr. Rait suggests that "the appointment of committees formed really the germ of the elective idea, by necessitating a choice after Parliament met; and that, in course of time, it became apparent that the election might as well be made at home as in Edinburgh or Scone." The conclusion is strengthened when it is remembered that elected

[1] Mr. Porritt, *op. cit.*, 67, commenting upon the few and late instances of Burghs of Regality being elevated to Royal Burghs, misses the point, I think, when he attributes it merely to political apathy. Not until the Act of 1672 was there a strong inducement to Burghs of Regality to undertake the obligations consequent upon Parliamentary attendance. After 1672, equally, it was no longer to the interest of the existing Royal Burghs to oppose an increase of tax-bearing constituencies.

[2] *Op. cit.* 31.

delegates only slowly displaced the attendance of the general body of county freeholders. But so soon as the method of appointing delegate Commissioners to Parliament arose, the electors would naturally be those who otherwise would themselves have enjoyed the right of personal attendance. In the absence of any specific definition of the qualifications for the burgh franchise, the practice of the county constituencies may be taken as a guide. In the shires, as has been pointed out, a Commissioner to Parliament was required to possess the qualifications which would entitle him to take part in an election for that office. Similarly, it may be inferred that as the burghs accepted as their representatives none but indwelling burgesses or trafficking merchants, the same qualification attached to those who elected them. The holders of the franchise, in fact, would be the freemen of the burgh, the resident householders, contributing to the charge of the burgh, and liable to watch and ward—a franchise which, as Mr. Porritt remarks,[1] would place the Scottish burgh franchise upon the level of English practice in the same period.

Whatever was the nature of the early burgh franchise, it may be described as popular and liberal compared with that which replaced it in 1469 and regulated the burgh constituencies for over three hundred years. Previous to 1469 the burgh magistrates were elected by the "whole community" of the burgh, as appears from the oldest extant record of a burgh election, that of Aberdeen in 1398.[2] By an Act of 1469, however, on

[1] *Op. cit.* ii. 61.

[2] *Miscell. Burgh Records Society*, lxiv.

the plea of the "great trouble and contention yearly for the chosing of the same through multitude and clamour of common simple persons," it was ordained, that upon the expiry of the term of office of existing magistrates and Councils in burghs, and thereafter, the new Town Councils should be elected by their predecessor, and that both bodies should combine to elect the officers of the burgh.[1] Later Acts, such as those of 1503 and 1535, restricted the magistrates and officials of the burghs to "they that are honest and substantial burgesses, merchants and indwellers of the said burgh," and the former Act ordered the municipal elections to take place annually.[2] These Acts, which constituted the municipal executive a narrow oligarchy, also regulated the annual elections of burgh Commissioners to Parliament. Like other burgh officials after 1469, they were no longer the freely elected representatives of the "whole community" of burgesses, but the nominees of the retiring and incoming Councils in joint session. Their qualifications, as will be remarked later, were precisely those which the Acts of 1503 and 1535 insisted upon for the other annually-elected officials of the burgh.

An investigation conducted by the Convention of Royal Burghs in 1708 proves that no unanimity then existed in the manner in which the annual municipal elections were conducted.[3] It also strikingly illustrates the very restricted electorate upon which the representatives of the burghs in the Scottish

[1] See Appendix III.

[2] *Miscell. Burgh Records Society*, lxvi.

[3] See *Ibid.* 159-295.

Parliament were chosen. The numerical strength of the burgh Councils in 1708 varied considerably, from 7 to 33. Only two exceeded 30. Forty-four were below 20. In the 66 Royal Burghs the united Councils in any one year represented a constituency of less than 2000 votes. Assuming that the Act of 1469 was generally observed, that the retiring and incoming Councils united to elect their Commissioners to Parliament, and that the members of the old were entirely different from the members of the new Council, the total burgh electorate would be under 4000. It may be safely asserted that it was far below that figure.

As to the qualifications demanded of the Commissioners to Parliament from the burghs, it has been stated already that the Acts of 1503 and 1535 restricted the officials of the burghs to trafficking merchants and indwellers. An Act of the Convention of Royal Burghs in 1574 specifically demanded that qualification in regard to burgh Commissioners to Parliament.[1] It has been noticed in the case of the shires that the residential qualification for Commissioners did not survive the Restoration. In the burghs it also tended to lapse, though it continued operative for a longer period. In 1678 the commission of the representative of New Galloway was objected to on the ground that he was neither a trafficking merchant nor an indweller of the burgh. The objection was sustained and the Commissioner lost his seat.[2] In 1681 the Commissioners for North Berwick, Selkirk, and Inverkeithing were all unseated as not being resident trafficking merchants of the burghs they represented.[3] A similar objection

[1] See Appendix vi. [2] *A.P.S.* viii. 217. [3] *Ibid.* 237.

was urged ineffectually against the Commissioner for Stranraer in 1690,[1] and thereafter the Act of Convention of 1574 may be said to have fallen into desuetude.

The reasons which contributed to the non-observance of the Burgh Convention Act of 1574 are not difficult to divine. It is clear that the maintenance of the rule depended, first, upon the absence of any disposition on the part of persons who were not burgesses or trafficking merchants to obtain burgh seats in Parliament; and secondly, upon the willingness of Parliament itself to observe a rule imposed by other authority than its own. In regard to the first, it has been pointed out already in the case of the shires, that after the Restoration there are indications for the first time of a desire on the part of persons legally disqualified to find seats in Parliament. In and after 1678, as is shewn by the examples already given, a similar inroad upon the burghs began. In the case of the shires Parliament needed only to amend its own statutes. In regard to the burghs the Burgh Act of 1574 had merely the sanction of traditional usage. So long as no disposition was shewn on the part of those whom that Act excluded to seek seats in Parliament, the sanction accorded to it was in no danger of being withdrawn. But the attempted violation of the Act in and after 1678 put it for the first time into conflict with practice. On that ground a decision by the superior authority was imperative.[2] It

[1] *A.P.S.* ix., Appendix 139.

[2] As bearing out the reason advanced for the complacence shewn to the Act of 1574 it may be noticed that a proposal of the Convention of Royal Burghs to prohibit "common clerks within burgh" from acting as Commissioners to Parliament, was denounced and forbidden

must be noticed also that the Act of 1574 was at the end of the eighteenth century no longer congruous to the control which Parliament had established over its economy in the interval. As will be shewn in its place, the House had secured to itself determination of the qualifications of those who sought its membership. While, therefore, it was no longer in the interests of the public service to maintain the Burgh Act of 1574, so was it held incongruous that any authority other than that of Parliament should regulate its membership. By no formal enactment, accordingly, but by the practice of the House acting through its Committee for Controverted Elections, the Burgh Act of 1574 ceased to be operative.[1]

Like the shires, the Royal Burghs originally were each empowered to send two Commissioners to Parliament. It is doubtful whether the right was ever taken advantage of fully and generally. In the early Parliaments and Conventions of the seventeenth century, down to and including the Parliament of May, 1617, neither was the representation of the burghs uniform, nor were the burghs which sent two Members numerous. In the Conventions of 1608 and 1609 all the

by the Council, which declared the Convention to have "usurped upon them that royal power and princely prerogative only competent to our sacred Sovereign and his Estates of Parliament" (*R.P.C.* vii. 224).

[1] Mr. Porritt observes (ii. 33) that "the proportion of these non-resident commissioners from burghs was not nearly so large as the proportion of non-resident members for the English boroughs all through the seventeenth century; and at no time in the history of the Scotch Parliament were candidates for membership so proportionately numerous as they were for the English Parliament between the Restoration and the Revolution of 1688."

burghs present sent one Member only. In the Parliament of 1612, in which forty-six burghs were represented, forty-one sent each one Member. In the Convention of March, 1617, of the eighteen burghs present only one (Edinburgh) sent two Members. In the Parliament of May, 1617, even the King's presence induced only eighteen out of the forty-five burghs represented to send more than one Member. It is clear that, whether upon the score of expense, or because in the existing method of Parliamentary procedure the voting power of the burghs was immaterial, two-Member burgh constituencies were few in number. For that reason, and in order to establish uniformity of representation, the Convention of Royal Burghs in 1619 ordained[1] that henceforth only one Commissioner should be sent to Parliament from each Royal Burgh. The single exception to the rule was Edinburgh, which was allowed to send two Members, and did so almost invariably to 1707.

The Act of Convention of 1619 is no isolated example of the interest which the Convention of Royal Burghs displayed in the representation of their Estate in Parliament. On 11th August, 1607, the Convention directed its agent to instruct the Royal Burghs to send qualified representatives to the Convention summoned for May, 1608.[2] The injunction was obeyed by only 12 burghs. In July, 1608, therefore, the Convention passed an Act declaring the irregular attendance of Burgh Commissioners in Parliament highly prejudical to the interests of their Estate. They

[1] *A.P.S.* i., Introd. 11.

[2] *Records of the Convention of Royal Burghs*, ii. 247.

were instructed to present themselves two days before the meeting of Parliament and not to absent themselves until Parliament was formally closed.[1] The Act of 1619 marked a further endeavour to make the representation of the burghs in Parliament complete and effective. It remained operative till the Union, when the maximum strength of the burghs numbered sixty-seven votes. In the United Parliament that number was reduced to fifteen.

The very uniformity of the burgh franchise in Scotland, as Mr. Porritt remarks,[2] gives it less historical interest than attaches to borough representation in the English Parliament. The variety of borough franchises in England, local protests against narrow franchises, aristocratic control over the boroughs, are absent from the history of Scottish burgh representation. "The economy and life of the English municipalities," to quote Mr. Porritt, "were completely revolutionised by the fact that from the closing years of the sixteenth century until the first quarter of the nineteenth there were outsiders who desired either to represent them in the House of Commons, or to control the boroughs in the choice of their representatives." But in Scotland "the movement of the landed classes to obtain control of the Parliamentary representation in the burghs . . . did not begin until the closing years of the reign of Charles II. It had then no success, and was attended with none until the Scottish Parliament was nearing its end." And except for the familiar and brief experiment of James VII.'s reign, the Scottish burghs were secure from any persistent effort to involve them in the

[1] *Conv. of Royal Burghs*, 262. [2] *Op. cit.* ii. 53.

turmoil of party politics.[1] In spite of the narrowness of the burgh franchise, and of the exclusiveness of the burgh constituencies, it must be concluded that the absence of extraneous influences upon their municipal politics, and the invaluable support and counsel they received from their own vigilant Convention, rendered them most efficient guardians of the interests of their Estate in Parliament.

Such were the constituent elements of the Scottish Parliament when the seventeenth century opened. Three of them, the Officers of State, the Clergy, and the Nobility, were already possessed of a Parliamentary pedigree, though the century, in one case temporarily and in the other permanently, eliminated two of the groups from the constitution of Parliament (Officers of State, and Clergy). But the result of the foregoing survey is to establish the conclusion that Parliament hardly attained the position of a representative Chamber until within the last century of its existence. Both shires and burghs had a permissive right of varying antiquity to be present. The tardiness of the former to take advantage of the privilege has been pointed out. In the case of the burghs a similar but less marked apathy is apparent. Until 1612 neither the shires nor the burghs were regularly or adequately represented,[2] and up to that date the single Chamber which formed the Scottish Parliament approximated rather to the English House of Lords than to a compound House of Lords and Commons. Its tardy but rapid development between 1603 and 1707 is the more remarkable.

[1] Porritt, ii. 56.

[2] *Ibid.* ii. 81.

PRIVILEGED ATTENDERS OF PARLIAMENT.

A CHARACTERISTIC of the Scottish Parliament was the presence in it of persons who were members of neither one nor other of the Estates, had no right to speak or vote, and yet *ex officio* were entitled to a seat in the House. The eldest sons of the Nobility, who lost and regained the right of attendance in the seventeenth century,[1] belonged to this class of privileged frequenters. The successive Orders of the House from 1641 onwards also indicate the presence in Parliament of official persons who were admitted as the representatives of Public Departments from whom the House might desire information and advice.

The Orders of the House of July, 1641,[2] while ordaining "that none be admitted to remain in the Parliament House with the Estates, but only the Members of Parliament," made an exception in the case of the Clerk of the General Assembly of the Church, and of the Agent of the Church, who were allotted seats alongside the Clerks of Parliament. The contest with the Crown in which the nation was then engaged, and the desirability of maintaining close touch with the

[1] See above, p. 18. [2] See Appendix xvii.

General Assembly, explain the privilege accorded to these two officials. The Orders prohibited any but Members of Parliament from carrying weapons within the House, a prohibition in which the officials of the House (other than the Constable and the Marischal and their officers) were included. The Orders also required that all "who are permitted to remain in the Parliament House and are not Members of Parliament shall keep their places appointed and be uncovered and silent, except they be desired to speak." Clearly privileged attenders might address the House if desired to do so.

After the Restoration the Orders of 1641 were revised. On 13th May, 1662, an "Act for settling the Orders in the Parliament House" was passed.[1] It readmitted the eldest sons and apparent heirs male of Noblemen, and also conferred the right of attendance upon Senators of the College of Justice, the Knight Marischal, the Ushers, the Lyon King-at-Arms, the Justices Depute, and the King's Agent. Seats were provided for the eldest sons of Noblemen upon "the lower benches of the Throne," the steps of which were appropriated to the Officers of State. The Judges were accommodated "at a table which is to stand betwixt the Throne and the Commissioners from Burghs." The Clerks' table, at which the Clerk of Assembly and Agent of the Church had sat in 1641, was now closed to them by the order "that none presume to sit at the Clerk's table save the Clerk Register and the Deputes and servants to be employed by him in the service of the House." All other non-Members were relegated to "the far end of the seats

[1] See Appendix xxi.

appointed for the Commissioners from Shires and Burghs." In 1685 the Clerks of Council, the Clerk of the Justice Court, and the Sheriffs-depute of Edinburghshire were admitted.[1]

On 21st April, 1693, Parliament permitted the Commander-in-Chief, the Captain of the Guard, the Judge of the Admiralty, the Keeper of the Signet under the Secretary of State, and the King's Chaplain, to stay in the House during the sittings of the Parliament.[2] On 19th July, 1698, the House included among its privileged attenders the Director of the Chancery and his deputy, the Clerks of Exchequer, the Keeper and Under-Keeper of the Great Seal.[3] On 24th May, 1700, the deputies of the Constable received permission to attend.[4] Finally, on 6th July, 1705, the House included among its privileged attenders the Clerk to the General Register of Sasines, the Clerk to the Register of Hornings, and the Queen's Solicitors.[5]

It is abundantly clear that throughout the last century of its existence Parliament summoned as extraordinary Members such officials as the nature of public business made it advisable to maintain touch with. The extraordinary Members were naturally debarred from voting, but if the House desired it, they could certainly address it. The fact indicates the remoteness of the Scottish Parliament from that jealous regard to its representative composition which the English Parliament preserved as a time-sanctioned tradition.

[1] *A.P.S.* viii. 458.
[2] See Appendix xxxi.
[3] *A.P.S.* x. 121.
[4] *Ibid.* 192.
[5] *Ibid.* xi. 215.

In the light of it, the presence of nominated Officers of State suggests nothing of incongruity. As to the latter, it is at least probable that they had originally gained admission to Parliament upon the same basis as those whom the Orders of 1641 and thereafter admitted; that, like them, they had neither "voice" nor vote in Parliament originally; but that the frequent exercise of a permissive right to address the House became converted into a constitutional right to do so, and that the right to vote followed logically upon the right to debate. This, however, is conjecture.

Of no constitutional importance, but interesting as a further illustration of the non-exclusiveness which distinguished the Scottish Parliament, is the fact that certain of its officials were allowed the attendance of their servitors within the House. The Orders of 1641 allowed to the Deputy Clerks of the House one servant each.[1] The Orders of 1662[2] permitted the Chancellor to be attended by one servant, the Constable and Marischal by two each, and the Advocate by one. The Orders of 1693 made similar provision.[3]

[1] See Appendix xvii. [2] See Appendix xxi.

[3] See Appendix xxxi.

OFFICIALS OF THE HOUSE.

The President. As early as the Act of 1427-8 [1] there is mention of "the common speaker of the Parliament," whom the Act enjoined the Commissioners of Shires to elect, and whose office was to "propone all and sundry needs and causes pertaining to the commons in the Parliament or General Council." The date and the name alike suggest the inspiration of James I.'s English exile. But it is in the last degree improbable that the Scottish Speaker was intended to exercise any function analogous to that of President. The mere fact that he was the nominee of but a section of the House precludes the idea. A passage in an Act of the Convention of Royal Burghs throws light upon his real functions. In the Act of 1574 [2] every burgh Commissioner was declared to be entitled to record his vote "according to his conscience," "excepting it be concluded before by the whole that one shall speak and vote for all; and if it be so concluded, that an act be made of the common consent of so many as shall be present for the time for his warrant that shall be chosen to vote for the whole as said is." It reasonably may be inferred that the "speaker" of the shires fulfilled an identical duty for his Estate.

[1] See Appendix I. [2] See Appendix VI.

Whatever were the duties of the Speaker of the Act of 1427, it may be affirmed certainly that he was never intended to, and never did, develop into a President of Parliament. As might be inferred rather, in a Chamber which was both House of Lords and House of Commons, the Presidentship was vested in the Lord Chancellor, at first upon the nomination of the Crown,[1] and ultimately *ex officio*. Until the civil commotion of Charles I.'s reign the Chancellor continued to act as President or Praeses. It was to be expected, however, in a century in which Parliament so rapidly gained control over its procedure, that the irresponsible position occupied by its President would not pass without challenge. In 1641 the House enacted that henceforth its President should be elected in each Parliament; that no person should act as President in the Parliament succeeding that in which he had been elected, unless by renewed election he had been continued in that office; but that the President elected in one Parliament should preside over its successor until the new House was constituted and its Members in a position to elect a new Praeses.[2]

It may be observed that the practice established for twenty years by the Act of 1641 differed in an essential particular from that of the English Parliament. In the latter the Speaker's authority terminated with the dissolution of the Parliament which elected him. In its successor, pending the election or re-election of a

[1] It may be noticed that in 1693, during the absence of the Chancellor, the Commissioner as representing the Crown nominated the person to preside in Parliament (*A.P.S.* ix. 323).

[2] *A.P.S.* v. 419.

Speaker, the Clerk of the House directed, and still directs, the initial procedure. It is not difficult to conjecture the reasons for the method which the Act of 1641 adopted. For since the President of one Parliament was legally constituted the President of its successor until the House was "ordered," the door was closed against the Crown's customary nomination of that official upon the meeting of the Estates.

An elected President did not survive the Restoration. On the opening day of the first Parliament of Charles II. (1st January, 1661), the Chancellor was restored to his traditional position, and was ordained to act as President in all time coming.[1] He did so until the Union.[2]

Prior to the seventeenth century the duties of the President must have been of a simple and routine character. The development of Parliamentary procedure in that century, however, added to them considerably, since it fell to the President to control the House in debate.[3] And beyond his duties as President, briefly interrupted from 1641 to 1661, there attached to the Chancellor an important function in the ritual of Parliament, the fulfilment of which preserved the name of his office in the rolls of Parliament even in the period during which the other Officers of State were eliminated. All Acts of Parliament which had been passed by the Estates were required to bear upon the engrossed copy of them the signature of

[1] *A.P.S.* vii. 7.

[2] It may be noticed that while acting as President, the Chancellor retained the right to record his vote (*Ibid.* xi. 329).

[3] The Orders of 1641 are the first to hint at the President in this new character. See Appendix xvii.

the Chancellor, with the additional phrase *In Presentia Dominorum Parliamenti*, or the initial letters *I.P.D.P.* merely. The Act signed by the Chancellor was, when called for, carried to the High Commissioner, its title was read out by the Clerk Register, and thereupon it received the royal assent.[1]

Clerk of Parliament. By right of office the Lord Clerk Register was Clerk of Parliament, as also of the Privy Council and of the Courts of Judicature.[2] The Minutes of Parliament were in his charge,[3] and in the earlier part of the century at least, all matters to be propounded in Parliament were required to be sent to him before the meeting of the Estates for examination and presentation "in a book to the Lords of Articles in the Parliament time, and all impertinent, senseless and improper matters rejected."[4] Before the Parliament of 1621 a small Committee of the Privy Council was appointed to examine and revise the bills, etc., prepared by the Clerk Register for submission to Parliament.[5] The Clerk Register, however, attended Parliament not as the servant of the House but generally as one of the Officers of State.[6] That privilege

[1] *Marchmont Papers*, iii. 324.

[2] Cosmo Innes, *Scotch Legal Antiquities*, 76.

[3] *A.P.S.* v. 269.

[4] *R.P.C.* xi. 109. A similar duty was imposed on the Clerk Register in the matter of petitions to Parliament in an Order of the Estates of 2nd June, 1690 (*A.P.S.* ix. 132).

[5] *R.P.C.* xii. 475.

[6] In all the Parliaments 1603-1607 in which the Officers of State were present, the Clerk Register is mentioned among them on 24 occasions.

he lost upon the elimination of the Officers of State from the roll of Parliament in 1640. The duty of preparing "matters that are to be handled and treated of in Parliament" was withdrawn from him.[1] In the Orders of the House framed in 1641 no part even of the clerical work of the House was allotted to him.[2] Not until the Parliament of 1644 was he allotted a seat at the Clerks' Table.[3] At the Restoration his ancient privileges were restored.[4]

By right and privilege the Clerks of the Court of Session, six in number, acted as the ordinary Clerks of Parliament.[5] The Orders of 1641, however, declared that "the three depute clerks of Parliament are the only number of the clerks allowed by the Estates, with one servant to each one of them."[6] In the Orders of 1662 their number is not specified. They are merely termed "the Clerk of Register's deputes."[7] In the Convention of 1689 the Clerks of Session were "continued" as Clerks of the House,[8] and in an Act of 1695 they are denominated "the Six Clerks of Parliament."[9]

The Constable and Marischal. The Scottish Parliament contained no official whose duties exactly resembled those of the Sergeant-at-Arms in the English House of Commons. But the Constable and Earl Marischal were traditionally vested with powers which

[1] *A.P.S.* v. 270.
[2] See Appendix xvii.
[3] *A.P.S.* vi. pt. i. 97.
[4] See Appendix xxi.
[5] *A.P.S.* ix. 6.
[6] See Appendix xvii.
[7] See Appendix xxi.
[8] *A.P.S.* ix. 6.
[9] See Appendix xxxii.

preserved the House in session from intrusion, and enforced, if necessary, its internal discipline. The somewhat overlapping duties of the two officials was the cause of constant protests and counter-protests by one or both of them throughout the period. In July, 1606, an Act of Privy Council declared that "the keeping of the keys of the Parliament House and the guarding of the outer bar and gates thereof properly appertains to the Lord Constable as a part and privilege of his office; and that the keeping and guarding of the inner bar only appertaineth to the Marischal."[1] The Act of Council of 1606 was confirmed more amply in 1633.[2] In 1641 the Estates delivered the following judgment: "That the Lord Constable has the charge of all the outer guards and the keys of all the outmost doors properly belonging to him, and is to have only six men within the House for opening and guarding the great entry after the guards are set, and likewise the keys and charge of the whole house from the coming out of the Parliament till the next day the guards be set and the Parliament or Committees enter into the House. After which time the Lord Marischal has the charge within the House for ordering and guarding of the same. And to this effect shall likewise have keys of all the inner rooms, which are only proper for him to make use of at his pleasure during the sitting of the Parliament or Committees within the House."[3] The number of guards employed by the Marischal within the House had also been the subject of protest by the Constable, seemingly with cause; for in July, 1621,

[1] *R.P.C.* vii. 221. [2] *Ibid.* second series, v. 117.
[3] *A.P.S.* v. 647.

the Council desired the Marischal not to bring "a confused number of persons as a guard within the House to disturb the House."[1] By the Orders of 1641[2] the Constable and Marischal and their servants were prohibited from carrying their "ordinary arms" except on "the riding days of the Parliament, that is the first and last days thereof." Under the Orders of 1662[3] the Knight Marischal[4] and the Macers were "upon their peril" required to expel from the House any unauthorised persons, to fine them £1 sterling for the first offence, and to imprison them for the second.

In spite of reiterated decisions the relative duties of the Constable and Marischal continued vague in practice to the end of the period. On 30th June, 1703, the Constable was instructed to direct the officer of his guard to bring before the Estates two Members who had been in custody for "unbecoming expressions and other undutiful behaviour in the House." The Marischal, at the next meeting of the House, protested that "he had the jurisdiction as to delinquencies committed within the doors of the House conform to his ancient rights."[5] But a few weeks later the Constable again had in custody a Member who,

[1] *R.P.C.* xii. 548.

[2] See Appendix xvii.

[3] See Appendix xxi. The injunction was repeated in the Orders of 1693. See Appendix xxxi.

[4] This official does not appear in the Orders of 1641. In those of 1693 he was among the persons privileged to attend Parliament.

[5] *A.P.S.* xi 65, 66.

upon the complaint of the Lord Advocate, had been committed for unbecoming expressions towards the High Commissioner.[1]

The Macers. Closely associated with the Marischal in maintaining the internal discipline of the House were the Macers of Parliament. Like the Clerks of Parliament, the Macers were also officials of the Court of Session, and were four in number.[2] In the Act of 1587 "Anent the Parliament,"[3] they are declared liable to lose "one year's fee" for failure to perform their duties, and to deprivation upon a repetition of their offence. But in the Orders of 1641, framed at a time when the House was settling into new quarters, the Macers are not mentioned. That their exclusion was intentional appears from the fact that they attempted to perform their customary duties in Parliament shortly after the new Orders were put into operation, but were excluded by the Marischal's orders.[4] On 11th July, 1643, however, the collection of fines from absent Members was entrusted to them,[5] and on 1st June, 1650, they were expressly ordered to guard the House against the intrusion of strangers, and to clear such persons from the House after the rolls were called at each diet, under pain of imprisonment or deposition.[6]

[1] *A.P.S.* xi. 74. It is interesting to notice that the Constable, at any rate occasionally, fulfilled a duty more familiar in the practice of the English Parliament. Before the meeting of the Estates in 1600 the Constable "viewed the rooms under and above the Parliament House" (*Maitland Club Miscellany*, iii. pt. i. 121).

[2] *A.P.S.* x. 135.

[3] See Appendix VIII.

[4] *A.P.S.* v. 644.

[5] *Ibid.* vi. pt. i. 12.

[6] *Ibid.* vi. pt. ii. 571. See also Appendices XXI., XXXI.

As to their emoluments, the four Macers, in August, 1698, petitioned for and were granted twelve shillings "for every first [reading of an] Act."[1]

A *Sergeant* of Parliament had been attached to the service of the House since 1524. His duties are indicated in the fact that in 1641 the offices of Sergeant-at-Arms and Macer combined were conferred upon Colonel Leslie of Myres.[2] Of greater antiquity was the *Dempster* or Judicator. His office dated from before 1445, and, as his name suggests, his duty was to pronounce the judicial dooms or decrees of Parliament. In the earlier period of Parliament's history its *acta* or legislative measures also are described as promulgated "per ora Judicatoris."[3]

If one adds to the foregoing the *Heralds*, *Pursuivants*, and *Trumpeters* mentioned in the Act of 1587,[4] who took part in the public ceremonials of the House, and the *Ushers*,[5] the list of officials in the service of the Estates may be held to be complete.

Certain of the greater Officers of State also had a traditional *rôle* in the public procedure of the House. The Chancellor and Clerk Register have been mentioned already. The "fencing," that is, the formal constituting of the Parliament, was performed by the Clerk Register and the Lyon King-at-Arms, or his

[1] *A.P.S.* x. 135.

[2] *Ibid.* v. 513.

[3] See *Ibid.* xii. "Contents," *passim.*

[4] See Appendix VIII.

[5] The office was claimed by Langton of Cockburn in 1621 (*R.P.C.* xii. 548). The "ushing" of the House was the preliminary to the commencement of its public business—in other words, the House was cleared of strangers and the doors were closed.

depute.[1] The Lyon was also responsible, with the Clerk Register, for marshalling the "riding" of Parliament.[2]

[1] See *A.P.S.* ix. 99. It has been stated already that in 1662 the Lyon King was admitted as a privileged attender of Parliament.

[2] Sir James Balfour Paul, *Heraldry in relation to Scottish History and Art*, 103.

THE PARLIAMENT HOUSE.

When the Union of 1707 took place the Scottish Parliament, as has been pointed out, had attained comparatively recently completeness in its composition. Unlike the Parliament into which it was merged in that particular, it was equally unlike it in the absence of long-established traditions attaching to the place of its meeting. "The Scotch Parliament," as Mr. Porritt observes,[1] "from the time when the elected element was numerically preponderant, never met for a full century in the same building." In the earlier part of the seventeenth century Parliament was housed, with the Courts of Session and Justiciary, in the old Tolbooth, which stood near the north-west corner of Parliament Square, or, as it was called in the seventeenth century, Parliament Close.[2] The accommodation of the old Tolbooth was certainly inconvenient, and a sense of its incongruity may have been quickened by James VI.'s observation of his English Parliament's home at Westminster. Under a threat to summon

[1] *Op. cit.* ii. 100.

[2] The site of the old Tolbooth, which was removed in 1817, is marked by the figure of a heart in the pavement near the north-west corner of St. Giles' Church.

Parliament elsewhere, the citizens of Edinburgh were induced to provide a more fitting habitation. On 20th March, 1632, the magistrates of the city announced their willingness to build "a Parliament House and Council House and Session House," and received the Council's thanks.[1] The new building was occupied for the first time at the meeting of the Estates in 1641, and the event seems to have at length stimulated the House to frame orders, both for the seating and attendance of members, and for the conduct of debate. In June, 1649, the House ordered the magistrates of Edinburgh "to cause plant a garden at the south end of the Parliament House and to cause wall it about."[2] During the unusually full attendances of Anne's reign the seating accommodation of the new building seems to have proved inadequate.[3] But it outlived the institution for which it had been erected, and which it had housed for over half-a-century.

The great Hall of Parliament which the House occupied from 1641 to 1707, "a magnificent room 120 feet long, over 40 feet wide, and 40 feet high, with a very fine oak hammer-beam roof,"[4] has been sanctified since by other associations. The successive Orders of the House in the seventeenth century enable one to picture it while it still served its original purpose. Those of 1641 directed it to be "hung and the cloth

[1] *R.P.C.* second series, iv. 448.

[2] *A.P.S.* vi. pt. ii. 444.

[3] On 24th June, 1703, the Earl Marischal and other Members were instructed to "consider how the house may best be fitted for the accommodation of the members" (*Ibid.* xi. 64).

[4] *Ordnance Gazetteer of Scotland*, 492.

of state put up." Morning and evening prayers were held in it, and a minister was appointed every Sabbath day during the Parliament to preach to the Members.[1] Morning sermon was over by 9 a.m., when "a great bell" rang "a competent space" to announce the opening of the morning session. At noon "a little bell in the Parliament House" announced the mid-day adjournment. At three, except on Saturdays, the House resumed, summoned again by "the great bell," and at six the little bell in the House signalled the conclusion of the day's work. The House did not meet on Mondays. At each session, morning and afternoon, the roll was called and absent Members were fined. Those who were present sat in the order in which they were called in the rolls, and the seats of those who were absent were directed to "remain void."[2]

The Orders of 1662 more minutely prescribe the positions allotted to Members, officials, and privileged attenders. At the south end of the Chamber, under the great window, stood the Throne. Upon the steps of it the Officers of State were accommodated. Below them, "on the lower Benches of the Throne," the re-admitted eldest sons of the Nobility sat. To the right and left of the Throne "Benches" were reserved for the Nobility and the Clergy. At some distance down

[1] The pulpit used in the House is preserved in the Museum of the Society of Antiquaries (*Ordnance Gazeteer*, 492).

[2] See Appendix xvii. On 1st June, 1650, the House ordered each Estate to appoint one of their number each week to see that the Orders were carried out (*A.P.S.* vi. pt. ii. 571). In the Orders of 1662 and 1693 the Knight Marshal and the Macers appear to have been held directly responsible. See Appendices xxi., xxxi.

the Chamber the Lords of Session sat at a table allotted to them. Beyond them, at the end of the Hall remote from the Throne, the representatives of the shires and burghs were accommodated with "forms." Privileged persons admitted to Parliament were relegated to "the far end of the seats appointed for the Commissioners from Shires and Burghs."[1]

By 1693 the Clergy had ceased to be an Estate of Parliament. The Orders of the House in that year therefore present the final arrangements for the accommodation of its Members. As in 1662 the Officers of State were directed to sit upon the steps, and Noblemen's eldest sons upon the "lower Bench," of the Throne. The benches, which in 1662 had been shared between the Clergy and Nobility, were now assigned to the latter. The Lords of Session, the Commissioners of Shires and Burghs, and privileged attenders of Parliament, retained the positions allotted to them in 1662. The Clerks' Table, exclusively reserved for the Clerk Register and his deputes, stood in front of and below the Throne.[2]

[1] See Appendix xxi. The draft of the Orders of 1641 gives more minute particulars. It appears from it that the seats of the Nobility were advanced from their old position in the "gavel and the side walls of the House" to a nearer position on each side of the Throne, the Earls being seated on the east, and the Lords on the west, side of the Throne. The seats of the Barons of Shires were on the same side and below those of the Earls. Those of the burgh Members were below the Lords on the west side. The forms for the Barons and Burgesses could each accommodate twelve Members. Between the Throne and the Clerks' Table a vacant space was marked by a bar, at which persons cited before the House took their stand. See *A.P.S.* v. 625.

[2] See Appendix xxxi.

The fact that each of the Estates was penned, as it were, into its particular enclosure, rendered it impossible for the Scottish Parliament to assume the party divisions of the English Houses. Under the Orders of 1641 not only did each Estate sit apart from its fellows, but each member of each Estate had his own allotted seat, which was left vacant if he chanced to be absent. It must be observed also that the House, a strict task-master in the matter of attendance, allowed its Members little liberty of movement during the hours of actual session. A sudden crisis, unless it had been foreseen, found the Members unable, by hurried converse in the House or by discussions in the lobbies, to plan concerted action. The Orders of 1662 expressly enjoined: "That after the House is set none offer to stand or walk or keep private discourses one with another, that none go forth except in cases of necessity, and that they forthwith return," and that "no Member of Parliament leave the House until the meeting be by his Majesty or his Commissioner dissolved."[1]

In one particular the Orders of 1641 were subjected to considerable alteration in the course of the century. It is clear that they were framed under the belief that the House in full session twice daily (except Saturdays and Mondays) would be able to cope with the business which heretofore had been prepared for its digestion by the Committee of the Articles. It will be shewn[2] that the attempt—the natural reaction from the earlier method—to deal with public business *ab initio* in full

[1] See Appendix xxi. The prohibition was repeated in the Orders of 1693 (see Appendix xxxi).

[2] See below, p. 142.

Parliament proved a failure, and that the increase of Committee work was a marked feature in the developing procedure of Parliament from 1641 until the Union. At first the separate Estates, or "several Bodies" as they are termed, sat separately in Committee upon measures which ultimately were considered by the full House. After the Restoration, and in spite of the rehabilitation of the Committee of Articles, Committees of the House increasingly established their position and powers. Hence the allocation of the working hours of the day to two sessions of the full House, under the Orders of 1641, soon required amendment.

How rapidly the necessity for allotting time to Committees was recognised appears from a resolution of the Estates a few weeks after the Orders of 1641 had been promulgated. On 19th August, 1641, the House directed that each of the three Estates (Nobility, Barons, Burgesses) should meet separately daily from 7 to 9 a.m. At 9 a.m. the Estates met in full session, and adjourned at noon. In the afternoon, from 3 to 6, the various Committees which the House had constituted were directed to meet.[1] Out of eight daily working hours, therefore, the House in full session claimed no more than three. The new rule, however, was not permanent. On 24th August, 1641, each Estate was directed to meet separately at 2 p.m., and the House in full session at 3 p.m.[2] Two days later (26th August, 1641) the Committees again took possession of the afternoon session at 3 p.m.[3] In the Convention of 1643 the Members were directed to

[1] *A.P.S.* v. 333. [2] *Ibid.* 647. [3] *Ibid.* 648.

meet in full session at 2 p.m., and each Estate to assemble separately at 9 a.m. The "particular Committees" appointed by the House met at 10 a.m., and the members of them were instructed to repair first to their particular Estate, and then to proceed to the Committees on which they served.[1] In the Parliament of 1645 the House ordered (31st December, 1645)[2] the several Estates to meet separately at 8 a.m., the House in full session at 10 a.m., and the particular Committees in the afternoon. On 27th January, 1647, the several Estates were directed to meet separately at 8 a.m., the particular Committees at 9 a.m., and the full House at 2 p.m.[3] On 15th February, 1649, the "several Bodies" were ordered to meet at 7 a.m., particular Committees at 2 p.m., and the full House at 9 a.m.[4] In the Parliament of 1650 the House daily settled the hours for the next day's meetings of the several Bodies, the particular Committees, and the full session of the Estates. It is clear that the limited time available for Parliamentary business made it difficult to apportion it among the "several Bodies" in Committee, the particular Committees, and the House in full session. It is equally clear that Committee work tended to absorb the greater part of each day's working hours. Accordingly, the House rapidly and frequently revised its original Orders of 1641, and appointed its hours of meeting and those of its general and particular Committees to suit the nature of public business.

It must be borne in mind that the Parliamentary buildings opened in 1641 had been erected also for the

[1] *A.P.S.* vi. pt. i. 12.
[2] *Ibid.* 496.
[3] *Ibid.* 672.
[4] *Ibid.* vi. pt. ii. 186.

accommodation of other public Departments. In that respect the Estates were not better housed after 1641 than they had been in the Old Tolbooth. Unprovided in either building with Committee-rooms of their own, the Estates throughout the seventeenth century were forced to appropriate for their Committee work apartments which were normally devoted to other purposes. The prorogation of the Courts of Session during the meeting of Parliament was in fact necessary, not merely because its officials attended Parliament, but also because Parliament required the accommodation usually appropriated to the Court. In the Parliament of 1633, which met in the Old Tolbooth, the King, during the election of the Lords of the Articles, retired to "the inner great room of the Exchequer house." The Clergy made their election in "the little Exchequer house," the Nobility in "the Inner House where the Lords of Session sit." The Committee of the Articles itself met daily in the "Inner House of the Tolbooth."[1] In the new buildings similar provision was made. In 1663 the Exchequer Chamber was assigned to the Clergy, the Inner House of the Court of Session to the Nobility.[2] In 1690 the Nobility endeavoured to remain in the Parliament House while engaged in electing their representatives to serve on Committees, and to compel the Barons and Burgesses to withdraw elsewhere. It was represented, however, that the invariable practice of the past had been for the Nobility to withdraw to the "Inner Session House," and (6th May, 1690) a rule was made in accordance with precedent.[3]

[1] *A.P.S.* v. 9. [2] *Ibid.* vii. 449. [3] *Ibid.* ix. 112.

DISCIPLINE OF THE HOUSE.

It has been remarked already, that however apathetic the constituencies were in sending their representatives to Parliament, the House very jealously demanded the time and attention of those who were present. By the Act of 1587[1] Members of Parliament who had no lawful and sufficient excuse for their absence were declared liable to "a pecuniary pain" of £300 Scots for an Earl, £200 Scots for a Lord, £100 Scots for a Prelate, 100 merks for a Burgess. The fines were payable within ten days under severe penalties for refusal. It is significant that the Act imposed no "pecuniary pain" upon the Barons of the Shires. The omission confirms the view already advanced, that prior to the seventeenth century they had barely become a considerable factor of Parliament. Equally suggestive is the fact that an Act of 1617, which confirmed its predecessor of 1587, imposed a fine of £100 Scots upon absent Barons. It further directed that all excuses for absence should be lodged with the Clerk Register on the day on which Parliament was "fenced," and that no excuse should be held valid unless it was signed by the King, if in Scotland, by the High Commissioner if the King was

[1] See Appendix VIII.

absent, or, in default of the High Commissioner, by the Lord Chancellor and President of the Secret Council.[1]

The Orders of 1641[2] differ from the Acts of 1587 and 1617 in an instructive particular. The latter dealt only with entire absence from Parliament. The Orders of 1641 enacted penalties for lateness and occasional absence. Members who took their seats after the roll was called at each session of each day were mulcted in eighteen shillings for a Nobleman, twelve shillings for a Baron, six shillings for a Burgess. For a whole day's absence, £20 Scots was the fine for the Nobleman, twenty merks for the Baron, and ten merks for the Burgess. For a half-day's absence (except on Saturday, when the whole sum was leviable), the fines were half those amounts. Leave of absence could be granted only by the President with the consent of the House.[3] Late comers were required to pay their fines before taking their seats, or failing that, to pay a double fine, and in default to have "the censure of the House." An Order of 9th July, 1643,[4] somewhat mitigated the severities of the Orders of 1641. While confirming the fines for lateness, those for a full day's absence were reduced to £10 Scots for a Nobleman, 10 merks for a Baron, 1 dollar for a Burgess. The Macers were instructed to refuse admission to Members whose fines were unpaid, and the

[1] *A.P.S.* iv. 535. [2] See Appendix xvii.

[3] For instance, on 17th May, 1693, a Member was excused attendance "in respect of his lady's indisposition" (*A.P.S.* ix. 261. See *Ibid.* 367 for a similar case).

[4] *Ibid.* vi. pt. i. 12.

Clerk was ordered to provide them with a list of delinquents for that purpose. The fines paid were in the custody of the Clerk of Parliament. The Orders of 1662 fixed the fines for absence from each diet of Parliament at £12 Scots for the Nobility and Prelates, £6 Scots for the Barons, and £3 Scots for the Burgesses, and half the fine in each case for appearing after the roll had been called.[1] A separate Act[2] revived the penalties for absence from the entire Parliament. For such "high contempt and neglect of His Majesty and his authority" the Nobles and Prelates were declared liable in £1200 Scots, Commissioners of Shires in £600 Scots, and Burgesses in £200 Scots. The Orders of 1693 followed those of 1662 as to fines for absence from the daily diets and for not answering the roll-call.[3]

To what extent the Orders of the House as to fines for non-attendance and lateness were actually enforced it is difficult to determine. The absence of any order as to fines in the Minutes of Parliament tends to an alternative conclusion: either the fines were regularly exacted and punctually paid, or, the threat of their exaction was purely formal. The latter conclusion is probably nearer the truth than the former. But the instances of leave of absence sought and obtained prove sufficiently that the House exacted and received the close attendance of its Members.[4]

An Order of the Estates on 25th August, 1641, shews that the rigorous rules relating to attendance left a loophole for escape. The Order directed that

[1] See Appendix xxi.
[2] See Appendix xxii.
[3] See Appendix xxxi
[4] See Porritt, ii. 110.

not only the names of those who were absent, but also those who sent "venientes," should be given in daily to the Earl Marischal that their fines might be collected.[1] The "venientes" were clearly persons who answered "veniens" or "coming" on behalf of an absent Member when his name was read out on the roll. Though it is not impossible to believe that an absent Member could send some casual person to answer "veniens" to his name, it is more probable that one Member would fulfil the friendly office for another. So late as 1703 the practice was the subject of a Parliamentary Order.[2]

Closely connected with the subject of attendance is the short-lived custom of proxies. The Order of 1617 has already been referred to as extending to the Commissioners of the Shires the penalties for absence which had been laid upon the other Estates by the Act of 1587. It is curious to observe, therefore, that the earliest Act which included all the Estates under "a pecuniary pain" for absence from Parliament empowered those of the Nobility and Prelates who were lawfully excused attendance to register their votes by proxy, such proxies being of the Estate to which the absent Member belonged.[3] It has been observed already that proxies were employed in the county Head Courts.[4] The extension of the practice to Parliament, sanctioned by the Act of 1617, was of no long continuance. The Parliament of 1640, holding that the "dignity, honour and authority" of the Estates were prejudiced by the custom, forbade the

[1] *A P.S.* v. 648.
[2] *Ibid.* xi. 45.
[3] *Ibid.* iv. 535
[4] See above, p. 40.

use of proxies for the future.[1] The rule held for the remainder of Parliament's existence, and was not disturbed by the reactionary legislation of the Restoration. In and after 1640, in fact, when Parliament for the first time was becoming a legislative and debating Assembly, the use of proxies was incongruous with those new functions which the contest with the Crown had developed.[2]

It was no doubt owing to the clashing of Parliamentary and military duties in a period of civil war that a curious point was raised in 1647. It was debated whether in the absence of a Member upon public or other necessary service a deputy could be appointed to fill his place,[3] and it was agreed that no new election in shires and burghs should take place until a rule had been laid down.[4] In 1648 a deputy was empowered to act for the absent Member for Clackmannanshire,[5] and the rolls of Parliament furnish other instances of the same practice.

While Members of Parliament were coerced by fines into giving punctual and regular attendance, they also possessed certain privileges which enabled the House to claim their whole time and attention

[1] *A.P.S.* v. 296.

[2] It may be noticed, however, that in 1690 a proposal was made on behalf of the Nobility to revive proxy-votes in their favour (*A.P.S.* ix., App. 146).

[3] *Ibid.* vi. pt. i. 644. [4] *Ibid.* 677.

[5] *Ibid.* vi. pt. ii. 13, 19. At the Aberdeenshire Head Court in 1649 Gilbert Skene of Dyce was appointed to represent the shire in the room of either of the two elected Commissioners who might be absent from Parliament (MS. Minutes).

during its session. They were relieved of attendance in legal actions in which they were concerned.[1] They were also immune from arrest except with the House's permission. The latter privilege was established by a precedent in 1641. On 18th August, 1641, Charles I., having issued a warrant for the arrest of a Member of the House, protested his ignorance of the Parliamentary status of the person against whom the warrant had been issued, and assented to the passing of an Act declaring Members of Parliament immune from arrest for misdemeanour while the House was sitting.[2] The privilege was reaffirmed in an Act of 1701: "That no Member of Parliament attending shall be imprisoned or confined upon any account whatsoever during a session of Parliament without a warrant of Parliament, Reserving to the High Constable and Marischal their privileges and jurisdictions in the time of Parliament as formerly, and also providing that if any Member shall happen to commit a capital crime, or if there be a manifest hazard of the peace, any magistrate may attach for securing of the person or the peace, and deliver the person to the custody of the High Constable in order to the Parliament's cognition the next sederunt."[3]

A further fact contributed to a full attendance of the representatives of the constituencies. It has been pointed out[4] that until after the Restoration Parliamentary elections were held annually in both shires and burghs, and that extraordinary elections were directed from time to time under the authority of

[1] *R.P.C.* second series, iii. 623.
[2] *A.P.S.* v. 333.
[3] *Ibid.* x. 275.
[4] See above, p. 27.

the Privy Council. In and after 1678 Parliament, through its own Committee for Controverted Elections, assumed that control over its membership which in the earlier part of the century the Privy Council had exercised. In particular, constituencies which were unrepresented, either on account of the death of their Member, his elevation to the Peerage or to office, his disability on various grounds, including ill-health, were empowered to fill the vacancy forthwith upon a warrant issued by Parliament itself.[1] Nothing better illustrates the rapid development of Parliament within the period. In 1603 its powers and procedure were bound hand and foot by external authority. Long before the century reached its close, so far as its internal economy is concerned, it had become its own master.

On one other topic the legislation of the period enables one to gain some idea of the discipline to which Members of Parliament were subjected. In an institution in which public ceremonial played an unusually conspicuous part, and in which the daily roll-call was a feature, some recognised order of precedence was necessary. The rule of precedence was indeed of the simplest. The Nobility in their several ranks were called according to the date of their creation. The shires apparently were ranked according to the date of their appearance in Parliament. The precedence of the burghs was determined by the date of their charters of erection. But this simple method of ranking was complicated by the fact that the *data* which it assumed to be known and verifiable were in fact not always so.

[1] See *A.P.S.* x. 123.

Certain of the burghs which had the longest Parliamentary record could not produce charters of erection, and probably had received none.[1] For that reason the harmony of Parliament was not infrequently in danger of disturbance owing to the protests of Members dissatisfied with their position on the roll. An Act of 1587,[2] upon the preamble that "in divers Parliaments held by our Sovereign Lord and his most noble progenitors, sundry questions has been amongst Noblemen and others of the Estates for priority of places and votes in Parliament, and thereupon sometimes quarrelling, to the disturbance of the Supreme Court of Parliament, which ought to proceed with greatest honour and quietness," enacted that no Member should "presume in time coming to make quarrel or provocation of trouble to other for priority of places or votes in Parliament," but should submit himself to the arbitrament of the King and his Estates and abide by their award. Persons contravening the rule were declared liable to be "grievously punished therefor at the discretion of His Highness and Lords of the Articles assembled at that Parliament." The rule of 1587 seems to have been effectual. The Orders of 1641 merely direct that Members "shall take their places as they are or shall be called by the rolls."[3] Protests regarding precedence were frequent throughout the seventeenth century, but the Minutes of Parliament shew that they were addressed to the House and were not the subject of the personal altercations hinted at in the Act of 1587.

[1] See *Miscellany of the Scottish Burgh Records Society*, lxiii.

[2] See Appendix ix.

[3] See Appendix xvii.

THE "RIDING" OF PARLIAMENT AND CEREMONIAL COSTUME.

"OUT of doors in the seventeenth century," Mr. Porritt remarks, "much more was seen of the Scotch Parliament than was seen of the House of Commons."[1] The informal manner in which the Members of the English Parliament assembled at its opening and departed at its close had no counterpart in the practice of the Scottish Parliament. The opening and closing days of the session were distinguished by the pomp of public procession from and to Holyrood, the "riding" of Parliament, so called, when the Members of Parliament accompanied the King, or his Commissioner, to and from the Parliament House.

The "riding" of Parliament is not mentioned in its records before 1587. The Act of 1587,[2] which declared it the duty of Members under pain of fine to accompany the King "on horseback decently with foot-mantles from His Highness' Palace to the Parliament House," suggests that in this as in other matters there had been since the death of James V. some decay of the "form, honour and majesty" of Parliament which James VI. was anxious to repair.

[1] *Op. cit.* ii. 111.

[2] See Appendix VIII.

The King's accession to the throne of England quickened his jealous care for the restoration of the "decent and comely order" of Parliamentary ceremonial. On 2nd July, 1606, Privy Council made the following Act: "The Lords of Secret Council, willing that a decent and comely order shall be observed and kept by the Estates of this kingdom in their riding to this present Parliament, has set down the order following to be observed and kept by them: viz. that the Commissioners of Burghs, two and two in a rank, shall march forward; and next unto them the Commissioners of the Barons, two and two in a rank upon horseback; and next unto them the Abbots and Priors, two and two in a rank; and immediately after them the Lords, ranked as said is, and the latest in creation to march forward; and next unto the Lords, the Bishops and Archbishops, two and two in a rank, according to their dignities; and immediately after them the Earls, ranked as said is, and the latest in creation to march foremost; and next unto them, and immediately before the Commissioner, the Honours;[1] and after the Commissioner, the Marquesses of Hamilton and Huntly."[2] The Council's order failed to give general satisfaction, and on 24th July, 1607, a royal letter modified it so far as it related to the Nobility and Prelates. The King decreed that the Commissioner and the Regalia should hold the place of honour in the rear, preceded, in the order

[1] The Honours comprised the Royal Crown, Sceptre, and Sword. For an account of their condition in 1621 see *R.P.C.* xii. 523. Speaking generally the presence of the Honours was necessary for the constitution of a valid Parliament.

[2] *R.P.C.* vii. 221.

named, by the Marquesses, Archbishops, Earls, Bishops, and Lords.[1] The elimination of the Clerical Estate removed the difficulties arising from the conflicting claims of the temporal and spiritual Peers, apparent in the conflicting directions of 1606 and 1607. With the Restoration, however, the procession resumed its original proportions, and an Act of 9th September, 1663, threatened Barons and Burgesses who failed to take part in it with the loss of the allowance to which they were entitled for their Parliamentary attendance.[2]

Frequenters of Parliament were not limited to the actual Members. A Proclamation of 13th June, 1606, restricted the retinue of Members to 24 attendants for a Marquess or Earl, 12 for a Lord, 8 for a Baron, and for others their "ordinary household train only."[3] That the injunction was not implicitly obeyed is clear from the fact that on 1st November, 1625, the Commissioner intimated to the Estates his instructions to sanction an Act forbidding a Member to resort to Parliament "with greater trains or better accompanied than with his ordinary household servants, under the pain of being censured by our Council as a contemner of our authority."[4] The Act was passed on the following day (2nd November, 1625).[5] In times of political crisis, however, as for instance in the Convention of 1689, the Acts forbidding "trains" were by no means rigidly observed.

Regulations affecting the apparel of Members of Parliament were as old as 1455. An Act of that year[6] directed Earls to wear brown mantles trimmed with

[1] *R.P.C.* vii. 534. [2] *A.P.S.* vii. 474. [3] *R.P.C.* vii. 214.
[4] *A.P.S.* v. 182. [5] *Ibid.* 183. [6] *Ibid.* ii. 43.

white fur, and a hood of the same upon the shoulders. The Lords were to be clothed in red mantles trimmed with grey, and hoods of the same. Commissioners of Burghs were to have "a pair of cloaks of blue furred" worn "open on the right shoulder" and a hood to match. A fine of £10 was ordained against such as failed to appear in appropriate raiment.

Either the Act of 1455 had fallen into neglect, or the fashion of apparel which it enjoined had become antiquated when James VI. attained his majority. The Act of 1587,[1] already quoted as an effort to restore to Parliament its "ancient order, dignity and integrity," ordered "That every Estate shall have their several apparel in seemly fashion, conform to the pattern thereof which the King's Majesty shall cause make and command to be observed, under the pain of two hundred pounds of the person failing, and debarring of them forth of the Parliament House." After the King's accession to the English throne the apparel of the Members of his Scottish Parliament was the subject of frequent and conflicting directions. On 7th June, 1605, the Council, in obedience to royal direction, seeing the "loveable, comely and most decent custom" of wearing ceremonial robes in Parliament had fallen into disuse, enacted that Dukes, Marquesses, and Earls should provide themselves with "red crimson velvet robes lined with white ermine and taffeta," and that Lords should wear "red scarlet robes lined after the same fashion."[2] Clearly the King designed to apparel his Scottish Parliament after the model of Westminster.

[1] See Appendix VIII. [2] *R.P.C.* vii. 57.

But either he had failed to distinguish between the House of Lords in its Coronation and ordinary aspects, or his instructions were imperfectly understood in Scotland. On 8th April, 1606, a royal letter conveyed the King's astonishment at learning that certain of the Scottish nobles proposed to wear their crimson velvet robes in the approaching Parliament, "whereas," the King admonished his Council, "velvet robes are never at any time worn by any Earls except at Coronations, creations, and such public solemnities." The ordinary apparel of Peers in Parliament, he directed, was to be made of scarlet cloth "distinguished for the several degrees of honour in the copes or hoods of the same by so many several stripes of white fur drawn athwart the same." They were instructed so to provide themselves.[1] On 24th April, 1606, the Council made an Act amending that of 7th June, 1605, in accordance with the King's directions.[2]

As to the spiritual Peers, a royal letter of 16th January, 1610, directed them to wear in Parliament "such habit and vestment as are accustomed to be worn by Bishops, most proper and decent for the dignity of their places and Estate."[3]

Like other Parliamentary ceremonies the bearing of badges of office by the Officers of State had fallen into

[1] *R.P.C.* vii. 488.

[2] *Ibid.* 208. A circular letter to the Earls, dated 19th March, 1633, bids them attend Parliament "in that stately and decent form as beseemeth the dignity of such actions, viz. with your robe of crimson velvet enermined and your crown at the Coronation, and with your scarlet robe at the Parliament" (*Ibid.* second series, v. 52).

[3] *Ibid.* viii. 614.

desuetude until the activity of James VI. bent itself to the restoration of traditional ceremonies. An Act of Council of 28th January, 1609, directed the Chancellor to "carry before him His Highness' Great Seal enclosed in a poke," and to have "a Mace of silver overgilt borne before him."[1] As President of Parliament no distinctive dress distinguished him from the other Members. If he were a Nobleman he wore the robe of his Order. If he were a Commoner he was directed to apparel himself "according to his own discretion [in] a rich fair gown of some sad or grave colour."[2] The Treasurer, whose precedence was established next after the Chancellor and before any subject in the Kingdom, was directed to carry "a small walking rod or staff in his hand," and to "cause carry a silver Mace overgilt by one immediately going before him."[3] The Lyon King-at-Arms on 17th March, 1630, petitioned Council, representing that "for accomplishing that part of his service which ought to be done the time of His Majesty's happy Coronation," and "for accomplishing many other honourable services at Parliament and otherwise," he might be provided with a golden crown. The Council ordered one to be constructed.[4]

The apparel of the Commissioners of Burghs was also the object of the King's solicitude. On 24th June, 1609, the Estates enacted: "That the said magistrates of Burghs to be hereafter elected, and their Commissioners of Parliament, shall have and wear at Parliaments, Conventions, and other solemn times and

[1] *R.P.C.* viii. 234. [2] *Ibid.* 613. [3] *Ibid.* 234.
[4] *Ibid.* second series, iii. 491.

meetings when the dignity shall require it, such comely and decent apparel as His Majesty shall prescribe convenient for their rank and Estate, whereby they may be discerned from other common burgesses and be more reverenced by the people subject to their charge."[1] A few months later (16th January, 1610) the King sent his directions in the matter. He commanded Commissioners of Burghs to "ride" the Parliament "in their scarlet gowns; but if they be of the meaner sort of Burghs, then they shall ride in their black gowns as they sit in their Councils."[2] The order was received with protest,[3] and the Commissioners of Burghs probably continued to appear at Parliament in their civic black robes.

In regard to Commissioners of the Shires, it has been remarked already that they were required to be provided with foot-mantles at the expense of their constituents. The foot-mantle was made of black velvet,[4] and the Act of 1661 empowered the Commissioners "always at the rising of each Parliament" to make over their foot-mantles to the Shire "to be disposed as they shall think fit."[5]

[1] *A.P.S.* iv. 435. [2] *R.P.C.* viii. 613.

[3] An order of December, 1619, that the Provost of Edinburgh should be provided with a gold chain and scarlet robe to wear during the session of Parliament was met on the part of the city by the statement that the Provost had no place in Parliament, "and is never employed as a Commissioner there," and further, that the Magistrates were already provided with black gowns (*Melros Papers*, i. 349). The Provost of Edinburgh did occasionally accompany the Commissioner to Parliament in his official capacity.

[4] Balfour, *Annals*, ii. 356. [5] See Appendix xix.

Edinburgh in the seventeenth century offered little opportunity for processional display. Its streets were narrow; the houses which bordered them were high; and the "riding" of Parliament traversed but a short route from Holyrood, where the procession started, to the corner of St. Giles', whence Members proceeded on foot through Parliament Close to the Parliament House.[1] None the less the procession, with its sombrely clad Commoners followed by a scarlet cavalcade of Nobles, and the Honours in the rear, symbolised a nation's autonomy. Its discontinuance at the Union brought home vividly to Scotsmen the sacrifice at which that compact had been sealed.

The corollary, as it were, to the "riding" of Parliament was the "fencing" or formal constituting of it. The same officials, the Clerk Register and the Lyon King, who were responsible for marshalling the "riding," ordered the "fencing" of the House in the following form: "Forasmuch as this present Parliament is now called and convened by His Majesty's special warrant and in His Majesty's name and authority, I do therefore in His Majesty's name and in name of His Majesty's Commissioner command all and sundry to reverence, acknowledge and obey the same, and do defend and forbid all manner of persons to make any trouble or molestation thereto."[2] The "fencing" took place after the calling of the rolls, and by a rule of 1546 was only necessary at the commencement of a Parliament, and not in subsequent sessions if it were continued.[3] In 1644, no

[1] Balfour, ii. 360. [2] *A.P.S.* vii. 6. [3] *Ibid.* ii. 467.

Commissioner from the King being present, Parliament was "fenced" by the President.[1] In similar circumstances in 1689 the ceremony was performed by the Lyon's deputy.[2] But the conjunction of the Clerk Register and the Lyon, as in 1703,[3] appears to have been the constitutional practice, the Lyon repeating after the Clerk Register the form of words appointed for the ceremony.

[1] *A.P.S.* vi. pt. i. 96. [2] *Ibid.* ix. 99. [3] *Ibid.* xi. 33.

THE LORDS OF THE ARTICLES.

It is impossible to understand the procedure of the Scottish Parliament, or its rapid progress in the period 1603-1707, without a preliminary account of its characteristic institution, the Lords or Committee of the Articles.

"The origin of the Committee which became famous under the title of the Lords of the Articles is one of the standing puzzles of Scottish history," Mr. Rait remarks.[1] Its history dates from the Parliament at Scone in 1367, when certain persons were chosen to hold the Parliament while the rest returned home. At Perth in 1368 the practice was repeated, and the general body of Members, owing to the inconvenience of the season and the dearness of provisions, again returned to their homes. In 1369 also the Estates made over to a delegated Committee the business of Parliament. But on that occasion it appears that the surrender of their powers by the general body of Members was not wholly spontaneous and voluntary. The Committee of 1369 was constituted, in fact, upon the plea that it was not expedient for "certain special and secret affairs" to be deliberated upon by the full

[1] *Op. cit.* 40

body of the Estates.[1] In 1424 the term "articles" was for the first time associated with the Committee, when it was formally constituted to consider certain "articles" submitted by the Crown.[2] From that time onwards until the reforms of the seventeenth century the Committee of the Articles virtually annexed to itself the whole deliberative and legislative functions of Parliament. The general body of the Estates met solely to elect the Committee, and, after an adjournment of varying duration, to witness the ratification of the "articles" or legislative measures prepared by it.

It needs but few words to point out that so long as this strange institution continued, the Scottish Parliament differed fundamentally from the English and other Parliaments which were at once deliberative and legislative bodies. An illustration will drive the fact home. The Parliament of 1617 met on 27th May, and adjourned to 13th June. On 13th June the Members were ordered to answer the roll daily until it should please the King to ride to the choosing of the Lords of the Articles. On 17th June the Committee was chosen, and until 28th June it met daily. On 28th June the King "concluded" the Parliament, and the whole mass of legislation prepared by the Articles was ratified in a single day.[3] Not only did the Committee do the work of Parliament, but the ordinary Member of the House can have possessed the barest notion of the purport of the legislation whose ratification he was required to witness.

[1] *A.P.S.* i., Introd. 10. [2] Rait. 44.

[3] See *A.P.S.* iv. 523-27.

In the effort to suggest—it is not possible to determine—how a Committee of Parliament succeeded in usurping the legislative and deliberative functions of the Estates, it may be assumed, for the purpose of argument, that the Committee was either (1) the spontaneous development of Parliamentary procedure from an early period, or (2) an arbitrarily created excrescence of Parliament, constituted by the authority of the Crown or of some other dominant interest. Its advantages from the Crown's point of view are too obvious to need insistence.

Mr. Rait[1] suggests a variation of the theory of the Committee as a body arbitrarily created. He observes that, "The device of superseding Parliament by a committee was employed for the first time under a weak king, and precisely at the moment when burgesses were first appearing as an integral part of Parliament. After it was elaborated in 1369, the method continued to be employed on every occasion on which burgesses were present, and, so far as we know, only when burgesses were present, till the return of James I. from England" in 1424. His conclusion is that the purpose and the effect of the practice was "to exclude the burgess element from the effective work of Parliament."

There remains the conjecture that after all the Committee was the spontaneous growth of circumstances. The Scottish Parliament before the Union was never precisely what the English Parliament was to Englishmen, the pulse of the nation's being, popular as the guardian of national interests, an institution whose membership was prized both by the constituencies and

[1] *Op. cit.* 48.

their representatives. Even in the seventeenth century, when Parliament for the first time became really representative, when it acquired powers and developed a procedure which enabled it to act in that character, the hearts of the people beat rather with the General Assembly of the Kirk than with the Meeting of the Estates. In fact, as Professor Hume Brown has observed,[1] it was not until the Revolution of 1689 that Scotland can be said to have adopted a secular standpoint.

In the period preceding the seventeenth century national indifference towards Parliament is to be remarked in yet greater degree. The whole tenor of James VI.'s reconstructive legislation from 1587 onwards presents the picture of an institution which, far from being jealously regarded and maintained, had fallen into neglect. It has also been shewn that until the reign of that King, Parliament was preponderantly a Council or hierarchy of officials and Peers. The county constituencies took little interest in the franchise conferred upon them, and only a fraction of them saw fit to send up representatives. As to the burghs, though an equal amount of apathy is not apparent, it has been observed that so late as the reign of James VI. their irregular attendance claimed the serious consideration of the Convention of Royal Burghs. The withdrawal of the Commons from Parliament in 1367, 1368, and 1369 is perfectly consonant with their later attitude. It appears therefore a sound and tenable conclusion that the Committee of the Articles owed its origin largely if not solely to this prevailing

[1] *History of Scotland*, ii. 454.

and characteristic apathy, and that the Commons certainly, and the other Estates probably, welcomed a method of conducting Parliamentary business which relieved them of other than the briefest attendance, while it preserved their constitutional right of participation in and confirmation of the legislative and general work of Parliament. It is of course obvious that this strange development of Parliamentary procedure could not be regarded other than favourably by the Crown. To control the Articles was to control the Parliament.[1] But there is nothing to prove, indeed there is nothing to suggest, that before the middle of the seventeenth century the Committee which virtually reduced Parliament to the position of a Court of Registration, was regarded as incongruous or otherwise than with placid acquiescence.

In the course of the fifteenth century neither the size of the Committee of the Articles, nor the proportional representation of the several Estates upon it, were uniform and constant.[2] In this matter, as in so many others, it was reserved for James VI. to establish a

[1] On 26th July, 1621, the Earl of Melros writes to the King concerning the Parliament of that year: "Thereafter the Lords of Articles were chosen with such dexterity that no man was elected (one only excepted) but those who by a private roll were selected as best affected to your Majesty's service" (*Melros Papers*, ii. 416). Cosmo Innes (*A.P.S.* i., Introd. 12) quotes James' remark to his English Parliament in 1607,—"only [such articles] as I allow of are put into the Chancellor's hands to be propounded to Parliament, and after this, before I put my sceptre to a law, I order what I please to be erased"—as only exaggerating somewhat the influence which the Committee of the Articles gave to the Crown.

[2] See a table in Rait, 48.

definite rule. By the Act of 1587[1] it was ordained that each Estate should be equally represented upon the Articles, and that the representatives of each should be not fewer than six nor more than ten. In point of fact, during the next twenty years, practice tended to establish the number eight for the representation of the Clergy, Nobility, Barons, and Burghs upon the Articles. The number of Officers of State varied considerably, and in 1606 was as large as ten. In regard to the burghs an interesting fact emerges.[2] In the Parliaments up to that of 1633 the Commissioners of Burghs upon the Articles usually numbered nine, though the number of constituencies represented was invariably eight. It seems clear that the burghs themselves and not their individual Commissioners were chosen upon the Committee. Hence, in the event of a two-Member constituency being chosen the individual representation of the burghs was proportionately increased, though it may be inferred that each constituency counted only as a single vote. In later Parliaments the practice of choosing eight individuals to represent the burghs was adopted.

[1] See Appendix VIII.

[2] The following are the figures for the early Parliaments of the seventeenth century :

	Clergy.	Nobility.	Barons.	Burgesses.	Officers of State.	Total.
1604.	8	8	8	9	6	39 (*A.P.S.* iv. 260).
1606.	8	8	8	9	10	43 (*Ib.* 280).
1607.	9	9	8	9	6	41 (*Ib.* 365).
1609.	8	8	8	9	7	40 (*Ib.* 413).
1612.	8	8	8	9	7	40 (*Ib.* 467).
1617.	8	8	8	9	8	41 (*Ib.* 526).
1621.	8	8	8	8	7	39 (*Ib.* 594).
1633.	8	8	8	9	8	41 (*Ib.* v. 8.).

The Parliament of 1617 may be held to date the practical adoption of the number eight for the representation of each Estate upon the Committee, and an Act of that year[1] limited the Officers of State to the same number. The Act of 1587 still remained in force, however,[2] and provided each Estate was equally represented, the number of its representatives might vary from six to ten. In practice, however, the number remained constant at eight.[3] The Committee at its full extent, therefore, formed a not inconsiderable body of forty members.

The method by which the Committee was elected varied considerably, but Parliament's control of it may be said to have tightened to the final climax of abolition. So far as can be inferred, the Committees of 1367 and 1368 were freely elected. Evidence points also to the conclusion that throughout the sixteenth century the Estates, at least nominally, elected the Committee.[4] But after the Union of the Crowns the Committee was certainly nominated by the Crown, though the form of free election was preserved. In 1612 the names of persons whose election the Crown desired were communicated to the Estates through the Secretary, and the King's nominations were not accepted without modification.[5]

[1] See Appendix xiii.

[2] See Appendix xv. in which the Act of 1587 is quoted as authoritative in 1640.

[3] After the Restoration and upon the rehabilitation of the Committee, the number eight was again adopted (*A.P.S.* vii. 449).

[4] See Rait, 52.

[5] *Miscellany of the Maitland Club*, iii. 115.

In another direction the election of the Committee developed a method which lessened the direct influence of each Estate upon the appointment of its representatives. In 1524 the representatives of the Clergy were chosen by the Nobility, and the protests which that method evoked suggest that it was an innovation.[1] In 1560 it was represented as the custom for the Nobles to elect the Clerical members of the Articles, and for the Clergy to elect those of the Nobility, while the Burgesses elected their own.[2] In 1612 the same method was observed in regard to the Clergy and Nobility, but the representatives of the shires and burghs upon the Committee were elected jointly by the Clergy and Nobility.[3]

The method of election adopted in 1612 was employed in the Parliament of 1633, and thereafter formed an authoritative precedent. In 1633 the Clergy and Nobility withdrew apart, leaving the Barons and Burgesses in the Parliament House. The Nobles elected eight of the Clergy and the Clergy eight of the Nobles. The Clergy then joined the Nobility, and each communicated to the other the names of the persons chosen. Thereafter the two Estates jointly elected the representatives of the shires and burghs, and sent an intimation to the King of the names of those appointed to represent the several Estates. The King thereupon joined the Clergy and Nobility and in their presence nominated eight Officers of State to complete the Committee. Finally, the King, Clergy and Nobility returned to the Parliament House and

[1] *A.P.S.* ii. 289. [2] Randolph to Cecil, quoted in Rait, 53.
[3] *Miscellany of the Maitland Club*, iii. 115.

the composition of the Committee was formally announced.[1]

The next stage in the development of the Committee was reached in the Parliament of 1639. The Clergy were no longer an Estate of Parliament, and the fact compelled a revision of the procedure of 1633. But the election of the Articles in 1639 is more important as indicating a deep-rooted opposition to the indirect method of election established in 1633, and a determination, fulfilled in 1640, to make the House the master of its Committee. When the Parliament of 1639 met it was known that the Crown intended to assume that part in the election of the Articles which had been exercised in 1633 by the Clergy. Protests were offered by all the Estates. By the Nobility the Crown's right to nominate the members of their Estate to serve on the Articles was not challenged, but it was desired that the exercise of that right on the present occasion should not be held as a precedent for the future, and that an Act should be passed forthwith "for settling a perfect order of election of the Articles in all time coming." The Act, it was urged, should empower each of the Estates to elect its own representatives upon the Committee. The shires and burghs advocated a similar procedure, and protested that the election of their representatives by the Nobility on the present occasion should not be held as a precedent against their claim to elect their own. Thereupon the High Commissioner nominated eight of the Nobility to act on the Committee, and the Nobility elected eight of the Barons and eight of the Burgesses. To renewed

[1] *A.P.S.* v. 9.

protests against the new method of election the Lord Advocate asserted that "the power of election of noblemen to be upon the Articles is only competent to His Majesty by right and possession, and the power of election of Barons and Burgesses to be upon the Articles is only competent to the Noblemen."[1]

It may be doubted whether the protest of 1639 was due so much to a general development of constitutional ideals as to the necessity, having regard to the ecclesiastical crisis which had recently arisen, for establishing the House's control over the body which framed the laws. But in 1640 Parliament went to the root of the constitutional principle involved in its traditional relations with the Articles. An Act of 1640[2] asserted that "according to the liberty of all free Judicatories" it was competent for future Parliaments, "according to the importance of affairs for the time, either [to] choose or not choose several committees for articles as they shall think expedient." In the event of the Estates deeming it necessary to appoint one or more "preparative" Committees, each Estate was to elect its representatives thereon, in numbers (for each Committee) of not less than six or more than ten as prescribed by the Act of 1587. The full significance of the Act will be dealt with more appropriately in regard to legislative procedure.[3] Its effect was to abolish the Committee of the Articles as a standing legislative Committee, to transfer to the House the powers which hitherto had been surrendered to that body, and to make the Committee or Committees of the House purely Committees

[1] *A.P.S.* v. 253. [2] See Appendix xv.
[3] See below.

ad hoc, without the power to initiate, and charged solely with the duty of considering specific matters remitted to them.

At the Restoration the Committee of the Articles was rehabilitated, though, as will be shewn, the system of Committees *ad hoc* instituted by the Act of 1640 continued to exist. In the Parliament of 1661 the Committee was elected in accordance with the Act of 1640. The Nobility, Barons, and Burgesses, sitting apart, elected representatives of their own Estate to serve on the Committee. But in violation of the Act of 1587, each Estate elected twelve of its members to act.[1] Upon the Bishops resuming their attendance at Parliament in May, 1662, nine of their Estate were added to the Committee of Articles appointed in the previous year.[2] The House having rescinded the Act of 1640 anent Committees,[3] the election of the Articles was in danger of reverting to the haphazard methods of the first generation of the century. For that reason, in the third session of Charles II.'s first Parliament, the Estates ordained (18th June, 1663) that the "ancient" ritual of election should be restored, and in particular that the precedent of 1633 should be adopted. That precedent involved the withdrawal from each Estate of the direct appointment of its representatives upon the Committee. In 1663, therefore, the Clergy and Nobility each elected eight members of the other to serve on the Articles. But in the election of Barons and Burgesses the precedent of 1633 was significantly departed from. The whole body of the Clergy and Nobility did not jointly elect the representatives of the Commons,

[1] *A.P.S.* vii. 8. [2] *Ibid.* 371. [3] *Ibid.* 9.

as in 1633. The proceedings of 1663 shew that after the general body of the Clergy and Nobility had met together to communicate their respective elections, "the persons elected, at the least so many of them as were present, stayed together in that room (whilst all others removed) and they jointly" elected eight Barons and eight Burgesses. In other words the Clergy elected the Nobility, and the Nobility elected the Clergy, and the sixteen persons thus elected chose sixteen others to represent the Commons upon the Articles. The Committee was completed by the Commissioner's nomination of the Officers of State.[1] The same procedure was repeated in 1669,[2] and thereafter until the abolition of the Committee in 1689. Vacancies on the Committee during the currency of Parliament were filled by the Crown.[3]

The constitutional objections to the functions of the Committee of the Articles had been clearly but ineffectually asserted in the Act of 1640. In the crisis of 1689 they were urged again, and with complete success. In the Convention which met after James VII.'s flight, a motion that each Estate should name eight persons to represent it upon a Committee for settling the government was defeated in favour of one which enabled every Member of the House to nominate the representatives of every Estate.[4] Those elected were therefore the nominees of the whole House, and held an authority such as no previous Committee of Parliament had ever enjoyed. Upon the recommendations of, as one may term it, this popularly chosen Committee, the Estates

[1] *A.P.S.* vii. 449. [2] *Ibid.* 552.
[3] *Ibid.* viii. 57, 580. [4] *Ibid.* ix. 22.

on 13th April, 1689, voted that "the Committee of Parliament called the Articles is a great grievance to the nation, and that there ought to be no Committees of Parliament but such as are freely chosen by the Estates to prepare motions and overtures that are first made in the House."[1]

In spite of the emphatic vote of 13th April, 1689, the new government was reluctant to endorse it. To have done so meant the surrender to Parliament of a power of initiative which had been persistently withheld save during the brief period in the middle of the century when the Crown was powerless to coerce. On 18th June, 1689, therefore, an Act[2] was introduced by the High Commissioner, which, while conceding to the Estates the right to introduce measures other than those initiated by the Articles, proposed to continue the Committee with its traditional powers. As to its composition the precedent of 1640 was to be followed. Each Estate was to elect eight of its number, forming a Committee of twenty-four, the Officers of State being "always supernumerary," or members *ex officio*. The Commissioner's suggested compromise was countered by a motion, repeating the decision of 13th April, 1689, that a "constant Committee" of Parliament was a grievance. A week later (25th June, 1689), when consideration of the matter was resumed, the Estates[3] vetoed the right of Officers of State to act *ex officio* upon the Committee, and reiterated the contention of the Act of 1640, that a standing Committee was a grievance; that the House was competent to appoint Committees or not as it pleased; that each Estate had

[1] *A.P.S.* ix. 45. [2] See Appendix xxv. [3] See Appendix xxvi.

the right to elect its own representatives upon the Committee or Committees; and that the size of the Committee or Committees was as the House chose to determine, provided that each Estate was equally represented thereon. To these proposals the Commissioner refused his assent, as "not being in the terms of the instruction which he had from the King." On the following day (26th June, 1689), the Estates "humbly offered" reasons for their opposition to the Commissioner's proposals.[1] They urged that whereas by the vote of 13th April, 1689, the Committee of the Articles, "being a constant Committee, is found to be a great grievance to the Nation," the Act "offered by His Majesty's Commissioner" proposed to perpetuate it. They pointed out that though the vote of 13th April, 1689, limited the power of Parliamentary Committees to consideration of measures remitted to them by the House itself, the proposals which the Commissioner was instructed to carry entailed that "no matter can be moved nor Act passed in the House until first it be either approved or rejected in the Articles"; though, it was conceded, "there be a power reserved to the Parliament to take into their consideration any matter rejected by the Articles." In the third place it was pointed out, that though by the vote of 13th April, 1689, the size of any Committee was "at the option of the House," the Commissioner's proposals limited its number to twenty-four, besides the Officers of State. Finally, the inclusion of the Officers of State *ex officio* violated the principle affirmed in the vote of 13th April, 1689, that "Committees are to consist of Members

[1] See Appendix xxvii.

freely chosen by the Estates." The petition concluded: "By all which it doth evidently appear that the grievance voted by the Estates anent the Articles doth level against a constant Committee, or of a fixed number, or of Members not chosen by the Estates, to which Committee all motions and overtures must be made." A Committee so constituted, the document declared, the House "absolutely condemns, notwithstanding any former Act of Parliament to the contrary."

The outcome of the strong representations against a "constant" or standing Committee of Parliament was the introduction by the Commissioner of amended and ridiculously inadequate proposals. On 9th July, 1689, he presented an Act[1] identical with that of 18th June, 1689, save that each Estate was to be represented on the Articles by eleven instead of eight members, and that the Committee could be chosen "monthly or oftener." The suggested compromise failed to meet the constitutional principle involved in the controversy, and the Crown wisely abandoned its attempt to continue a discredited and unpopular institution.[2] By an Act of 8th May, 1690,[3] the constitutional theory enunciated in the Act of 1640 and in the vote of 13th April, 1689, was affirmed. The House was empowered to elect Committees or not as it pleased, provided that each Estate was equally represented upon them. Such

[1] See Appendix xxviii.

[2] See a royal letter of 17th July, 1689, in which the Crown consented to the appointment of four Committees *ad hoc* to deal with certain specific questions (*A.P.S.* ix., Appendix 135).

[3] See Appendix xxix.

Committees were purely *ad hoc*, and were only competent to consider such measures as the House saw fit to remit to them. Officers of State might attend the Committees, but could not vote. Whereas, therefore, at the beginning of the century the House had been in bondage to a Committee which usurped its legislative functions and prescribed its activities, the Union of 1707 found it with the initiation of public business in its own hands, and its Committees reduced to a necessary position of subordination. The bare statement measures the development of the constitutional powers of Parliament within the period.

In its vigorous period the Committee of the Articles was the exclusive avenue through which business, both public and private, could be introduced into Parliament. The work thrown upon it was considerable, therefore. An Act of 1594[1] lightened its labours somewhat by ordaining that a "convention" of four of each Estate should meet twenty days before the opening of each Parliament "to receive all manner of articles and supplications concerning general laws or touching particular persons" previously lodged with the Clerk Register. Their duty was to eliminate all matters other than those which seemed to them "reasonable and necessary." The measures that survived their investigation were to be presented "in a book to the Lords of Articles in the Parliament time." The latter body was thereby relieved of the necessity to consider "impertinent, frivolous, and improper matters." The right of the King to "present such articles as he thinks good con-

[1] See Appendix xi.

cerning himself or the common weal of the realm at all times when he thinks expedient," was expressly safeguarded. A similar preparative Committee was appointed to prepare the business of the Parliament of 1621.[1]

A point of some constitutional importance is the duration of the authority vested in the Committee of the Articles. In the earlier period the comparatively small amount of public business enabled each session of the Estates to stand as a separate and particular Parliament. In those circumstances the authority of the Lords of the Articles obviously was limited to a single session. In the seventeenth century, however, the practice developed of continuing Parliaments from session to session, or year to year, instead of holding the single-session Parliaments which had been hitherto customary. Under these circumstances the competence of the Committee of the Articles to be similarly "continued" was naturally raised. The point came up first in 1606. The Lords of the Articles appointed on 26th April, 1604, had continued in office since that date. That objections had been raised against their indefinite span of authority is clear from a royal letter of 24th June, 1606, communicated to the Estates on 3rd July, 1606. The King's letter admitted that he had heard of "the different opinions of some your number concerning the order observed in preceding current Parliaments of that our Kingdom anent the retaining of the Lords of Articles chosen in the beginning thereof during the whole following sessions to the final end and conclusion of the said Parliament, or change of them at

[1] *R.P.C.* xii. 475.

each several session." Taking advantage of the King's permission, the Estates on that occasion proceeded to elect a fresh Committee.[1] But the general practice of the seventeenth century was for the Committee to be elected at the commencement of a new Parliament and to act until that Parliament was dissolved.

[1] *A.P.S.* iv. 280.

COMMITTEES OF THE HOUSE.

FREED from the incubus of the Articles, the House was enabled to develop the system of preparative Committees *ad hoc* indicated in the Act of 1640 as the proper complement of "all free Judicatories."[1] The Act ordered that henceforth all overtures of public business should be made direct to the House, which was declared competent either to deal with them outright or to remit them to Committee. Such Committees, by a resolution of 19th August, 1641, were declared open to all Members of the House, even if they had not been elected to act upon them, with the proviso that they should withdraw when depositions on oath of secrecy were being taken.[2] In 1645 the President was appointed to have place and vote in all Committees of the House, and to preside when present.[3]

In addition to these Committees *ad hoc*, the abolition of the Articles entailed a considerable amount of committee work on the several Estates, or "Bodies," sitting separately and apart. For instance, on 20th August, 1641, the King's manifesto in favour of the Elector Palatine was read in Parliament, and was remitted to each Estate to consider separately that afternoon and

[1] See Appendix xv. [2] *A.P.S.* v. 333. [3] *Ibid.* vi. pt. i. 287.

"to give their answer the morn."[1] On the same day proposals for the pacification of the North were read, and a copy of them was given to each Estate for its particular consideration.[2] On the same date each Estate was invited to consider the question of a Committee of Accounts and to report its conclusions in writing to the House.[3] The employment of the separate Estates or "Bodies" in this manner did not survive the Restoration.

The appointment of Committees of the House dates from the Parliament of 1641. In that Parliament several were constituted. The affairs of the Army, the state of the North, the Church, the Irish Rebellion, the "Incident," were among the subjects remitted to them. Reference also is made to a "Committee for revising the articles,"[4] which, as the "Committee for the Bills," or "for Bills and Ratifications," was regularly appointed so long as the Lords of the Articles were in abeyance. Its function undoubtedly was to sift and winnow the overtures which the Act of 1641 had ordered to be presented direct to Parliament. That it was not in any sense a preparative Committee may be inferred. It fulfilled, however, a very useful and necessary purpose which previous to 1641 attached to the Lords of the Articles. The restoration of that body in 1661, therefore, inevitably terminated its career. Nor was it revived after the final abolition of the Lords of the Articles in 1690.

From 1641 to 1650 Parliament regularly appointed Committees, and each Estate was entitled to an equal

[1] *A.P.S.* v. 645. [2] *Ibid.* 646. [3] *Ibid.* 647. [4] *Ibid.* 333.

representation upon them. Nor did the restoration of the Articles in 1661 completely check the appointment of Committees *ad hoc*. In the Parliament of 1661 Committees were appointed for trade,[1] for seals and writs, and other matters.[2] In the Parliament of 1669 a Committee for Controverted Elections was constituted for the first time,[3] and it remained a permanent feature of Parliament until the Union. In the Parliament of 1693 three other Committees made their appearance, and were regularly appointed until 1702, namely, for Trade, for the Address, and for Security of the Kingdom. Parliament, in fact, deserting its earlier habit of appointing an indefinite number of Committees to deal with particular questions, had restricted its Committee work to the purview of four Committees almost invariably recurrent in each Parliament. To the four Committees already mentioned (Controverted Elections, Trade, Address, Security of the Kingdom) the Parliament of 1700 added a fifth, a Committee for revising the Minutes of Parliament for the Session.[4] In electing its Committees the House observed the procedure which distinguished the election of the Lords of the Articles. In May, 1690, for instance, the Nobles elected their representatives upon four Committees in the "Inner House." The Barons "stayed still" in the Parliament House. The Burgesses retired to "the room where

[1] *A.P.S.* vii. 9. [2] *Ibid.* 192. [3] See below, p. 125.

[4] It should be noted that the Parliament of 1703-1706, absorbed as they were by the subject of the Union, did not appoint the Committees which had become traditional since the Revolution.

the Comissaries sit."[1] It is more important to remark that the Committee work of Parliament developed under the restored *régime* of the Lords of the Articles, a fact which at once suggests that the deliberative powers of Parliament after 1660 were on a much higher plane than before 1640.[2]

[1] *A.P.S.* ix. 114.

[2] The deliberative and legislative functions of Parliament and their development are dealt with separately.

CONTROVERTED ELECTIONS.

ATTENTION already has been drawn to the general apathy with which a seat in Parliament was regarded until after the Restoration. The fact that until 1678 Parliament did not regularly constitute a Committee to determine controverted claims to its membership goes some way towards proving the alleged apathy. But Mr. Porritt, who has marked this characteristic of Scottish Parliamentary history, is unwittingly misleading in his statement that "until after the Commonwealth there were no disputed elections to be referred to committees,"[1] and that in 1678 the first Parliamentary Committee was appointed to regulate them.[2] Prior to 1641 Privy Council determined the elegibility of Parliamentary Commissioners.[3] But on 26th August, 1641, the House took into its own hands the settlement of a controverted election in Roxburghshire,[4] and in 1643 quashed an election for Forfarshire on the ground that the electors had imposed restrictions upon their representatives contrary to the practice of the Kingdom.[5] Again, on 4th January, 1649, doubtful commissions presented by

[1] *Op. cit.* ii. 43. [2] *Ibid.* 47. [3] See above, p. 41.
[4] *A.P.S.* v. 648. [5] *Ibid.* vi. pt. 1. 5.

certain of the shires and burghs were remitted to their Estates or "Bodies" for consideration.[1]

So far as the meagre evidence can guide one, it would appear that before 1669 controverted elections were remitted by the House to the particular Estate concerned, to the Barons if a county election was challenged, to the Burgesses if the controverted election was that of a burgh. Not until after the Restoration was the matter remitted to a Joint Committee of the several Estates. On 19th October, 1669, such a Committee was nominated to hear parties and to report in regard to controverted elections in Berwickshire, Stirlingshire, Kincardineshire, and Cromarty.[2] A similar Committee was appointed in the Parliament of 1678.[3] Thereafter, if controverted elections were reported, the Committee was regularly constituted.

Some of the cases remitted to the Committee for Controverted Elections are instructive as illustrating the working of the franchise, and particularly the lax practice which prevailed in county elections in spite of legislative efforts to control them.[4] In the Parliament of 1678 a curious position was revealed in regard to the representation of Perthshire. One of the two persons elected at the Head Court in 1677 had since received an office of State, and was therefore not competent to represent the shire in Parliament. His colleague's commission hardly could be regarded as affected by the circumstance. The freeholders of the shire, however, held a fresh election and appointed not

[1] *A.P.S.* vi. pt. ii. 126. [2] *Ibid.* vii. 552. [3] *Ibid.* viii. 216.

[4] I have not thought it necessary to refer to cases in which the qualifications of the Commissioners were challenged.

one but two new Members. The Committee had therefore to deal with three would-be representatives of Perthshire in Parliament. The decision it recommended was the obvious one. The commission in room of the person elevated to office was sustained. So also was that of the second representative elected in 1677, on the ground that his commission was current until the Michaelmas Head Court of 1678, and could not be disturbed in the interval by a bye-election, as it were, to fill the place of his colleague.[1] The election of a representative of Berwickshire in the same Parliament reveals astonishing laxity of procedure. The Member's commission was attested by several electors who had not been present at the election, and it did not bear the signature of the clerk of the meeting. It was therefore disallowed.[2] The commission presented by Ayrshire was also rejected on the ground that it did not bear the name of the person by whom it had been drafted, nor that of the clerk of the meeting.[3] Of another character was the controverted election for Stirlingshire in the same Parliament. Two commissions were presented, signed by an equal number of voters. In the circumstances the Committee recommended that the House itself should determine which of the rival commissions should be sustained. That course was adopted.[4] A double election in Dumbartonshire to the same Parliament reveals the paucity of county electors. Of two commissions presented, the Committee recommended one

[1] *A.P.S.* viii. 217. [2] *Ibid.* 217. [3] *Ibid.* 218.

[4] *A.P.S.* viii. 218. This precedent was reversed in 1703 and 1704.

as being "more solemn and formal," whereas the other was subscribed by only three electors, though by Act of Parliament six electors' signatures at least were required.[1]

The Act of 1681[2] in some measure corrected the laxity of procedure which the cases brought before the House in 1678 revealed, though the number of controverted elections in later Parliaments was not inconsiderable.[3] In 1689 the House annulled the election of the Member for Jedburgh on the ground of "clandestine marking of the votes" in his favour. It was also established that the magistrates of the burgh had "threatened and menaced" those who objected to these irregular proceedings, and that the supporters of the rival candidate "were threatened by these magistrates to have their heads broken." It was alleged further, that one of the electors, whose name was subscribed at full length upon one of the rival commissions, could not write.[4] The existing political crisis no doubt explains the excited state of political feeling in Jedburgh. In the case of Ross-shire the House rejected both of the commissions presented to it by the rival candidates and ordered a new election, on the ground that both were "null, informal, and illegal," and especially as not being subscribed by a sufficient number of the freeholders.[5] A contested

[1] *A.P.S.* viii. 218. The Act referred to is that of 1587. See Appendix x.

[2] See Appendix xxiv.

[3] The number of controverted elections referred to the Committee between 1669 and 1706 was between sixty and seventy.

[4] *A.P.S.* ix. 18. [5] *Ibid.* 89.

election at a time of considerable political excitement could not draw even twelve electors to the poll!

A technical, though possibly an intentional, infringement of the Act of 1681[1] invalidated the election for Stirlingshire in the second session (1690) of William's first Parliament. The commission presented was rejected on the ground that "previous intimation was not made at some parish kirks of the meeting of the freeholders" of the shire.[2] In the sixth session (1696) of the same Parliament a curious case arose in connection with a commission presented for Elginshire. It was quashed for the reason that it had been signed by electors "at four several places," that it was dated "near twelve months after the pretended election," and that two of the subscribers were not present at the Head Court at which the election was represented to have been made.[3] The meaning of this irregular procedure is sufficiently clear. Called upon to elect a Commissioner to Parliament, a duty clearly neglected on the proper occasion, the officials, or the would-be Member himself, adopted a plan which obviated the necessity of summoning the electors to an extraordinary meeting. A few of the electors were visited by some person assuming that authority, and at four different places the necessary six signatures were obtained. The wording of the commission signed by these selected freeholders implied that the election had been made at a properly constituted meeting of the electors, whereas two of the persons subscribing it had not been present at the Court at which it was supposed to have been drawn, and the commission itself bore a date nearly

[1] See App. xxiv. [2] *A.P.S.* ix. 116. [3] *Ibid.* x. 41.

a year later than that of the pretended court of election. This irregular procedure appears to have been an official contrivance designed to meet a sudden emergency with the least amount of trouble to the electors. That such irregularity was possible is instructive. The dangers involved in it are obvious.

A case in which the electors superseded a current commission by conferring one upon another person occurred in the seventh session (1698) of William's first Parliament. In that Parliament Roderick Mackenzie of Prestonhall claimed to represent the shire of Cromarty in the room of John Urquhart of Craighouse, whose commission the electors declared to be null and void. The House ruled, that to annul an election was "not in the power of freeholders to do without express warrant of Parliament."[1] In the eighth session (1700) of the same Parliament the House ordered a new election in the burgh of Linlithgow, the sitting Member having become a minister of the Gospel.[2]

In the ninth and last session (1700) of William's Parliament two controverted elections were reported which exhibit some constitutional importance. The first of them[3] involved two points: (1) the powers of the Sheriff in a Head Court summoned to elect Parliamentary representatives; (2) the right of the Nobility to be present at or to exert influence upon Parliamentary elections. In regard to the first, the Act of 1681[4] clearly laid down that the Barons were to elect their President before proceeding to elect their Parliamentary representatives. In the present case,

[1] *A.P.S.* x. 127.
[2] *Ibid.* 192.
[3] See Appendix xxxiii.
[4] See Appendix xxiv.

however, the Sheriff took the chair, and, in spite of protests, continued to occupy it. On that ground the House annulled the election. In regard to the attendance of certain of the Nobility at the election, the evidence is conflicting as to the motives which had drawn them into the room where the election was held. But on the broad ground that they were present, their conduct was condemned as "an encroachment on the freedom of the election of Barons."

The second case related to the election of Commissioners for Ayrshire.[1] It involved several points of importance. One may be stated as follows: A, an elector, and until recently possessed of the necessary property qualification, had disponed his property to B, who, however, had not been legally infefted in it. On the one side it was urged that A, having denuded himself of his qualification to act as an elector, was not entitled to vote. On the other it was urged that until B had by the process of infeftment legally taken over the property qualification transferred by A, the latter was entitled to exercise his privilege as an elector. The point was settled in A's favour.

In the first session (1703) of Queen Anne's Parliament several contested elections were reported. A few of them are noticeable. In Clackmannanshire a double election was amicably settled by two of the four rivals electing to sit for other constituencies which also had elected them.[2] In Haddingtonshire also there was a tie. A similar situation in Stirlingshire in 1678[3] had been solved by the House itself giving, as it were, a casting vote. That precedent was now reversed, and

[1] See Appendix xxxiv. [2] *A.P.S.* xi. 39. [3] See above, p. 27.

the House ordered a new election.[1] In the Renfrewshire election an interesting point was raised. It involved the claim of a Royal Burgh to vote in a county election, on the plea that it was corporately possessed of the property qualification. The claim was upheld by the House against the objection, that as a burgess was not competent to represent a shire, therefore a burgh was incompetent to vote in an election of county representatives.[2] In the same Parliament a somewhat pedantic objection was lodged against the Orkney election. The Act of 1681 directed that the county elections should take place at the Michaelmas Head Courts. The representatives of Orkney had been elected on Michaelmas Day, though 2nd November was the customary date for the Orkney Head Court. The House refused to quash the election on such trivial grounds.[3] In the case of Fifeshire the House affirmed a previous ruling,[4] and conformably to the Act of 1681 quashed the election on the ground that due notice of the meeting of electors had not been given at the Head Burgh of the Shire.[5]

In the second session (1704) of Queen Anne's Parliament two controverted elections were reported. Both were double elections, and in both cases the House affirmed its ruling in 1703. The Kirkcudbrightshire election was quashed on the ground of "an illegal intimation" by the Sheriff-depute,[6] no doubt in connection with the notice of the meeting of electors which the Act of 1681 required. The Ross-shire election had resulted in a tie, and the House, again

[1] *A.P.S.* xi. 45. [2] *Ibid.* 39. [3] *Ibid.* 65.
[4] See above, p. 129. [5] *A.P.S.* xi. 40. [6] *Ibid.* 127.

deserting the precedent of 1678, ordered a new election.[1] In the third session (1705) of the same Parliament Ross-shire again reported a controverted election. The case involved a point raised in the Wigtonshire election in 1700,[2] the observance of the Act of 1681 in regard to the chairman of the meeting of electors. The objection in this case was not sustained.[3]

[1] *A.P.S.* ix. 187. [2] See above, p. 130. [3] *A.P.S.* xi. 214.

PARLIAMENTARY MINUTES.

PARLIAMENT'S progress from a condition of dependence and listlessness to one of control and alertness of interest in the seventeenth century is apparent in its relation to its Minutes. In the first part of the century not only had the House no power to revise its Minutes, but the latter were in the charge of an Officer of Estate and were inaccessible to the ordinary Member. An Order of the House in 1640 therefore has particular significance. By it the Clerk Register, *ex officio* Clerk of Parliament, was instructed to produce in each Parliament the records and registers of its predecessors, partly that the House might be assured of their safe-keeping, partly that they might be available for reference. With the latter object the Clerk was empowered to give such extracts therefrom as might be desired at a reasonable charge.[1] Not until seven years later is there evidence that the Minutes were under the daily supervision of the House. An Order of the Estates on 21st January, 1647, directed "the last act of each day's session of Parliament to be this, That before the prayer be

[1] *A.P.S.* v. 269.

said, the minutes of all that is done in that day's session be publicly read in audience of the Parliament."[1]

It was not until towards the close of the century that the Minutes of Parliament were printed during the current session for distribution among the Members. An Order of the House on 5th May, 1693, forbade copies of the Minutes to be circulated before they were in print. It directed that before being sent to the printer they should be revised and signed by the Chancellor, and that the first printed copy should be sent to the Secretary of State.[2] In the same year they were ordered to contain only the Acts and ordinances of Parliament,[3] and to be printed exclusively by the King's Printer.[4]

In 1695, and again in 1698, the adjustment of the Minutes was remitted to the Justice-Clerk and Advocate.[5] On 24th May, 1700, in the last session of William's Parliament, the House for the first time elected a Committee specifically for that purpose.[6] It was again appointed in 1702, and its work is patent in an increasing minuteness of detail as to the procedure of Parliament, the course and order of public business, the record of divisions, and the numerical strength of the Ayes and Noes. To compare the Minutes of James VI.'s Parliaments with those of Anne's reign suggests a

[1] *A.P.S.* vi. pt. i. 663. In 1689 the Minutes of the previous sederunt were read at the outset of the following one (*Ibid.* ix., Appendix 136).

[2] *A.P.S.* ix., Appendix 77.

[3] *Ibid.* ix. 250.

[4] *Ibid.* ix., Appendix 76.

[5] *Ibid.* ix. 351, x. 121.

[6] *Ibid.* x. 193.

striking contrast in form and matter. And the contrast speaks to the development of Parliament itself from the cramping limitations of mediaeval forms and traditions to the exercise of full and necessary constitutional powers.

RULES OF DEBATE.

It is already clear that down to a late period of its history—until, in fact, it was within measurable distance of extinction—the Scottish Parliament was not a Chamber of debate. So long as the Committee of the Articles continued to exercise its traditional office, the House in full session was practically restricted to the performance of duties which involved neither the right nor the necessity to debate. At the outset the Estates elected the Articles. While the Articles sat daily to prepare legislative measures, the general body of Members remained idle. When the Articles had concluded their labours, the House reassembled to witness the Crown's ratification of measures in whose preparation the general Members of Parliament had had no share. No opportunity for debate was offered at any point. The Acts introduced by the Articles were called for by the Commissioner. Each Act was endorsed by the Chancellor, carried to the Throne, touched by the Sceptre, and became law. In this manner, in the course of a few hours, a mass of legislation was passed which not infrequently runs to hundreds of folio columns in the printed *Acts* of Parliament.

So long as Parliament was without the power to initiate its business and to control its procedure it had neither power nor inducement to debate. So late as 1607 James VI. could assert that no one opened his mouth in Parliament without leave.[1] The House's appearance as a debating body may be therefore said to date from the Act of 1640,[2] which reversed the relation hitherto existing between Parliament and its Committee. By the Act the deliberative powers of the Committee of the Articles were transferred to the House, seeing that all overtures and legislative measures were required to be first submitted to Parliament itself for preliminary digestion, and reached the Committee stage only if the House desired them to be proceeded with. A further fact of importance resulted from this reversal of the position of Parliament and its Committee. So long as the Committee of the Articles continued, an enormous amount of Parliamentary time was perforce wasted. The Committee did not report—if one may use a term not strictly applicable—until its whole legislative budget was complete. Even if the privilege had existed, to debate the Committee's proposals in the few hours left to a dying Parliament was practically impossible. But the Act of 1640 kept the House and its Committee in simultaneous session, each supplying the other with material for debate and consideration. In place of dumping the whole budget of legislation upon a single, and that the last, day of the session, the House was enabled to debate the business before it leisurely.

[1] *A.P.S.* i., Introd. 12.

[2] See Appendix xv.

It is therefore not surprising that the Minutes of Parliament furnish no hint as to an established procedure of debate until after 1640, and for the reason that prior to the Act of 1640 rules of debate were irrelevant to an Assembly which was not deliberative. The Orders of the House in 1641 were the first to establish rules of debate. Meagre as they are they mark an effort to preserve the House from extravagances which its sudden conversion into a "House of Palaver" might invite. The Orders[1] forbade any one to address the House without the President's leave, or to interrupt a speaker during his speech. For "eschewing of contest and heat" Members were required to address the Chair and not previous speakers. The oath of Parliament in 1641 claimed for its Members liberty of speech, and bound them to use their freedom for the glory of God and the weal of the country.[2] It is significant that even upon the restoration of the Articles the functions of the House as a deliberative Assembly were still recognised. The Orders of 1662,[3] in addition to repeating the rules of debate set forth in 1641, enjoined that "all reflections

[1] See Appendix xvii.

[2] *A.P.S.* v. 332. If the Parliamentary oath were extant for an earlier period its terms would define the functions which a Member of Parliament was expected to fulfil. As to the methods of administering and taking the oath; in 1661 it was taken, apparently, *en bloc*, the Members holding up their hands during the reading of it. (*Ibid.* vii., Appendix 2). In 1703, the oath was first administered by the Clerk Register to the Chancellor, then by the Chancellor to the Clerk Register, and then to the Members "five by five" (*Ibid.* xi. 36).

[3] See Appendix xxi.

be forborne, and that no man offer at one diet and in one business to speak oftener than twice at most, except in such cases where leave shall be first asked and given by His Majesty or his Commissioner." The Orders of 1693[1] repeated those of 1662.

That the courtesies of debate were jealously guarded may be inferred from the House's treatment of those who infringed them. On 5th July, 1672, the Commissioner for the burgh of Kintore was committed to the Tolbooth "for some words uttered by him tending to the subversion of Parliament." Five days later he craved pardon on his knees, and was readmitted to his seat.[2] On 15th July, 1695, the Commissioner for the burgh of Stirling was expelled the House, and a new election for his constituency was ordered, on the ground that he had threatened with physical violence another Member whose vote on a recent Act he resented.[3] On 12th June, 1702, the Commissioner for Sanquhar was also expelled the House, and a new election in his constituency was ordered, because during the reading of the Act for securing the Protestant religion and Presbyterian government he had declared it to contain "things inconsistent with the essence of the Monarchy."[4] On 30th June, 1703, two Members were in custody for "unbecoming and undutiful behaviour in the House."[5] On 13th August, 1703, another Member was in custody for using unbecoming expressions towards the High Commissioner.[6] It seems clear that the House used its powers not only

[1] See Appendix xxxi. [2] *A.P.S.* viii. 63, 67. [3] *Ibid.* ix. 448.
[4] *Ibid.* xi. 15. [5] *Ibid.* 65. [6] *Ibid.* 74.

to preserve the amenities of debate, but also on occasion to expel a Member from its service whose opinions, or his perfervid utterance of them, ran counter to the standpoint of the majority. The House, in fact, had assumed the powers which early in the seventeenth century had been exercised by the Council.

LEGISLATIVE PROCEDURE.

THE constitutional powers of Parliament developed in proportion as it cast itself loose from the control of its "constant" or standing Committee of the Articles. To what extent this is true of the House as a deliberative body has been set forth. It remains to consider the statement in relation to its procedure as a legislative Chamber. Until 1640, that is, until the Lords of the Articles had been deprived of their traditional functions, the Scottish Parliament was only vicariously and indirectly a legislature. As a body it did not initiate legislation, it did not debate it, and its vote did not establish it.

The career of the House as a legislative body dates from the Parliament of 1640. That Parliament, in addition to the Act[1] which asserted its right to appoint and control its own Committees, enacted that "all grievances and other matters that are to be handled and treated of hereafter in Parliament [are] to be given in and presented in open and plain Parliament in all time coming."[2] For the first time the House was in a position to frame its legislative programme, to select the measures which it desired to pursue, and to reject

[1] See Appendix xv. [2] *A.P.S.* v. 270.

those which it viewed with disfavour. That in itself marked a considerable step forward. But Parliament in 1640 was without any tradition or ordered procedure upon which to act as a legislative body. It has been shewn that it forthwith equipped itself for the task by formulating elementary but effective rules of debate. Its effort to establish a system of legislative procedure dates from the same period.

The Orders of 1641 indicate the method which the House adopted in order to cope with its unaccustomed legislative labours. The Orders directed that every overture presented to the House should be communicated to each Estate to be considered separately and, as it were, in Committee. To each Estate twenty-four hours were allowed in which to formulate their views upon an overture before being required to report them to the House in full session.[1] Having regard to the fact that in the Parliament of 1641 a number of Committees were constituted to deal specifically with particular matters, it seems clear that the several Estates under the Orders of 1641 were intended to exercise a preliminary and general supervision over the legislative overtures remitted to them. In fact, to the several "Bodies" was entrusted the duty which in 1617 had been laid upon the Clerk Register, namely, to eliminate "all impertinent, senseless and improper matters" from the overtures sent in for Parliament's consideration.[2] It would appear, however, that the House in vindicating its right, hitherto usurped by the Articles, to determine the business to come before it, had hit upon a method cumbrous and unworkable. It was superseded in 1644

[1] See Appendix xvii. [2] See *R.P.C.* xi. 109.

by the creation of a Committee of Bills and Ratifications[1] charged to receive, revise, and consider all Bills, Supplications, and Ratifications to be presented to Parliament, and to reject such as they held not competent, without prejudice to the supplicants to present them direct to the Parliament. The House itself, however, determined the priority and urgency of overtures recommended for its consideration.[2]

Attention has been drawn[3] to the fact that whereas the Orders of 1641 arranged for two daily sessions of the full House, it was soon found necessary to allocate part of the working hours of the day to the Committees of the House and also to the separate meetings of the three Estates. It may therefore be inferred that the duties of the separate Estates or "Bodies" were not restricted to the preliminary function already indicated. The Minutes of Parliament in the period give the barest indications of procedure. But there is no room to doubt that at every stage of a Bill each Estate had the opportunity to consider it separately and to report amendments or acquiescence. Legislative procedure in 1641 may be outlined as follows, therefore. Every overture which had the House's permission to be introduced was at once remitted to each Estate for its separate consideration. If their assent was unanimous, or if a majority of the Bodies approved the measure, the Bill, when reported to the House, was "read, voted, and passed." On the other hand, if further amendments were deemed necessary, the Bill was "read and

[1] *A.P.S.* vi. pt. i. 288. [2] *Ibid.* v. 329.

[3] See above, p. 80.

continued"[1] for further consideration by the Bodies or by a specific Committee.

So far it has been attempted to indicate the legislative procedure of Parliament in the period preceding the Restoration. The year 1641, as has been shewn, marks the dividing point between a usage sanctioned by long practice and an effort to establish more constitutional methods. The progress of that effort was inevitably checked by the Restoration and the revival of the Committee of the Articles. Necessarily the preparative work which had been done by the Committee of Bills and by the several Bodies between 1640 and 1650 was resumed by the earlier and restored Committee whose functions they had usurped. The Committee work which had developed in the same period was also curtailed. In the Parliament of 1661 the revival of the Articles did not preclude the constitution of other Committees of the House. But thereafter until the Revolution the Committee for Controverted Elections was the only Committee constantly appointed, and so far as its legislative procedure is concerned, Parliament reverted to the earlier traditions which had so sorely restricted its functions.

Although between 1660 and 1689 the initiative of the House was curtailed and restricted, the privilege of debate, declared in the Orders of 1641, was not withdrawn. The Orders of 1662[2] asserted the right of any Member to address the House, provided that without leave granted he did not speak more than twice "in one business." It is significant, also, that while the Orders of 1641 made it necessary

[1] *A.P.S.* v. 654. [2] See Appendix xxi.

for a Member to obtain the permission of the President to address the House at all, the Orders of 1662 required a Member to obtain permission to speak only if he had already twice addressed the House on the same motion and in the same diet. Clearly the privilege established between 1640 and 1650 was not only not broken but was expanded after the Restoration, inasmuch as the right to speak was only limited by the rule that a Member should not speak more than twice without leave. On the other hand, it must be noticed that whereas in 1641 permission to address the House was accorded by the President, the regulation of debate was by the Orders of 1662 vested in "His Majesty or his Commissioner."

The question arises at this point, What practical effect upon legislative procedure resulted from the fact that even in the reactionary period 1660-1689 the House maintained its character as a Chamber of debate? At once it may be answered that the restoration of the Articles was far from reducing the House to the condition of impotence which had marked the earlier sway of that "constant" Committee. It is true that once more the Articles fed the House, as it were, with materials for its digestion. It is true also that the constitution of that Committee tended to provide for the approbation of the House measures which were inspired or sanctioned by the Court. But reactionary as was the general character of the period, it would be an entire mistake to suppose that Parliament suffered a similar decline. A study of its procedure proves the statement.

The almost tri-cameral constitution which developed

between 1640 and 1650 disappeared after the Restoration. The separate Estates or Bodies no longer acted as Committees of the House, and their disappearance in that capacity was the natural result of the revival of the Articles. With the chief exception of the Committee for Controverted Elections, the House's ability to remit overtures to specific Committees *ad hoc* was restricted. As was the case before 1640, therefore, the House and its "constant" Committee of the Articles were the two factors in legislative procedure. But their relative importance was no longer as it had been before 1640. Then, as has been shewn, Members were summoned on the last day of the Parliament's existence to witness the Crown's ratification of measures which had been framed by the Articles while the House was practically in vacation. But between 1661 and 1689 Parliament was no mere onlooker, nor in a state of suspended animation, in the interval between the election of the Articles and the Crown's approval of the measures framed by that body. In the early part of the Parliament of 1661 the House met twice weekly on two fixed days of the week. As the session progressed it met irregularly, at more frequent intervals, as the state of public business demanded. As the century progressed the intervals between the diets of Parliament became less and less frequent, and after the Revolution and the final elimination of the Committee of the Articles the House may be said to have met practically on every working day of the session.

The mere fact that the diets of the House were more frequent between 1660 and 1689 than they had been between 1603 and 1640 in itself proves that the revival

of the Articles did not reduce the House to the condition of legislative impotence which had marked it in the earlier period. That inference is otherwise confirmed. Bills were "touched" and passed into Acts in the course of the session, instead of being reserved for that ceremony to the last day.[1] The House therefore had leisure to examine the measures which were sent down from the Articles for its approbation. Its right to formally approve them was also allowed. On 15th April, 1661, a report from the Committee of the Articles was minuted as "read, voted, and approven" by the House.[2] On 9th September, 1663, a Bill sent down from the Articles was "twice read, voted and approven, and touched with the Sceptre" on the same day.[3] Nor was the House restricted to passive acquiescence. The Bill of 9th September, 1663, was not approved in its original form. The House deleted a paragraph before giving its assent, and in its amended form the Bill was ratified by the Commissioner without remitting it to the Committee of the Articles.[4] Had the amendment been vital to the spirit of the Bill the Commissioner might have withheld his assent. But the present point is merely, that the House's right to amend a measure sent down to it from the Articles passed unchallenged. It is to be remarked also that it could instruct the framers of legislation. On 8th March, 1661, upon the report of the Committee of Bills,[5] the minutes bear

[1] *A.P.S.* vii. 16.

[2] *Ibid.* vii., Appendix 59.

[3] *Ibid.* vii. 472.

[4] *Ibid.*

[5] This Committee must not be confused with the Articles. It was the Committee of Bills and Ratifications, and did not survive the Parliament of 1661.

that "The Lord Commissioner and Parliament approves the report, and ordains an Act to be extracted hereupon."[1]

One may certainly conclude, therefore, that the legislative powers of Parliament under the restored Stuarts were neither formal nor inconsiderable. The diets of the House were frequent. It had both leisure and license to review the measures put before it. It debated and by vote of its Members, approved them. On occasion it even ventured to amend them. It could also indicate measures which called for legislation, though the framing of the Bills it desired was not directly within its power. That Parliament was a power to be reckoned with, in fact, is confirmed by its careful nursing at the hands of Charles II. and his successor. The customary and constitutional annual elections in the constituencies were practically abrogated. James VII.'s arbitrary interference with the burghs is a familiar fact. Both methods would have been supererogatory had not Parliament after 1660 retained much of the independent authority which it had developed between 1640 and 1650.

With the Revolution—though possibly the dimness of pre-Revolution Minutes obscures the extent of an earlier development—the legislative procedure of Parliament rapidly crystallised into regular and constitutional forms. It has been shewn that the Crown parted

[1] *A.P.S.* vii., Appendix 21. I need but refer here to the high judicial power of Parliament exemplified in the indictment before it of James Guthrie, the Earl of Argyll, and the confederates of the Viscount of Dundee. For its procedure as a Court of Justice, see Appendix xxxii.

reluctantly, and only after an effort, with the Committee of the Articles. The elimination of that body enabled the House to revert to the system which had been in process of development after 1640. In a word, the House was again the arbiter of the legislative measures to be submitted to it, and the master of its preparative Committees. A resolution of 5th November, 1700, marks its complete recovery of the initiatory powers of which the restored Committee of Articles had deprived it. The order ran: "Resolved that all motions and overtures be first made in plain Parliament, and that no motion or overture come in from any of the Committees but upon matters first remitted to them by the Parliament."[1]

While the power to initiate legislation was restricted to the House itself, there were two methods by which public business could be introduced before it, by resolution, or by overture. On 6th July, 1705, the House having adopted a resolution moved by the Earl of Mar, the question was then put, "Proceed by way of Resolve or Overture, and carried by way of Overture." The Earl thereupon declared "that since his motion was given in by way of resolve he withdrew the same for the time."[2] An overture is defined in the minutes as the "draft of an Act." Overtures were ordered in 1703 to be printed and distributed to Members.[3] A resolution to proceed "by way of

[1] *A.P.S.* x. 207. [2] *Ibid.* xi. 215.

[3] The first suggestion that overtures were printed occurs on 22nd June, 1703, when four several Acts of Security were overtured. Her Majesty's Solicitors were ordered to have them printed for information of Members (*A.P.S.* xi. 63). It should be noticed, however, that an order to print Acts occurs as early as 1649 (*Ibid.* vi. pt. ii. 150).

Overture" was therefore tantamount to giving leave to introduce a Bill whose provisions were in print and accessible to every Member. But such a resolution in no sense implied the House's approval of the measure overtured. The Bill was read, but that formality did not necessarily constitute a technical "reading." On 9th June, 1703, for instance, an overture having been read, "the vote was stated, If the Act should be marked a first reading, or should lie on the table, and Carried that it should lie on the table."[1] An order that a Bill should lie upon the table implied, either that the House desired further opportunity to consider it, or that it had no wish to go further with it. An overture which had been presented, but had not been marked a first reading, could be withdrawn by its introducer.[2]

So far as it has been outlined the legislative procedure of Parliament after the Restoration was, as one may term it, modern. Measures were introduced by leave of the House, and according to their nature and complexity were either considered in full session or were remitted to an appropriate Committee. So soon as a Bill had been marked a second reading it awaited only formal "voting" by the House, and thereupon "passed the Parliament." The touch of the Sceptre alone was required to convert it into law. An illustration of this procedure may be given. On 28th September, 1696, a draft Bill for Security of the Kingdom was brought in from Committee. It was read, a clause was added, and the Bill was ordered to lie on the table. On 29th September the Bill was marked a second reading and was ordered to lie on

[1] *A.P.S.* xi. 47. [2] *Ibid.* 84.

the table. On 30th September it was "voted." On 9th October, 1696, it was "touched."[1]

The procedure outlined in the preceding paragraph marks the maturer, and indeed the final, practice of the House. The formality of a first and second reading of a Bill, followed by the "voting" (practically a third reading), of it was of late introduction. So late as 15th April, 1661, a measure sent down by the Articles was "read, voted, and approven" in a single diet.[2] On 9th September, 1663, a measure was read twice, voted, and "touched" on the same day.[3] But on 25th September, 1696, the House passed an important resolution with the object of checking hasty legislation, very necessary in a Parliament which was not bicameral: "That any law to be made for hereafter shall not be concluded and voted in that sederunt in which it is first read, but that the same shall lie on the table till another sederunt, that the Members of Parliament may consider thereon in the meantime."[4]

It appears to have been a moot point whether an Act twice read and voted in one Parliamentary session could be continued to a future session for the Crown's assent. On 22nd April, 1690, the Commissioner was desired to "touch" an Act which had been passed in the previous session. It was objected that as it had not been "touched" in the session in which it was voted it must be voted again. To that contention it was answered, that an Act once voted had passed the Parliament and was capable of receiving the royal assent at any time

[1] *A.P.S.* x. 36, 39, 41, 57.
[2] *Ibid.* vii., Appendix 59.
[3] *Ibid.* vii. 472.
[4] *Ibid.* x. 35.

thereafter. It was replied that the voting and "touching" of an Act was *unus actus unico contextu*.[1] No authoritative decision appears to have been arrived at.

To private business—supplications, petitions, ratification of charters, privileges, dignities and titles—which formed so considerable a part of the legislative output of Parliament, what has been said in regard to public measures equally applies. Such measures passed in the course of the century from the omnivorous control of the Articles into that of the House itself. In 1645 private business, in the form of petitions and ratifications, was put under the purview of the Committee of Bills and Ratifications, with permission to supplicants to present to the House itself petitions neglected by the Committee.[2] After the final abolition of the Committee of the Articles the House again took into its hands the control of this branch of its legislative work. An Order of 28th September, 1696, constituted the Secretary, Advocate, Justice-Clerk and the Crown Solicitor, a Committee to revise "the Ratifications that are to pass this Session of Parliament."[3] The printed records of Parliament shew sufficiently the large amount of private business which the House was required to attend to. On 30th December, 1700, it was agreed to appoint a regular day in each week of the session "for hearing private affairs."[4] A similar allocation of a particular diet to private business was made in the Parliament of 1703.[5]

[1] *A.P.S.* ix., Appendix 140.
[2] *Ibid.* vi. pt. i. 288.
[3] *Ibid.* x., Appendix 8.
[4] *Ibid.* x. 234.
[5] *Ibid.* xi. 85.

In regard to private legislation promoted in Parliament, it was customary to pass in each session a qualifying or safeguarding Act, technically called the Act *Salvo Jure*. Its terms were as follows: "Our Sovereign Lord taking to consideration that there are several Acts of Ratification and others passed and made in this Session of Parliament in favour of particular persons without calling or hearing of such as may be thereby concerned or prejudiced, Therefore His Majesty with advice and consent of the Estates of Parliament statutes and ordains that all such particular Acts . . . shall not prejudice any third party of their lawful rights nor of their actions and defences competent thereupon before the making of the said particular Acts," etc.[1]

[1] *A.P.S.* x. 112.

VOTING IN PARLIAMENT.

In the attempt to trace the development of Parliament as a deliberative and legislative Chamber nothing has been said as to the mechanical methods by which the sense of the House was ascertained. The fact that until nearly the middle of the seventeenth century Parliament was neither a deliberative nor a legislative Assembly supports the conclusion that its Members were not called upon individually to vote, except upon the election of the Lords of the Articles. Even supposing that the privilege was constitutionally theirs, the method under which the whole legislative programme was put before the Estates for approval on the closing day of the session made it a physical impossibility for each Act to be regularly voted upon. It may be noticed also that the Chancellor's formal inscription of each Act for presentation for "touch" of the Sceptre recorded that it had been signed *in the presence* of the Lords of Parliament and not after their formal and approving vote. If the general body of the Estates was consulted at all, the method by which assent was invited and given must have been of the most perfunctory character. But in fact it is improbable that prior to the Parliament of 1640 the

private Member either claimed or was allowed to vote upon the measures ratified in his presence. He, or rather the Estate of which he was a member, had delegated authority to the Committee of the Articles and thereby stood committed to its resolutions. The general Members of the House remained merely passive spectators of the Crown's assent to the legislative programme of the Articles.

The conclusion that the private member was without the power to vote is strengthened if it is remembered that with rare exceptions before the seventeenth century, and during a considerable portion of that century, neither Barons nor Burgesses voted in the election of the Lords of the Articles. It is difficult to imagine that they could vote upon the legislative measures of a Committee in whose appointment they had no share. In fact it was admitted in 1690 to be a moot point whether the King's freeholders originally voted in Parliament, though their right to attend was admitted.[1] It may be pointed out also that the Act of 1427, summoning representatives of the shires to Parliament, only empowered the Members so chosen to elect a "common speaker" to be their mouthpiece in Parliament.[2] In the Parliament of 1639 a claim of the Commissioners of Shires to vote was resisted upon grounds which so entirely harmonise with ascertained facts that the disability of the Barons to vote may be held established. Their claim was denounced as "contrary to the perpetual custom inviolably observed," "prejudicial to His Majesty," and "never acclaimed before."[3]

[1] *A.P.S.* ix., App. 145. [2] See App. 1. [3] *A.P.S.* v. 614.

So far as the Commissioners of the Burghs are concerned their disability to vote is nowhere so decisively asserted. The Act of the Convention of Royal Burghs in 1574 distinctly claimed that every Commissioner had liberty "according to his conscience to give his vote, except it be concluded before by the whole that one shall speak and vote for all."[1] But the fact that the representatives of the burghs, like those of the shires, lost even the power to vote upon the election of the Articles, proves that the right asserted in 1574 was not in practice maintained. So far, therefore, as the two elected groups of Parliament are concerned, it must be concluded that before 1640 their individual members did not vote upon Parliamentary business. It is a conjecture, and no more than a conjecture, that their formal assent to the Bills presented to the House may have been given through the "common speaker," whose functions are sketched in the Acts of 1427 and 1574. It is, however, much more probable that the political apathy which has been remarked on already left both shires and burghs indifferent to the exercise of control over the resolutions of the Committee of the Articles. As to the Clergy and Nobility, their votes constituted the Committee. Their sanction to its findings may therefore be held as given in advance. There is no clearer indication in their case than in that of the shires and burghs that the Bills prepared by the Articles were submitted to their votes before receiving the Crown's ratification.

[1] See App. VI.

As a deliberative and legislative Chamber the history of Parliament dates from 1640, as has been observed already. As a voting body its history dates from the same period. A motion before the House on 22nd September, 1641, brings out not only the method of voting then in vogue, but also the more secret method which a section of the House desired to adopt. The motion, introduced by the Commissioners of the Shires, proposed that members of Council and the Officers of the State should be elected in the House by "billets" or voting-papers and not by open votes. It was suggested that each Member should give in his "billet" bearing the words "Allows" or "Rejects" in regard to each person proposed for office, a method to be adopted only "in the election of persons for places." The proposal, "by plurality of voices," was ordered to be taken into consideration.[1] A few days later (30th September, 1641) the Chancellor was elected *viva voce*, that is, by open vote, and it was protested that his election should be without prejudice to the proposed method of ballot voting.[2] The established method of voting in 1641 was oral and open, therefore, each member answered "Aye" or "No," or probably "Allows" or "Rejects," to his name as the roll was read by the Clerk when a motion was submitted. For so long as the Parliament maintained its separate existence that remained the recognised method of ascertaining its opinion. The House never "cleared" for a division.

After the Restoration another attempt was made to protect the private Member from the consequences

[1] *A.P.S.* v. 356, App. 667. [2] *Ibid.* v. 366.

which an oral vote might entail. In 1662 the House passed an "Act appointing the manner of voting by billets,"[1] and employed that method in the debates upon the Act of Oblivion. On 26th June, 1663, the King lodged a strong protest against it. He described it as "never before practised under Monarchy," and appointed a Commission to enquire into the circumstances which had led to its adoption.[2] Upon its report an Act was introduced, and passed in the following September, which declared "Billeting to be most pernicious in itself and of a most dangerous consequence, as tending to the dishonour of His Majesty and his Parliament and to the subversion of all justice and government, it being a way never before that time practised in this Kingdom or in any other place under Monarchical government." The Act of 1662 was therefore repealed, and by order was expunged from the records of Parliament.[3] No further attempt was made to depart from the method of oral voting.

In the Convention of 1689, upon the critical vote binding the House not to dissolve in the event of King James's letter ordering that course, the House adopted an unusual procedure in requiring Members to subscribe their names to the vote.[4] Up to that date the Minutes of Parliament do not record the division lists. Nor did the practice regularly obtain till 1701.[5]

The post-Revolution Parliaments did not modify in any important particular the method of oral voting which had obtained since 1640. A motion in 1690 on the part of the Nobility to revive their ancient liberty

[1] *A.P.S.* vii. 471. [2] *Ibid.* 450. [3] *Ibid.* 471.
[4] *Ibid.* ix. 9. [5] *Ibid.* x. 246.

to vote by proxy naturally failed to find acceptance.[1] An order of 26th May, 1703, required Members to stand up in their places and to give their vote audibly as the roll was called. It enjoined also that no one should answer the roll for another.[2] That Members of Parliament were not entirely removed from temptation in the disposal of their votes appears from the fact that in 1704 it was found advisable to introduce an Act for securing free voting in Parliament. The Act proposed to place the receiving of bribes under pain of infamy, disfranchisement, and fine of £10,000.[3] It does not appear to have progressed beyond the preliminary reading.

[1] *A.P.S.* ix., Appendix 146. [2] *Ibid.* xi. 45. See above, p. 89.
[3] *A.P.S.* xi., Appendix 59.

CONCLUSION.

The foregoing pages have attempted to furnish an account of the constitution and procedure of the Scottish Parliament in the last century of its existence. The abiding impressions which remain are, perhaps, three. In the first place stands out strongly the fact that until the seventeenth century Parliament had little claim to be regarded as a representative institution, so far as the Commons were concerned. The burghs had a prescriptive right of long standing to send representatives to it, but until the seventeenth century their attendance was neither considerable nor regular. In even greater degree the remark applies to the shires. For practical purposes county representation was non-existent before the reign of James VI. To the end of its history Parliament remained a feudal and non-popular Chamber, from which all but the Crown's vassals and officials were excluded.

In the second place, the development of Parliament's internal powers and of its relation to the Crown in the period were astonishing. From holding a nominal and wholly subservient position in the constitution it raised itself to one of independence. From being the mouthpiece of the executive it achieved equality

with that authority. Therein its history runs parallel to that of the English Parliament in the period. But the Stewart Parliaments in England, after all, worked on lines already laid down, on principles of popular liberty long since recognised. The Scottish Parliament had no such traditions. That the closer, but not invariably friendly, relations with England guided it to the same goal seems clear. But whatever the inspiration, the development of Parliament's constitutional powers in the short space of little more than three generations is almost startling. From being a silent Chamber of registration it developed into a Chamber of legislation and debate. It purged itself of the presence of those who had no claim to represent either the hereditary or elected Estates. It developed a procedure to meet its newly acquired constitutional powers. It obtained the control of its own membership, regulated the constituencies, and guarded the franchise. It qualified itself, in a word, by the development of three generations to share the traditions of the Parliament into which, by the Union of 1707, it was merged—traditions which had been the slow growth of centuries.

And lastly. In spite of its rapid development in the seventeenth century, in spite of the part it played in the crises of 1640 and 1689, the Scottish Parliament failed to secure for itself, even in the period of its greatest vigour and authority, the respect, popularity, and authority of its English contemporary. To put this in another way: The character, the fundamental interests of the seventeenth century deprived Parliament of the chance to centre the nation's hopes upon it at the very period when it was for the first

time qualified to fulfil the trust. The reason is too obvious to the student of the seventeenth century to need elaboration. It is briefly expressed in the fact that the abiding interests of the nation in the period were non-secular. For all that the nation most deeply cherished it looked to the General Assembly. It was but beginning to realise more secular interests when the Union deprived its Parliament for ever of the chance of carrying itself to popular consideration by its care of them. To that extent Parliament's failure to draw to itself the regard and interest of the nation was its misfortune rather than its fault. But the causes of its failure to take the place which it might have held are to be found in its earlier history. Save in the two crises already referred to, it cannot be said to have ever championed a great national cause, except perhaps in the Reformation. And it is noticeable that in the latter crisis, as in those of 1640 and 1689, it followed that non-secular instinct so deeply rooted in the nation's character. To say so much is by no means to indicate that Parliament, in the long course of its existence, failed to rise to the standard expected of it. If Parliament was content to accept a subordinate position, to be subservient to the Crown, and to surrender its proper functions to an Executive Committee, the reason is found in the absence in the nation itself of those political instincts which would induce a more dignified and a more responsible *rôle*. Hence is it that until the last three generations of its existence Parliament neither in its composition, its procedure, nor its functions fulfilled the idea of a popular and representative institution. The apathy of its Members was the counterpart of the

apathy towards it of the constituencies. Even in the seventeenth century, in spite of the tardy and sudden development of its representative character and powers, its history in the two periods of Stewart despotism shews it complacently adapting itself to the fluctuation of royal policy. That the characteristics of its past record would have been perpetuated had the Union not terminated its existence it is impossible to believe ; for everything in the last quarter of the seventeenth century points to a new era in its history. Pathetic in other aspects, the Union is tragic in this, that it for ever closed the career of Parliament at the moment when, after long preparation, it was ready and able to play a fitting part in the nation's history.

APPENDICES.

HAVING regard to the purpose which has prompted the printing of the following Acts of Parliament as Appendices to the text, it seemed advisable that they should be presented in a form intelligible to those who might find them in their original phraseology difficult to understand. For that reason they are printed here without their original and perplexing contractions, and the spelling has been modernised.

APPENDIX I.

Of the Commissioners of the Shires and the Common Speaker of the Parliament.

1st March, 1427-28. [*A.P.S.* ii. 15.]

Item the king with consent of his whole council general has statuted and ordained that the small barons and free tenants need not to come to parliaments nor general councils, provided that of each sheriffdom there be sent chosen at the head court of the sheriffdom two or more wise men after the largeness of the sheriffdom, except the sheriffdoms of Clackmannan and of Kinross of the which one be sent of each one of them, the which shall be commissioners of the shire. And by these commissioners of all the shires shall be chosen a wise and an expert man called the common speaker of the parliament, the which shall propone all and sundry needs and causes pertaining to the commons in the parliament or general council, the which commissioners shall have full and absolute power of all the rest of the sheriffdom under the witnessing of the sheriff's seal, with the seals of divers barons of the shire, to hear, treat, and finally to determine all causes to be proponed in council or parliament. The which commissioners and speakers shall have their expenses of them of each shire at every compearance in the parliament or council. And of their rents each pound shall be other's fellow to the contribution of the said costs. All bishops, abbots, priors, dukes, earls,

lords of parliament and bannerets the which the king will be reserved and summoned to councils and to parliaments by his special precept.[1]

APPENDIX II.

Of Freeholders coming to Parliament or General Council.

6th March, 1457-58. [*A.P.S.* ii. 50.]

Item, the lords think speedful that no freeholder that holds of the king under the sum of £20 be constrained to come to parliament or general council personally except he be a baron or else specially of the King's commandment be warned either by officers or by writ.

APPENDIX III.

Anent the election of Aldermen, Baillies, and other officers of Burghs.

27th Nov., 1469. [*A.P.S.* ii. 95.]

Item, as touching the election of aldermen, baillies and other officers of burghs, because of great trouble and contention yearly for the choosing of the same through multitude and clamour of common simple persons, It is thought expedient that neither officers nor council be continued after the king's law of burghs further than a year, and [that] the choosing of the new officers be in this wise, that is to say, that the old council of the town shall choose the new council in

[1] This clause is obscure. Its purport is that the persons mentioned are entitled to attend Parliament upon a special precept, and are excluded from the provisions of the present Act.

such number as accords to the town, And the new council and the old of the year before shall choose all officers pertaining to the town, as alderman, baillies, dean of guild, and other officers, And that each craft shall choose a person of the same craft that shall have voice in the said election of the officers for that time in likewise year by year. And moreover, it is thought expedient that no captain nor constable of the king's castles, what town they ever be in, shall bear office within the said town, as to be alderman, baillie, dean of guild, treasurer, nor none other officer that may be chosen by the town from the time of the next choosing forth, etc.

APPENDIX IV.

Of presence in the Parliament.

15th March, 1503-4. [*A.P.S.* ii. 244.]

Item. It is statuted and ordained from henceforth that no baron, freeholder, nor vassal, who are within one hundred merks of this extent that now is, be compelled to come personally to the parliament, unless it be that our sovereign write specially for them, and, so [as] not to be unlawed for their presence, they send their procurators to answer for them with the barons of the shire or the most famous persons. And all that are above the extent of one hundred merks to come to the parliament under the pain of the old unlaw.

APPENDIX V.

Anent the choosing of commissioners to Parliament for the whole Shire.

20th Dec., 1567. [*A.P.S.* iii. 40.]

Item. Of law and reason the barons of this realm ought to have vote in parliament as a part of the nobility, and for

safety of number at each parliament that a precept of parliament be directed to the sheriff of the shire and his deputes charging them to direct their precept charging the barons of his shire by open proclamation at the market cross of the head burgh of the same to compear within the tolbooth thereof upon eight days' warning at any time within the proclamation of the parliament, and there to choose one or two of the most qualified and wise barons within the shire to be commissioners for the whole shire, And that the sheriff or his deputes take four or six barons being present for the time and extent, the barons of the whole shire as well them that be absent as present to make the said commissioners' expenses.

APPENDIX VI.

Convention of Burghs at Edinburgh.

15th July, 1574. [*Records of the Convention of the Royal Burghs*, i. 25.]

In the convention of burghs held at Edinburgh, the xv day of July anno 1574 years. The commissioners of burghs after subscribing statutes and ordinances as follows, etc.

In the First, It is statuted and ordained that in all conventions, both in parliament and outwith, where the commissioners of burghs are required to be for giving of their votes in the common affairs, that no man take upon hand to vote for others, neither for the whole nor for part, without special commission after ripe advisement granted and given thereto, but that every commissioner have the free liberty according to his conscience to give his vote, excepting it be concluded before by the whole that one shall speak and vote for all; and if it be so concluded, that an act be made of the common consent of so many as shall be present for the time for his warrant that shall be chosen to vote for the whole as said is.

ITEM, After ripe advisement and consideration taken by the said commissioners for causes moving them concerning their common weal, It is statuted and ordained that no commission shall be given at any time hereafter to any manner of person to treat, reason, or conclude in causes concerning the common weal of burghs, or estate of merchants, but to such as are merchants and traffickers, having their remaining and dwelling within burgh, and bearing burden with the neighbours and inhabitants thereof, under the pain of one hundred pounds to be uptaken of the provost and baillies of the burgh that does in the contrary thereof, to be applied in the common affairs, as shall be thought good by the remaining commissioners that shall be present for the time; and for inbringing of the said pain and unlaw, the commissioners present after subscribing consent and grant for themselves, and in name and behalf of the towns of whom they have their commission, that upon this present act and ordinance letters shall be raised before the Lords of Session for poinding of the contraveners thereof by such as shall be nominated in the act and ordinance after following.

ITEM, It is statuted and ordained, that for collecting and inbringing of the pains and unlaws contained in the statute above written and in the statutes made of old, that the provost, baillies, and council of Edinburgh shall raise letters upon the common charges upon all burghs from Forth south,—the provost and baillies of Dundee from Forth north to the water of Dee,—the provost and baillies of Aberdeen from Dee north; and they and their commissioners to be held accusable in every convention, in case of not doing of diligence for inbringing the said pains, and further to be subject to account, reckoning, and deliverance in case any sums be delivered.

APPENDIX VII.

ANENT COMMISSIONERS OF THE SHIRES TO BE SENT TO THE PARLIAMENT.

10th Dec., 1585. [*A.P.S.* iii. 422.]

ANENT the article presented to our sovereign lord and three estates of this present parliament making mention how necessary it is that his Highness and they be well and truly informed of the needs and causes pertaining to his loving subjects in all estates, specially the commons of the Realm, and remembering of a good and lovable act made by his Highness's progenitor King James the first of worthy memory, being the hundred and twelfth act made in the time of his Reign, entitled, That small barons and freeholders need not to come to parliament, requiring that his Majesty and his said estates would ratify the same act and ordain the same to have full effect and to be put in execution in time coming, and of new statutes and ordains for the more full explanation of the same act and certain execution thereof, That precepts should be directed forth of the chancellory to a baron of each shire for the first to convene the freeholders within the same shire for choosing of the commissioners as they are contained in the said act, Which commissioners being once chosen and sent to parliament, The precepts of chancellory for convening of freeholders to the effect foresaid to be directed to the last commissioners of each shire, who shall cause choose two wise men, being the king's freeholders, resident indwellers of the shire, of good rent and well esteemed, as commissioners of the same, To have power and be authorized as the act purports under the commissioner's seal in place of the sheriff's, and that all freeholders of the king under the degree of prelates and lords of parliament be warned by open proclamation to be present at the choosing of the said commissioners, and none to have vote in their election but

such as has forty shilling land in free tenandry held of the king and has their actual dwelling and residence within the same shire, like as at more length is contained in the said article, The estates presently convened in this present parliament Remits the said matter to the will and good consideration of our said sovereign lord to do and ordain therein as his Highness shall think most requisite and expedient betwixt this and his Highness's next parliament, At which time his Highness with advice of his estates will godwilling take order for the final settling and establishing of that good form and order which shall be thought meet and convenient to stand in perpetuity in this behalf without prejudice of the Right or interest of any of his estates or otherwise whatsoever. And Sir John Maitland of Thirlestane, Knight, secretary to our sovereign lord, and William Douglas of Glenbervie, for themselves and in name and behalf of the rest of the barons took instruments of the foresaid act, and that the said matter was referred by the whole estates to the king's majesty's self, and that his Highness accepted the same upon him.

APPENDIX VIII.

Anent the Parliament.

29th July, 1587. [*A.P.S.* iii. 443.]

Our Sovereign Lord now being of lawful and perfect age, and considering the decay of the form, honour, and majesty of his supreme court of parliament by occasion of the troubles that have occurred since the decease of his dearest goodsire king James the fifth of worthy memory, and willing to restore the same to the ancient order, dignity, and integrity, Has thought expedient and by advice of his three estates assembled in this present parliament statutes and ordains as follows.

That there shall be no confusion of persons of the three estates, That is to say, No one person shall take upon him the

function, office, or place of all the three estates or of two of them, But shall only occupy the place of that estate wherein he commonly professes himself to live, and whereof he takes his style.

THAT in case any earl, lord, or baron of parliament, prelate, or burgh, being lawfully warned absent themselves from parliament without lawful and sufficient excuse admitted and allowed by the lords [of the] articles, Our sovereign lord and his three estates presently convened Has ordained and ordains that a pecuniary pain shall be modified and taken of every one of the non-compearants in manner following, That is to say, of every earl three hundred pounds, Of every lord two hundred pounds, Of every prelate one hundred pounds, and of every burgh one hundred merks, And that such as accompanies not the king's majesty on horseback decently with foot mantles from his Highness's palace to the parliament house shall be reputed for absent and incur the same pain as if they were absent, and letters shall be directed to poind and distrain their lands or goods therefor, Or to pay the same within ten days under the pain of rebellion, And if they fail, to put them to the horn, That the same pains may be inbrought to our Sovereign lord's use.

IF any of the ordinary heralds, pursuivants, macers, or trumpeters shall be noted absent from the parliament, or being present perform not that which becomes them of duties (without lawful excuse made and allowed as said is), every one of them being noted shall amitt and lose one year's fee for the first fault and for the second fault shall be deprived.

THAT every estate shall have their several apparel in seemly fashion Conform to the pattern thereof which the king's Majesty shall cause make and command to be observed, under the pain of two hundred pounds of the person failing and debarring of them forth of the parliament house.

ITEM that the number of the lords of articles be equal in each estate, and that the fewest number of every estate be six and the most number Ten.

ITEM that no advocate or prolocutor be any way stopped To

compear, defend, and reason for any person accused in parliament for treason or otherwise, But that whatsoever party accused shall have full liberty to provide himself of advocates and prolocutors in competent number, To defend his life, honour, and land against whatsoever accusation, Seeing the intenting thereof should not prejudge the party of all lawful defences As if it were *pro confesso* that the accusation were true, Annulling all acts made in the contrary hereof before.

No forfeitures lawfully and orderly led in parliament, Nor no decisions passed in parliament betwixt party and party by process after cognition of the cause, Shall be called in question by any inferior Judge.

And our sovereign lord with advice foresaid declares, statutes, and ordains that the order abovewritten shall be inviolably observed in all time coming as the necessary and lawful form of all parliaments, And faithfully promises to do or command nothing which may directly or indirectly prejudice the liberty of free voting and reasoning of the said estates or any of them in any time coming.

APPENDIX IX.

Against quarrelling for Priority of Place or vote in Parliament.

29th July, 1587. [*A.P.S.* iii. 443.]

Forasmuch as in divers parliaments held by our sovereign lord and his most noble progenitors sundry questions have been amongst noblemen and others of the estates for priority of places and votes in parliament, and thereupon sometimes quarrelling, to the disturbance of the supreme court of parliament which ought to proceed with greatest honour and quietness, For remedy whereof in times coming It is statuted and ordained by our sovereign lord with advice of his three estates of this present

parliament That none of his estates shall presume in time coming to make quarrel or provocation of trouble to other for priority of places or votes in parliament otherways than by supplication, and content them with the order and direction of his Highness and his said estates until their final decision of controversy, under the pain to be reputed and held as disturbers of the public peace and quietness of the realm and to be grievously punished therefor at the discretion of his Highness and lords of the articles assembled at that parliament.

APPENDIX X.

THE KING'S MAJESTY'S DECLARATION CONCERNING THE VOTES OF SMALL BARONS IN PARLIAMENT, AND INSTRUMENTS TAKEN BY THE EARL OF CRAWFORD AND THE LAIRD OF TULLIBARDINE.

29th July, 1587. [*A.P.S.* iii. 509.]

OUR SOVEREIGN LORD Considering the act of his Highness's parliament holden at Linlithgow the tenth day of December the year of God one thousand five hundred four score five years, Making mention how necessary it is to his highness and his estates to be truly informed of the needs and causes pertaining to his loving subjects in all estates, specially the commons of the realm, And remembering of a good and lovable act made by his highness's progenitor king James the first of worthy memory, being the hundred and twelfth act made in his reign, That his Majesty and his said estates would ratify and approve the same To have full effect and to be put to execution in time coming, And of new statute and ordain for the more full explanation of the same act and certain execution thereof, That precepts should be directed forth of the Chancellory to a baron of each shire first To convene the freeholders within the same shire for choosing of the Commissioners, as is contained in the said act, Which commissioners being once chosen and sent to Parliament The

precepts of parliament for convening of freeholders to the effect foresaid to be directed to the last commissioners of Each shire, who shall cause choose two wise men being the king's freeholders, resident indwellers of the shire, of good rent and well esteemed, as commissioners of the same shire, To have power and be authorised as the act purports under the commissioners' seal in place of the sheriffs', And that all freeholders of the king under the degree of prelates and lords of parliament be warned by proclamation to be present at the choosing of the said commissioners, and none to have vote in their election but such as has forty shilling land in free tenandry holden of the king, and has their actual dwelling and residence within the same shire, Which matter being remitted by the said estates convened in the said parliament holden at Linlithgow To the will and good consideration of our said sovereign lord, To do and ordain therein as his highness should think most requisite and expedient betwixt and his next parliament, And now his Majesty intending, God willing, to take order for the final settling and establishing of that good form and order most meet and expedient to stand in perpetuity in this behalf according to the effect of the said act of parliament made at Linlithgow, In consideration of the great decay of the ecclesiastical state and other most necessary and weighty considerations moving his highness, Therefore his Majesty, now after his lawful and perfect age of twenty-one years complete, sitting in full parliament Declares and decerns the said act made by king James the first To take full effect and execution, And ratifies and approves the same by these presents, And for the better execution thereof Ordains the Commissioners of all the sheriffdoms of this realm, according to the number prescribed in the said act of parliament, To be elected by the freeholders foresaid at the first head court after Michaelmas yearly, or failing thereof at any other time when the said freeholders please convene to that effect, or that his Majesty shall require them thereto, Which conventions his Majesty declares and decerns to be lawful. And the said Commissioners being chosen as said is for Each sheriffdom, Their names to be notified

yearly in writing to the director of the chancellory by the Commissioners of the year preceding. And thereafter when any parliament or general convention is to be holden, That the said commissioners be warned, at the first by virtue of precepts forth of the chancellory Or by his highness's missive letters or charges, And in all times thereafter by precepts of the Chancellory as shall be directed to the other estates. And that all freeholders be taxed for the expenses of the Commissioners of the shires passing to parliaments or general councils, And letters of poinding or horning to be directed for payment of the sums taxed to that effect upon a simple charge of six days warning only. And that the said Commissioners, authorized with sufficient commissions of the sheriffdom from which they come sealed and subscribed with six at the least of the barons and freeholders thereof, Shall be equal in number with the commissioners of burghs on the articles and have vote in parliaments and general councils in time coming, And that his Majesty's missives before general councils shall be directed to the said commissioners, or certain of the most accessible of them, as to the commissioners of burghs in time coming, And that the lords of council and session shall yearly direct letters at the instance of the said commissioners for convening of the freeholders To choose the Commissioners for the next year and making of taxation to the effect above-written, And that the compearance of the said commissioners of the shires in parliaments or general councils Shall relieve the whole remaining small barons and freeholders of the shires of their suit and presence in the said parliaments, Providing always that the said small barons observe their promise and condition made to his Majesty. Upon the which declaration and ordinance made and pronounced by our sovereign lord sitting in plain parliament as said is, John Murray of Tullibardine asked acts and Instruments, And David Earl of Crawford, lord Lindsay, for himself and in name and behalf of others of the nobility protested in the contrary.

APPENDIX XI.

For Consideration of articles to be proponed in Parliament.

8th June, 1594. [*A.P.S.* iv. 69.]

Our Sovereign Lord and his estates in this present parliament having consideration of the great trouble and inconvenience at sundry parliaments through presenting of a confused multitude of doubtful and informal articles and supplications, for remedy whereof in time coming Statutes and Ordains that whenever the parliament is appointed and ordained to be proclaimed there shall a convention be appointed of four of every estate To meet twenty days before the parliament To receive all manner of articles and supplications concerning general laws or touching particular parties, Which articles and supplications shall be delivered to the clerk of register and by him presented to the persons of the estates To be considered by them, To the effect that things reasonable and necessary may be formally made and presented In a book to the lords of articles in the parliament time, And all Impertinent, frivolous and Improper matters rejected, And that no article or supplication wanting a special title or unsubscribed by the presenter shall be read or answered in that convention or parliament following the same. It is always provided that his Majesty may present such articles as he thinks good concerning himself or the common weal of the realm at all times when he thinks expedient.

APPENDIX XII.

All ministers provided to prelacies should have vote in Parliament.

16th Dec., 1597. [*A.P.S.* iv. 130.]

Our Sovereign Lord and his Highness's estates in parliament having special consideration and Regard of the great

privileges and Immunities granted by his Highness's predecessors of most worthy memory to the holy church within this realm, And to the special persons exercising the offices, titles, and dignities of prelacies within the same, which persons has ever represented one of the estates of this realm in all conventions of the said estates, And that the said privileges and freedom has been from time to [time] renewed and confirmed in the same integrity and condition wherein they were at any time before, So that his Majesty now acknowledging the same to be falling and becoming under his majesty's favorable protection, Therefore his majesty of his great zeal and singular affection which he always has to the advancement of the true religion presently professed within this realm, with advice and consent of the said estates, statutes, decerns and declares that the church within this realm wherein the same religion is professed Is the true and holy church, And that such pastors and ministers within the same as at any time his majesty shall please to provide to the office, place, title, and dignity of a bishop, abbot, or other prelate, shall at all time hereafter have vote in parliament Suchlike and as freely as any other ecclesiastical prelate had at any time gone by, And also declares that all and whatsoever bishoprics presently vacant in his Highness's hands which as yet are undisponed to any person, or which shall happen at any time hereafter to be vacant, shall be only disponed by his majesty to actual preachers and ministers in the church, or to such other persons as shall be found apt and qualified to use and exercise the office and function of a minister or preacher, and who in their provision to the said bishoprics shall accept in and upon them to be actual pastors and ministers, And according thereto shall practise and exercise the same thereafter.

ITEM as concerning the office of the said persons to be provided to the said bishoprics in their spiritual policy and government in the church, The estates of parliament has Remitted and Remits the same to the king's majesty to be advised,

consulted and agreed upon by his Highness with the general assembly of the ministers at such times as his majesty shall think expedient to treat with them thereon, without prejudice always in the meantime of the Jurisdiction and discipline of the church established by acts of parliament made in any time preceding and permitted by the said acts to all general and provincial assemblies and others whatsoever, presbiteries, and sessions of the church.

APPENDIX XIII.

Declaration of his Majesty anent the number of officers of Estate who should sit and have place and vote in Parliament.

17th June, 1617. [*A.P.S.* iv. 526.]

The which day a question being moved to his Majesty anent the Number of officers of Estate who were to have place and vote in parliament and in the Articles, After that The Clerk of Register had shewed out of the Registers of many parliaments preceding That they have been sometimes more and at other times fewer than Eight, His Sacred Majesty for making the number certain in all time hereafter was graciously pleased to declare that in this and all parliaments hereafter There should be no more of the said officers of Estate who should sit and have place and vote in parliament and articles But only Eight set down, and their successors in their places, And if at any time hereafter there should be any more Of the said officers of estate than eight employed in the execution of the said offices By deputation, division or otherwise whatsoever, that no more should have place and vote in this and all parliaments hereafter but eight only.

APPENDIX XIV.

Act anent the constitution of this parliament and all subsequent Parliaments.

2nd June, 1640. [*A.P.S.* v. 259.]

The Estates of Parliament presently convened by his Majesty's special authority, Considering this present parliament was indicted by his Majesty for ratifying of such acts as should be concluded in the late assembly of the church for determining all civil matters and settling all such things as may conduce to the public good and peace of this church and Kingdom, And considering the several complaints of this church unto parliaments from time to time, proceeding from their continual experience of prejudice and ruin through many persons, and specially of prelates, their attempting to voice or do any thing in name of the church without either bearing office in the church or having commission from the church, And the acts of the late general assembly condemning the office of Bishops, Archbishops and other prelates, and the civil places and power of churchmen, As their voicing and riding in parliament, and craving the abolition of these acts of parliament which grants to the church or churchmen vote in parliament to be abrogated as prejudicial to their liberties and incompatible with their spiritual nature. Considering also that there are convened in this present parliament by his Majesty's special indiction, warrant, and authority, the Nobility, Barons and burgesses, the estates of this kingdom, who have a full and undoubted power to proceed and determine in all matters concerning the public good of this Kingdom, And that notwithstanding of the absence of the prelates who by former laws were appointed to be members of parliament, And to the effect none presume to move any question thereanent, The said Estates now convened as said is Have declared and by these presents declare This present parliament held by the Nobility, Barons and Burgesses and

their Commissioners the true estates of this Kingdom, To be a complete and perfect parliament and to have the same power, authority, and jurisdiction as absolutely and fully as any parliament formerly has had within this Kingdom in time bygone, And ordains all parliaments hereafter to be constituted and to consist only in all time coming of the Noblemen, Barons and Burgesses as the members and three estates of parliament, and rescinds and annuls all former laws and acts of parliament made in favour of whatsoever Bishops, Archbishops, Abbots, priors or other prelates or Churchmen whatsoever, for their riding, sitting or voicing in parliament either as Churchmen or the clergy or in name of the church or as representing the church as a state or member of parliament by reason of their ecclesiastical offices, titles, dignities or benefices, and namely the 231 act par. 15 Ja. 6, 1597 anent the church and specially persons and prelates representing the third estate, and the 2 act parl. 18 K. Ja. 6, 1606 anent the restitution of the estate of Bishops and their representing the third estate, with all acts and constitutions of convention, council or session and all practices and customs whatsoever In so far as the same or any clause thereof tends or may be extended to the effects foresaid, as being found and declared prejudicial to the liberty of this church and kingdom and to the purity of the true reformed religion therein established, And prohibits all persons whatsoever to call in question the authority of this present parliament upon whatsoever pretext under the pain of treason.

APPENDIX XV.

Act anent the choosing of committees out of every estate.

6th June, 1640. [*A.P.S.* v. 278.]

The Estates of Parliament presently convened by virtue of his Majesty's special authority, Considering that there have different questions arisen in this present parliament Anent the freedom

of the parliament either to choose or not to choose committees for articles, and when they resolve to choose, anent the manner of election of them and anent their use and power, By reason the same is not yet determined nor set down by any acts of former parliaments, For removing whereof and avoiding the great prejudice which by experience they find will hereby redound to this kingdom and to the liberty, freedom and dignity of the supreme courts of parliament, They have thought it necessary that a solid order be set down, as well declaring the liberty of the parliament in the manner of their proceedings by themselves alone or by committees for articles, as prescribing the form and manner of the election of these committees for articles and defining their use, power and manner of their proceedings to be observed in all times coming, And therefore have statuted and declared, That according to the liberty of all free Judicatories anent their own preparatory committees all subsequent parliaments may according to the importance of affairs for the time either choose or not choose several committees for articles as they shall think expedient, and that any subsequent parliaments making election of committees for articles to prepare matters for them shall proceed in manner following, To wit, That those of the Noblemen shall be named and chosen by the Noblemen themselves out of their number, And by the barons commissioners of shires by themselves out of their number, And the burgesses commissioners of burghs by themselves out of their number, The names of the which persons so named and chosen out of every estate (not exceeding for every committee the number prescribed by the act of parliament 1587) being openly read and made known to the whole estates sitting in full parliament, The said estates having received any propositions (which are ever first to be presented to themselves) by an act shall authorize the said persons with power to treat, reason, and consult upon the expediency of such articles only as shall be committed and recommended unto them by the estates, and to set down such reasons and motives as they can devise whereby to enforce either the passing or rejecting of the

same in parliament, To be reported with the said articles to the rest of the said estates assembled in parliament That they may deliberate and advise thereupon, And that after discussing of the reasons given in either for or against the same The said estates may ordain such of the said articles as they find to deserve consideration to be formed and passed as articles to be voted in full parliament. And in case it shall happen them to omit or forget to make report to the estates as said is of any of the said articles, with their reasons for or against the same, It shall be lawful in that case to the ingivers of the said articles to propone the same again in full parliament That they may there be determined and decided. And farther, to the effect that the said estates may be in readiness to receive all articles which shall be given in and presented to the parliament, And either to give answer thereunto themselves if they shall think it expedient, or otherwise to recommend the same to the said committee to be digested by them and reported as said is, It is thought fit and declared that the rest of the estates by and beside those of the several committees of the articles shall be held continually to sit for receiving, advising, and discussing of all articles, propositions, overtures, and matters [which] shall be presented to them from the beginning of the parliament to the close thereof, and also after all the said articles are passed and discussed by the said estates in manner foresaid, That they shall take such a competent time as they shall think requisite, according to the number and importance of the affairs in hand, to revise and consider the same again before the day of voicing That they may be well and ripely advised thereanent.

APPENDIX XVI.

Act Statutory appointing Parliaments to be holden once every three years.

6th June, 1640. [*A.P.S.* v. 268.]

The Estates of parliament presently convened by his majesty's authority, Considering That by reason of his Majesty's ordinary

residence forth of this his ancient and native kingdom The grievances and complaints of his good subjects cannot have so free and easy access to his ears as the same may be conveniently represented to his majesty's commissioners and estates of parliament from time to time, And how necessary it is That parliaments be kept frequently within this kingdom for preservation of the purity of God's true religion now by God's providence established within the same, And for the equal and Impartial administration of Justice to all his majesty's subjects, and maintaining of peace and concord amongst them, by applying of the true and lawful remedies to their grievances and complaints and timeous suppression of all abuses and corruptions which otherwise from small beginnings will grow to great disorders (Which frequent parliaments were continually observed in this kingdom before his majesty's father of happy memory went in to England), Have Statuted and Ordained That every three years once at least a full and free parliament shall be holden (and oftener as his majesty shall be pleased to call them) within the bounds of this kingdom in the most commodious place and convenient time to be thought upon, appointed, and affixed by his majesty and his commissioner for the time and the estates of parliament before the ending and closing of every parliament and to be the last act thereof, And The whole estates wishes that as it was their happiness to have his majesty's presence at all parliaments while the king had his residence in this kingdom, So that his majesty would be pleased to be present at each parliament, And they humbly supplicate his majesty for that effect.

APPENDIX XVII.

Articles agreed upon by the Estates for ordering the house of Parliament.

19th July, 1641. [*A.P.S.* v. 313.]

It Is ordained that none be admitted to remain in the Parliament house with the estates but only the members of parliament.

And it is declared that only the three depute clerks of parliament are the only number of the clerks allowed by the estates, with one servant to each one of them, to remain in the parliament house for serving of the estates. It is also declared that the clerk of the assembly and agent for the church Shall be permitted to remain In and sit at the table with the said clerks of parliament and their servants.

Item It is ordained that the whole Committees of estate, as well those lords of the session who are upon the Committee as the other barons and burgesses of that number, with the clerks of the committee and his colleague and the procurators for the estate nominated by the Committee, Shall also be permitted to come in and sit [and] hear.

Item it is ordained that none who are admitted to remain within the house of parliament shall have any weapons except the members of parliament, and these only to have their swords if they please, Reserving to the Constable and Marischal and their servants their ordinary arms, which they are only permitted to have in the riding days of the parliament, that is the first and last days thereof.

Item It is ordained that there be two sessions every day, one from nine hours to twelve hours, and another from three hours to six hours, except only on the Monday, upon the which there shall be no session, but the Monday shall be altogether free, and on the Saturday one session only from nine hours to twelve hours in the forenoon and no meeting in the afternoon that day. And for better keeping their diets ordains the sermons each day to end before nine hours, And appoints a great bell to Ring a competent space at the said several hours of meeting, and a little bell in the parliament house also to Ring at the hours of dissolving. And also ordains the rolls to be called every time when the Praeses sits down, and who is not then present and enters after the calling out of the rolls to pay the penalties following, viz. eighteen shillings for the noblemen, twelve shillings for each baron, and six shillings for each burgess. And it is ordained That the penalties following, viz. twenty

pound for each nobleman, Twenty merks for each baron, and ten merks for each Commissioner of burgh, Shall be payed by them respectively for each day's absence, and the half of these penalties for each session's absence, But the whole penalties to be paid for the Saturday's absence wherein there is only one session, and no License nor excuse for absents to be granted but by the Praeses with consent of the house.

ITEM IT is ordained That none speak without license asked and granted by the praeses, and who is permitted to speak That he be heard to an end without interruption, and that who shall reply direct his speech to the praeses and not to the former speaker, for eschewing of contest and heat. As also that none interrupt in the time of voicing.

ITEM IT is ordained that the Noblemen and Commissioners of shires and Burghs shall take their places as they are or shall be called by the rolls, which places to remain void in their absence.

ITEM IT is ordained that all those who are admitted to remain in the parliament house and are not members of Parliament Shall keep their places appointed and be uncovered and silent except they be desired to speak.

ITEM IT is ordained that a Minister be appointed to attend every day for the prayer at morning and evening, as also that a minister be appointed every Sabbath day during the parliament to preach in the parliament house to the members of parliament.

ITEM IT is statuted and ordained by the estates of parliament That when any overture is proponed every estate shall have the same overture twenty-four hours to advise the same before they be urged to answer thereto.

ITEM IT is ordained That the parliament house be hung and the cloth of state put up.

ITEM IT is ordained that the Marischal of the house and his deputes that he see the articles abovewritten so far as concerns their office put in execution, And in the meantime Commits to the Earl of Lothian, The Laird of Dun, And Mr. Robert Barclay, commissioner for Irvine, to see the orders before

written put in execution and observed, and this during the absence of the Marischal.

ITEM for better keeping the hours of meeting IT is ordained that whoever comes in *sero* Shall pay their penalties thereof at their Incoming before going to their seats, and who fails shall pay the double, and the refusers thereof to have the censure of the house.

ITEM That the rolls be called every night before the prayers be said, and who is then absent To pay the penalty of a session's absence, Except such a reasonable cause be shown as shall be admitted.

APPENDIX XVIII.

ACT ANENT THE CHARGES AND COMMISSIONERS' EXPENSES FOR THE BARONS.

11th Nov., 1641. [*A.P.S.* v. 384.]

OUR SOVEREIGN LORD and estates of parliament Ratifies and approves the acts made by his Majesty's predecessors king James the first of worthy memory in his seventh parliament and 101st act thereof, And the act made by his Majesty's unquhile dearest father of worthy memory in his twenty-second parliament, Anent the commissioners of small barons in parliament, In the whole heads, clauses and articles thereof, And specially that article of the said last act, Bearing that all freeholders be taxed for the expenses of the commissioners of the shires passing to parliaments or general councils, And letters of horning and poinding to be directed for payment of the sums taxed for that effect upon a simple charge of six days only, With this addition for clearing of the quantity and manner of the said taxation, that there shall be allowed to every one of the said commissioners for their whole charges and expenses five pounds every day for their expenses upon any parliaments or general councils, Counting the first and last days from the downsitting and rising of the said parliaments, with such other days allowed for the

commissioners of every shire for their coming to the said parliaments or general councils and returning therefrom from time to time as they shall sit or be adjourned, viz. for the commissioners of the Sheriffdom of Edinburgh for their coming and going, one day, Of Fife two days, Of Linlithgow two days, Of Clydesdale four days, Of Nithsdale four days, Of Dumbarton four days, Of Stirling two days, Of Haddington one day, Of Berwick four days, Of Clackmannan two days, Of Kinrossshire two days, [Of Peebles two days, Of Bute six days, Of Angus four days,] Of Perth four days, Of Mearns four days, Of Ayr four days, Of Wigton six days, Of Kirkcudbright four days, Of Roxburgh four days, Of Aberdeen eight days, Of Renfrew four days, Of Selkirk two days, Of Banff eight days, Of Elgin ten days, Of Nairn ten days, Of Argyll eight days, Of Inverness twelve days, Of Caithness sixteen days, Of Sutherland fourteen days, Of Orkney thirty days, the which daily allowance after rising of the said parliaments or general councils shall be calculated and put in a sum by the clerk of parliament under his hand To be divided and imposed proportionally upon the whole freeholders, heritors, and life-renters holding of the king's majesty and the prince according to the proportion of their lands and rents lying within the shire, Excepting always forth of this act all the lands belonging to the Noblemen or their Immediate vassals, And Therefore declares That their lands held of his Majesty or prince and their vassals to be free of the said tax Notwithstanding of this present act or any act preceding, And that letters be directed thereupon by the lords of session to charge the freeholders, heritors, and life-renters holding of his majesty and the prince To convene at the head burgh of every shire upon one special day for dividing and setting down the proportion thereof in manner foresaid, With power also to stent the said freeholders, heritors, and life-renters for the Tenth penny more of the said whole sum so calculated for the expenses of the letters to be raised therefore and other charges in collection thereof, With certification that such as shall convene shall have power to

proceed notwithstanding of the absence of the rest, And that letters of horning and poynding be directed thereupon at the instance of the said commissioners for payment thereof in manner abovewritten, And if payment be not made within the days contained in the charge So that the commissioners be forced to poynd therefor Then and in that case it shall be lawful to poynd for the double of the sum charged for by and attour the Sheriff, And no suspension pass thereupon but upon consignation alone, And if the suspension discuss against the suspender In that case the suspender shall be ordained to make payment to the commissioners of the double of the sum charged for by and attour the commissioners' other charges and expenses in discussing the suspension, And this act to take effect for the commissioners of this present parliament and all parliaments hereafter.

APPENDIX XIX.

Act concerning the election and charges of the Commissioners from the Shires to the Parliament.

30th May, 1661. [*A.P.S.* vii. 235.]

The King's Majesty Considering that divers debates have formerly occurred concerning the persons who ought and should have vote in the election of Commissioners from the several Shires of this Kingdom to Parliament, and who are capable to be Commissioners to Parliaments, And that it is necessary for the good of his service that the same be cleared for the future, Doe therefore with advice and consent of his Estates of Parliament Stutute, Enact, and Declare That beside all heritors who hold a forty shilling land of the King's Majesty *in capite*, That also all heritors, liferenters, and wadsetters holding of the King, and others who held their lands formerly of the Bishops or Abbots and now hold of the King, and whose yearly rent doth amount to ten chalder of victual or one thousand pound, All fue duties being deducted, Shall be and are capable to vote in the election of

Commissioners of Parliaments and to be elected Commissioners to Parliaments, Excepting always from this act all Noblemen and their vassals. And it being just that those who shall be chosen and accordingly attend his Majesty's and the Kingdom's service in Parliaments Have an allowance for their charges, His Majesty doth therefore with advice foresaid Modify and appoint five pound scots of daily allowance to every Commissioner from any Shire, Including the first and last days of the Parliament, Together with eight days for their coming and as much for their return from the furthest shires of Caithness and Sutherland and proportionately at nearer distances, And that the whole freeholders, heritors, and liferenters holding of the King and Prince Shall according to the proportion of their lands and rents lying within the Shire be liable and obliged in payment of the said allowance, Excepting Noblemen and their vassals, for the payment of which all execution of horning, poinding, and quartering is to pass as for raising of the excise, And that according as the time and days of the Parliament shall be attested under the Clerk of Register's hand. And because at this time some Commissioners of Shires have been put to extraordinary expenses in providing of foot mantles for the riding of the Parliament, It is hereby statuted that the Commissioners shall be relieved of the prices thereof, to be given in under their hands, And that the prices of the foot mantles be raised in the same way and by the same execution with the daily allowance foresaid, The Commissioners always at the rising of each Parliament Making the foot mantles forthcoming to the Shire to be disposed as they shall think fit.

APPENDIX XX.

Act for calling in the Bishops to the Parliament.

8th May, 1662 [*A.P.S.* vii. 370.]

Forasmuch as the King's Majesty hath been graciously pleased to restore the Church to its ancient and right Government

by Archbishops and Bishops, Dean, and Chapter, Yet seeing by the troubles and confusions these twenty-four years past That Government has been suppressed, So as their election and establishment at this time could not be in the form prescribed by the act of Parliament by Dean and Chapter, His Majesty has with advice and consent of his Estates in Parliament Thought fit to dispense with the present manner of election And declares the same to be sufficient and good and as valid as if the same had been done by Dean and Chapter. And therefore his Majesty with advice foresaid Ratifies and Approves the same. And considering that the Clergy did always in the right constitution of Parliaments represent the first State, and that now Archbishops and Bishops being restored It is fit the Parliament be returned to its ancient constitution and that the Clergy have their place and vote in Parliament as formerly, Therefore his Majesty with advice foresaid gives Commission to the Earls of Kellie and Wemys, the Lord Torphichen, the Lairds of Cromarty, Blakbarrony, and Prestoun, the Commissioners for Edinburgh, Ayr, and Saint Andrews, To go and in his Majesty's name invite the Archbishops and Bishops to come and take their place, and vote in Parliament as in former times before these troubles.

APPENDIX XXI.

Act for settling the Orders in the Parliament house.

13th May, 1662. [*A.P.S.* vii. 371.]

It is appointed that all members of Parliament do precisely keep the diets of Parliament under the pains following, viz. each Nobleman and Bishop for each diet's absence without leave, twelve pounds scots, each Baron six pounds, and each burgess three pounds, And that they pay the just half of their penalties for each diet they come in *sero* after the calling of the Rolls of Parliament.

THAT none be admitted to stay in Parliament but the ordinary members of Parliament, viz. the Archbishops and Bishops, Noblemen, Officers of State, Commissioners from Shires and Burghs, and the Clerk of Register's deputes and servants employed by him to serve in the house. And besides these, admittance is allowed to the eldest sons and apparent heirs male of Noblemen, to the Senators of the College of Justice, to the Knight Marischal, to the Ushers, to the Lyon, to the Justice deputes, to the King's agent, one servant allowed to the Lord Chancellor, two to the Constable, two to the Marischal, and one to the Advocate.

AND it is ordered that none presume to sit upon the Benches save the Nobility and Clergy; That the Officers of State sit upon the steps of the throne, That the Commissioners of Shires and Burghs sit in the forms appointed for them, That Noblemen's eldest sons and heirs aforesaid sit on the lower benches of the Throne, That the Lords of the Session sit at a table which is to stand betwixt the Throne and the Commissioners from Burghs, And that none presume to sit at the Clerk's table save the Clerk Register and the Deputes and servants to be employed by him in the service of the house, That any other persons allowed access shall sit at the far end of the Seats appointed for the Commissioners from Shires and Burghs.

AND it is appointed that the Knight Marischal and the Macers be careful as they will be answerable upon their peril That these orders be obeyed, and that they exact twenty shilling sterling from every person who shall be found within the house and are not members nor admitted as aforesaid, besides their removal and imprisonment at the Second fault, and these penalties with the former to be collected by the Macer and deposited in the hands of

to be disposed upon by order of the house.

THAT after the house is set none offer to stand or walk Or keep private discourses one with another, That none go forth except in cases of necessity and that they forthwith return, Nor

any persons suffered to stay at the Articles save members of Parliament.

That in all debates of the house no person offer to interrupt another Nor direct his discourse to any but to the Lord Chancellor or President.

That all reflections be forborne, and that no man offer at one diet and in one business to speak oftener than twice at most Except in such cases where leave shall be first asked and given by his Majesty or his Commissioner.

That no member of Parliament leave the house until the meeting be by his Majesty or his Commissioner dissolved.

APPENDIX XXII.

Act concerning members of Parliament who do not attend.

13th May, 1662. [*A.P.S.* vii. 371.]

Forasmuch as the King's Majesty out of his affection to this his ancient Kingdom, and for settling and securing the true interest, laws, liberties, and peace of the same, hath been pleased to call a meeting of his Estates in Parliament to be here at Edinburgh at this time, And it being most necessary for these ends, and for the advancement of his Majesty's service, That all members of Parliament should according to their allegiance and duty attend and keep the meetings of the Parliament, Therefore the King's Majesty with advice and consent of his Estates of Parliament hath Statuted and appointed and accordingly doth hereby require and Command all Archbishops, Bishops, Noblemen, Commissioners of Shires and Burghs, To come and attend his Majesty or his Commissioner in the meetings of this present Parliament and in all succeeding Parliaments, Certifying all such as without a lawful excuse timely represented and admitted by his Majesty or his Commissioner Shall after the twenty-seventh day of May instant be

absent from this Parliament, Or who in any succeeding Parliaments shall be absent at the diets to be appointed by his Majesty, They shall be liable unto and incur the pains and penalties following, viz. each Archbishop, Bishop, and Nobleman the sum of Twelve hundred pounds scots, each Commissioner of Shires the sum of Six hundred pounds scots, and each Commissioner of Burghs the sum of Two hundred pounds scots, Which penalties are presently to be raised And letters of horning and poinding are hereby ordained to be direct for payment of the same to his Majesty's Treasurer or Depute Treasurer. And it is hereby declared That these penalties are to be by and attour and without prejudice of what further censure the Parliament shall think fit to inflict for so high contempt and neglect of his Majesty and his Authority, And ordains Publication to be made hereof at the market cross of Edinburgh by Heralds with sound of Trumpet Whereby none pretend ignorance of the same.

APPENDIX XXIII.

Act anent the election of Commissioners from Shires.

26th Oct., 1669. [*A.P.S.* vii. 553.]

Forasmuch as divers questions have arisen in the election of Commissioners from the Shires to the Parliament, whether such heritors and others who by law are capable to vote in the election of Commissioners, or to be elected, being non-residenters within the Shire should be admitted as capable to vote in the election or to be elected, for clearing whereof his Majesty with advice and consent of his Estates of Parliament Finds and Declares That non-residence shall not be an exception why any (otherwise capable) may not vote in the election or be elected Commissioners.

APPENDIX XXIV.

Act concerning the Election of Commissioners for Shires.

17th Sept., 1681. [*A.P.S.* viii. 353.]

Our Sovereign Lord Considering the great delay in despatch of public Affairs in Parliament and Convention of Estates occasioned by the controverted Elections of Commissioners for Shires For preventing whereof and for clearing the orderly way of election of the said Commissioners in time coming, Therefore his Majesty with advice and consent of his Estates of Parliament Statutes and Ordains that none shall have Vote in the elections of Commissioners for Shires or Stewartries, which have been in use to be represented in Parliament and Conventions, But those who at that time shall be publicly infeft in property or Superiority and in possession of a forty Shilling land of old extent holden of the King or Prince distinct from the fue duties in fuelands, or, where the said old extent appears not, shall be infeft in Lands liable in public burden for his Majesty's supplies for four hundred pounds of valued rent, whether Church lands now holden of the King or other Lands holding fue, Ward, or blensh of his Majesty as King or Prince of Scotland, And that Apprisers or Adjudgers shall have no vote in the said Elections during the legal Reversion, And that after the expiring thereof, The Appriser or Adjudger first infeft shall only have vote, And no other Appriser or Adjudger coming in *pari passu* till their Shares be divided that the extent or valuation thereof may appear; And that during the Legal, the Heritor having right to the Reversion shall have vote, And likewise proper Wadsetters having lands of the Holding, extent, or Valuation foresaid; Which rights to vote proceeding upon expired Comprising, Adjudication, or proper wadset shall not be questionable upon pretence of any order of Redemption, payment, and satisfaction, unless a

Decreet, or Declarator, or Voluntary redemption, Renunciation, or Resignation be produced; And that apparent Heirs being in possession by virtue of their predecessor's infeftment of the holding, extent, and Valuation foresaid, And likewise Liferenters and Husbands for the freeholds of their wives or having right to a liferent by the Courtesy of the said liferenters, claim their vote, Otherwise the fiar shall have vote; But that both fiar and liferenter shall not have vote, Unless they have distinct Lands of the holding, extent, or Valuation foresaid; But that no person infeft for relief or payment of Sums shall have vote, but the granters of the said Rights, their Heirs or Successors. Likewise His Majesty Ordains the whole freeholders of each Shire and Stewartry having election of Commissioners, To meet and convene at the head Burghs thereof, And to make up a Roll of all the freeholds within the same, whether lying within Stewartries not having Commissioners, or Baillieries of Royalty or Regality, or without the same, upon the first Tuesday of May next to come, According as the same shall be instructed to be of the holding, extent, or Valuation foresaid, Containing the names and Designations of the Fiars, Liferenters, and husbands having right to vote for the same in manner above written, And expressing the extent of Valuations of the said freeholds, with power to continue or adjourn their meetings until the said Roll be fully complete. Likewise the said freeholders shall meet and convene at the head Burghs of the said Shires and Stewartries respectively at the Michaelmas head Court yearly thereafter, and shall revise the said Roll of Election and make such Alterations therein as have occurred since their last meeting from time to time; Which Roll for Election shall be inserted in the Sheriff or Stewart books particularly appointed for that end, According as they shall be stated each Michaelmas Court. And at the election of Commissioners, either at the Michaelmas court or at the calling of Parliament or Conventions, The said freeholders shall meet and convene at the head burgh of the Shire or Stewartry, in that room where the sheriff or Stewart Court

useth to be held, betwixt mid-day and two afternoon, Which room shall be patent to them And all others removed but whom they call. And the first or second Commissioner last elected, or in their absence the sheriff or Stewart-Clerk, shall ask the votes who shall preside, And who shall be Clerk to the meeting. And in case any alteration have happened in the said Roll of Elections since the last meeting, The persons then coming to have right to vote shall be inserted in the Roll, And there shall no objection be admitted against any inserted in the said Roll as said is but what shall be proponed before they begin to vote to Election. And if the objectors shall not be cleared and acquiesce, They shall take Instruments Containing their Objections against the admitting to or excluding any person from the foresaid Roll. And it is hereby declared that no other Objection shall be competent in Parliament or Convention but what shall be contained in the Instruments taken as aforesaid. And in case Objections be made when a Parliament or Convention is not called, a particular diet shall be appointed by the meeting and intimated to the parties controverting, to attend the Lords of Session for their determination, Who shall determine the same at the said Diet summarily According to Law, upon Supplication without further Citation. And it is hereby declared that Horning for a Civil cause, or Nonresidence, shall be no sufficient Objection, but that Minority being instantly verified shall be a sufficient objection, or the not taking the Test appointed by the Sixth Act of this present Parliament, which is hereby ordained to be subscribed by all the voters in presence of the meeting before they proceed to the Election, And recorded in the Sheriff Court books, And so returned with the Commission to the Clerk of Register. And if the persons objected against shall appear at the Parliament or Convention and instruct their right to vote, the objector shall pay their expenses and be farther fined in five hundred Merks. And if the Objection be sustained in Parliament, The objectors appearing shall have their expenses, And the party objected against shall be fined in five hundred Merks. And to the

effect that sufficient advertisement may be given to all parties having vote in Election who are to elect at the Calling of a Parliament or Convention, The Sheriffs and Stewards are hereby ordered to make publication of the Call and diet of the said Parliament and Convention, and of the Diet appointed for Election, And that at the head Burgh of the shire or Stewartry upon a market day betwixt Ten and Twelve in the forenoon, And also shall make the like Intimation at each parish church on Sunday immediately thereafter, Which diets for election shall at least be Twelve days before the meeting of a Parliament or Eight days before the meeting of a Convention, That the Commissioners elected may have sufficiency of time to keep the diet of the Parliament or Convention. Likewise His Majesty with consent foresaid Statutes and Ordains the whole Heritors, Liferenters, and Wadsetters within each shire and Stewartry to contribute for the Charges of the Commissioners thereof, According to their valuation, except only those who hold of Noblemen or Bishops, or Lands belonging to Burghs Royal in Burgage, And also to the expenses of the foot-mantles.

APPENDIX XXV.

Act for regulating the Election of the Lords of the Articles Given in by the Commissioner.

18th June, 1689. [*A.P.S.* ix. App. 127.]

The which day the Duke of Hamilton, his Majesty's Commissioner, represented to the Estates of Parliament, that it was his Majesty's express pleasure, that in the constitution of Parliaments and choosing of the Lords of the Articles at this Session, and in all time coming, there be a select number of twenty-four persons of the members of Parliament chosen to be upon the Articles, being eight out of every Estate, viz. eight noblemen, eight barons, and eight burgesses, and

that the noblemen choose the eight out of their state, and the barons eight out of their state, and the burghs eight out of their state, to prepare matters and acts for the Parliament. And in case of the decease of any of the persons so chosen, that the Estate out of which the person is deceased shall supply the same by choosing another of the same Estate in his place, and that these twenty-four persons should be beside the officers of State who are always supernumerary, but that the appointing of the Lords of the Articles should not exclude nor hinder the Parliament to take any matter to their consideration, though it has been thrown out and rejected in the Articles, and the Estates of Parliament with all humble duty having acquiesced to his Majesty's gracious pleasure thus signified to them, and in prosecution thereof, the Lords made choice of as eight of their state, and the Barons made choice of as eight or their state, and the Burghs made choice of as eight of their state, to be upon the Articles, to prepare matters and acts for the Parliament, which twenty-four persons are to be beside the officers of State, who are always supernumerary, and the King and Queen's Majesties with advice and consent of the Estates of Parliament statutes and declares that the appointing of the Lords of the Articles in manner foresaid shall not exclude or hinder the Parliament to take any matter to their consideration, though it has been thrown out or rejected in the Articles, and their Majesties with advice and consent of the Estates of Parliament rescinds and annuls the first act of the third Session, first Parliament of King Charles the Second, entitled An act anent the way and manner of the election of the Lords of the Articles, and all other acts, statutes, and practices which are contrary and prejudicial to or inconsistent with this present act, and declares the same to be void and null in all time coming.

APPENDIX XXVI.

Act regulating the Committees of Parliament.

25th June, 1689. [*A.P.S.* ix. App. 128.]

Forasmuch as the Meeting of the Estates of this Kingdom did by their vote of the eleventh of April last represent among other grievances, that the Committee of Parliament called the Articles is a great grievance to the nation, and that there ought to be no Committees of Parliament but such as are freely chosen by the Estates to prepare motions and overtures that are first made in the house, Therefore their Majesties with advice and consent of the Estates of Parliament do enact and declare that it is the undoubted privilege of the three Estates of Parliament to nominate and appoint Committees of Parliament of what number of members they please, being equal of every Estate and chosen by the respective Estates, viz. the Noblemen by the Estate of Noblemen, the Barons by the Estate of Barons, and the Burghs by the Estate of Burghs, for preparing motions and overtures that are first made in the house, or that the house may treat, vote, and conclude upon matters brought in in open Parliament without remitting them to any Committee if they think fit, or that the house may appoint particular Committees for any motions or overtures that need to be prepared or digested for them, declaring hereby that no officers of Estate are to be members of any Committee unless they be chosen, and hereby rescinds the first act of the third Session of the first Parliament of King Charles the 2nd, and all other laws or customs establishing the manner of election and power of any Committees of Parliament in so far as they are not conform to this act.

APPENDIX XXVII.

REASONS HUMBLY OFFERED TO HIS SACRED MAJESTY BY THE ESTATES OF PARLIAMENT FOR THE ACT VOTED BY THEM REDRESSING THE GRIEVANCE RELATING TO THE LORDS OF THE ARTICLES AND COMMITTEES OF PARLIAMENT, WHICH WAS DECLARED IN THE MEETING OF ESTATES AND REPRESENTED TO HIS MAJESTY WITH THE OFFER OF THE CROWN, AND WHY THEY FIND THE ACT BROUGHT IN BY HIS MAJESTY'S COMMISSIONER UPON AN INSTRUCTION DOTH NOT SUFFICIENTLY REDRESS THE SAME.

26th June, 1689. [*A.P.S.* ix. App. 128.]

1°. By the vote of the great Meeting of the Estates, that Committee of Parliament called the Articles being a constant Committee is found to be a great grievance to the Nation, whereas by the act offered by his Majesty's Commissioner, the Committee thereby appointed is constant.

2°. By the vote of the great Meeting, all Committees are only to be chosen upon motions and overtures first made in the house to prepare them in case the house think fit to remit them, whereas in the act offered by his Majesty's Commissioner no matter can be moved nor Act passed in the house until first it be either approved or rejected in the Articles, though there be a power reserved to the Parliament to take into their consideration any matter rejected by the Articles.

3°. By the vote of the great Meeting, the number of the members of any Committee, being equal of every Estate, is at the option of the house, whereas by the act offered by his Majesty's Commissioner, the number is fixed to twenty-four besides the officers of Estate.

4°. By the vote of the great Meeting the Committees are to consist of members freely chosen by the Estates, whereas in the Act offered by his Majesty's Commissioner, the

officers of State are members of the Committee, whether they be chosen or not.

By all which it doth evidently appear that the grievance voted by the Estates anent the Articles doth level against a constant Committee, or of a fixed number, or of members not chosen by the Estates, to which Committee all motions and overtures must be made, and absolutely condemns it, notwithstanding any former act of Parliament to the contrary.

APPENDIX XXVIII.

ACT FOR CONSTITUTING A COMMITTEE OF PARLIAMENT CALLED THE ARTICLES. GIVEN IN BY HIS MAJESTY'S COMMISSIONER.

9th July, 1689. [*A.P.S.* ix. App. 132.]

THE which day the Duke of Hamilton, his Majesty's Commissioner, represented to the Estates of Parliament that it was his Majesty's express pleasure that in the constitution of Parliament and choosing of a Committee of Parliament called the Articles, at this session and in all time coming, there be a select number of 33 persons of the members of Parliament chosen to be upon the Articles, being eleven out of every Estate, viz. 11 Noblemen, 11 Barons, and 11 Burgesses, And that the Noblemen choose the eleven out of their State, and the Barons eleven of their State, and the Burghs eleven out of their Estate, to prepare matters and acts for the Parliament; and in case of the decease of any of the persons so chosen, that the Estate out of which the person is deceased shall supply the same by choosing another of the same State in his place, and that these 33 persons should be beside the Officers of State, but that the appointing of a Committee of Parliament called the Articles should not exclude or hinder the Parliament to take any matter to their consideration, though it has been thrown out or rejected in the Articles, nor prevent the moving anything in open Parliament and remitting of it to the Articles. And

the Estates of Parliament with all humble duty having acquiesced to his Majesty's gracious pleasure thus signified to them, and in prosecution thereof the Lords made choice of as eleven of their Estate, and the Barons made choice of as eleven of their Estate, and the Burghs made choice of as eleven of their Estate, to be upon the Articles to prepare matters and acts for the Parliament, which 33 persons are to be beside the Officers of State who are supernumerary, And the said 33 persons are to be upon the Articles for the space of only, And then either to be continued, or a new nomination to be made of 33 persons to be upon the Articles, being eleven of every State, to be chosen in manner foresaid, to continue for the space of , or longer or shorter time as the Parliament shall think fit, And the King and Queen's Majesty, with advice and consent of the Estates of Parliament, Statutes and Declares that the Committee of Parliament called the Articles are to consist of 33 persons in all time coming, being eleven of every State to be chosen in manner foresaid, besides the Officers of State who are always supernumerary, but that the appointing of a Committee of Parliament called the Articles shall not exclude nor hinder the Parliament to take any matter to their consideration though it has been thrown out and rejected in the Articles, nor prevent the moving of anything in open Parliament and remitting of it to the Articles, As also that the said 33 persons, being eleven of every State to be upon the Articles, shall be chosen monthly or oftener if the Parliament shall think fit. And their Majesties with advice and consent of the said Estates of Parliament rescinds and annuls the first act of the 3rd Session, first Parliament, of King Charles 2nd, Entitled An act anent the way and manner of the election of the Lords of the Articles, and all other statutes or practices which are contrary and prejudicial to or inconsistent with this present act, and declares the same to be void and null in all time coming.

APPENDIX XXIX.

Act concerning the Election of Committees of Parliament.

8th May, 1690. [*A.P.S.* ix. 113.]

Forasmuch as the meeting of the Estates of this Kingdom did by their vote of the thirteenth of April, 1689, Represent amongst other grievances, That the Committee of Parliament called the Articles is a great grievance to the Nation, And that there ought to be no Committees of Parliament but such as are freely chosen by the Estates to prepare motions and overtures that are first made in the house, Therefore our Sovereign Lord and Lady the King and Queen's Majesties, with Advice and consent of the Estates of Parliament, Do hereby discharge and abrogate in all time coming the foresaid Committee of Parliament called the Articles, And further Cass and Annul and Rescind the 1st Act 3rd Session, Parliament first, Charles the 2nd, anent the way and manner of Election of the Lords of the Articles, with all other acts, Laws, and constitutions establishing the said Committee or Lords of Articles. Likewise Their Majesties with advice and consent foresaid Do hereby enact and declare that this present and all succeeding Parliaments and three estates thereof may choose and appoint Committees of what numbers they please, There being always an equal number of each estate to be chosen, viz. the noblemen by the estate of noblemen, The barons by the Estate of Barons, and the burghs by the Estate of Burghs, for preparing all motions and overtures first made in the house, and they may alter and change the said Committees at their pleasure, without prejudice always to the estates of Parliament to treat, vote, and Conclude upon matters proponed or brought before them in open Parliament without Committees as they shall think fit, And also providing that in all Committees to be hereafter appointed some of the

officers of State may be present by their Majesties' or their Commissioner's appointment as to them shall seem necessary, and that to the effect and with power to the said officers of state present in the said Committees freely to propose and debate only but not to vote, Declaring Likewise It is hereby declared that no officers of state shall be otherwise admitted in any Committee of Parliament but as it is here allowed, without prejudice always to the estate of the Noblemen to choose such of their own bench as are officers of State to be members of the Committees if they think fit.

APPENDIX XXX.

Act for an Additional Representation in Parliament of the greater Shires of this Kingdom.

14th June, 1690. [*A.P.S.* ix. 152.]

Forasmuch as the Meeting of the Estates of this Kingdom did represent amongst other grievances, that the manner and measure of the Lieges their representation in Parliament is to be considered and redressed in the first Parliament; And that by an Act, James 1st, Parliament 7 Cap. 101, The Barons and freeholders may out of each shire send two or more Commissioners, according to its largeness, to represent them in Parliament; And which Act is ratified in all its heads in the 11th Parl. James 6. Cap. 114, Our Sovereign Lord and Lady the King and Queen's Majesties considering the largeness, extent, and value of the Lands holden of them by the barons and freeholders within the shires after mentioned, to the effect they may have a more equal representation in Parliament with the Barons and freeholders of the other shires of the kingdom, Therefore their Majesties with advice and consent of the Estates of Parliament statute and ordain that in all Parliaments, meetings, and Conventions of Estates to be holden henceforth and hereafter, the Barons and freeholders of the shires after mentioned shall add to their former

representation the number of Commissioners after expressed, viz. The shire of Edinburgh Two, The shire of Haddington Two, The shire of Berwick two, The shire of Roxburgh two, The shire of Lanark Two, The shire of Dumfries Two, The Stewartry of Kirkcudbright one, The shire of Ayr Two, The shire of Stirling one, The shire of Perth two, The shire of Aberdeen two, The shire of Argyle one, The shire of Fife two, the shire of Forfar two, and the shire of Renfrew one. And it is hereby declared that this Act shall take effect in the next session of this Parliament and in all Parliaments and Conventions of Estates thereafter.

APPENDIX XXXI.

Act for settling the orders in the Parliament House.

21st April, 1693. [*A.P.S.* ix. 247.]

It is Ordered That all Members of Parliament do precisely keep the diets of Parliament under the pains following, viz. Each Nobleman for each diet's absence without leave or relevant excuse Twelve pounds Scots, Each Baron six pounds, and each Burgess three pounds, And that they pay the just half of their penalties for Each Diet they come in after the calling of the Rolls of Parliament.

That none be admitted to stay in Parliament but the Ordinary Members of Parliament, viz. The Noblemen, Officers of State, Commissioners for Shires and Burghs, and the Clerk Register's Deputes and servants employed by him to serve in the house. And besides these Admittance is allowed to the eldest Sons and apparent Heirs Male of Noblemen, to the Senators of the College of Justice, to the Knight Marischal, to the Ushers, to the Lyon, to the King's Agent, and one servant allowed to the Lord Chancellor, two to the Constable, two to the Marischal, and one to the Advocate.

And it is Ordered That none presume to sit upon the Benches save the Nobility, That the Officers of State sit upon the steps of the Throne, That the Commissioners for Shires and Burghs sit on the Forms appointed for them, That Noblemen's eldest Sons and Heirs aforesaid sit on the Lower Bench of the Throne, That the Lords of Session sit at a Table which is to stand betwixt the Throne and the Commissioners from Burghs, and that none presume to sit at the Clerk's Table save the Clerk Register and the deputes and servants to be employed by him in the Service of the House, nor to stand betwixt the Throne and the Clerk's Table, That any other persons allowed access shall sit at the far end of the Seats appointed for the Commissioners from Shires and Burghs.

And it is appointed That the Knight Marischal and Macers be careful, as they will be answerable upon their peril, That these Orders be obeyed, And that they exact Twenty Shillings sterling for each person who shall be found within the House and are not members nor admitted as aforesaid, besides their Removal and Imprisonment at the second fault, And their penalties to be collected by the Macers and deposited in the hands of to be disposed upon by the Order of the House. That after the House is set none offer to stand or walk or keep private discourses one with another. That none go forth except in cases of necessity, and that they forthwith return, nor any persons suffered to stay at the Committees save members of Parliament. That in all debates of the House no person offer to interrupt another, nor to direct his discourse to any but to my Lord Chancellor or President. That all reflections be forborne, and that no man offer at one Diet and in one business to speak oftener than twice at most, except in such cases where leave shall be first asked and given by his Majesty or Commissioner. That no member of Parliament leave the house until the Meeting be by his Majesty or his Commissioner dissolved.

As also by another Act of the date of twenty-eighth of April 1685, the Clerks of the Council, the Clerks of the Justice Court, and Sheriff-Deputes of Edinburgh-shire are allowed to stay in the house the time of the sitting of the Parliament.

And also by two Acts of the dates the Twenty-first and Twenty-second of April 1693 The Commander-in-chief of the Forces, the Captain of the Guard, the Judge of the Admiralty, the Keeper of the Signet under the Lord Secretary, and the King's Chaplain are also allowed to stay in the House during the sitting of the Parliament.

APPENDIX XXXII.

Act Regulating Citations before the Parliament.

28th May, 1695. [*A.P.S.* ix. 361.]

His Majesty, with the Advice and Consent of the Estates of Parliament, finding it necessary that the order of summoning private parties to appear before them be cleared and regulated, Do therefore Statute and Ordain That the manner of summoning private parties in actions raised either before or during the sitting of the Parliament shall be for hereafter, and from the day and date hereof, in this manner, viz. That in prosecution of protests for remedy of Law, the party at whose instance summons is to be granted may give in his bill containing the matter of his cause or complaint, signed by himself or an Advocate for him, which being subscribed by one of the Six Clerks of Parliament, and presented before the sitting of the Parliament to any of the Officers of State, or the time of the sitting of the Parliament to the Lord Chancellor or President of the Parliament for the time, or any of the said Officers of State, the same may be by them passed in course. And that as to all other causes that may be brought before the Parliament Summons

and warrants for Citation shall for hereafter only be granted by deliverance either of Parliament in time of Parliament, or of the Lords of Session upon a summary Citation, to abide neither continuation nor roll, *in presentia*, in the recesses and intervals of Parliament, upon a bill containing, subscribed, and presented as above and no otherwise: which warrants for Citation being granted, Summons in his Majesty's name shall be thereon granted to macers, if the party cited be within the Town of Edinburgh, for summoning the said party if within the said Town of Edinburgh on forty-eight hours, and if elsewhere within the Kingdom (excepting Orkney and Zetland) upon fifteen days' warning, or if in Orkney or Zetland upon forty days, personally or at his dwelling house, or if without the Kingdom upon sixty days' warning, at the market Cross of Edinburgh and pier and shore of Leith, to compear before his Majesty and the said Estates of Parliament where and when the Parliament shall be appointed to meet or shall be met for the time, with continuation of days and with certification and also for summoning of witnesses, as is usual before the Lords of Council and Session, which Summons to be expedited by deliverance as said is shall pass under the Signet of the Session; and the party at whose instance the same is raised shall pay to the Clerk of Parliament or Session aforesaid, for writing and subscribing of the bill and Letters, the sum of twelve pounds Scots and no more on any pretence whatsoever, and for affixing of the Signet the sum of three pounds Scots and no more: Declaring that if any adjournment of Parliament, one or more, shall happen to intervene betwixt the giving of Citations in manner foresaid and the day of Compearance, the foresaid Summons shall nevertheless still stand in force for obliging the parties and witnesses summoned to compear at the day to which the Parliament shall be adjourned, and whenever the same shall first meet. And further it is hereby Declared, that at the said day of Compearance before the Parliament being so met, or any other

lawful day thereafter, it shall be lawful to the Clerks of Parliament at the desire of the party pursuer to call the foresaid Summons after the opening of the House, and before the sitting down of the Parliament, at the Patent gate of the Parliament House, and if the party summoned compear, to mark the same, that the Summons with the Executions and the other pieces produced by the pursuer may be given out to see and answer, to the effect the same may be seen and returned within six days in the common form, and so the cause or complaint may be ready prepared for the Parliament to proceed therein when the same shall be again called in their presence. Providing always, that no Decreets be given out in absence but upon special application to and Sentence pronounced by the Parliament, and no otherwise. And excepting always from this act, all Summons of Treason, and for other public Crimes, and executions and processes thereupon, which are to proceed as formerly. And lastly, Providing that the foresaid Citations to be made by deliverance of the Lords of Session shall found no exception of prejudiciality against any party in any action may be raised, until the foresaid Citation be called before and sustained by the Parliament.

APPENDIX XXXIII.

Act annulling the election of Wigton.

9th December, 1700. [*A.P.S.* x. 224.]

His Majesty's High Commissioner and the Estates of Parliament having upon the twelfth of November last Remitted to the Committee for Elections to receive the depositions of witnesses Cited by Lord Basil Hamilton and William Stuart of Castlestuart by virtue of the several diligences granted to them on the fifth of the said month, and to take trial of the whole other matters of fact (so far as the same requires

probation) relating to the several elections of both the said parties made by the Barons of the Shire of Wigton for supplying the place of the deceased Laird of Garthland late Commissioner for that Shire, The said Committee Reported to the Parliament that they having considered the interrogators given in by either party and the depositions of the witnesses adduced by them, They were of opinion that it is proven by the depositions of David Stuart younger of Phisgill, Robert Crauford of Craufordstoun, and Alexander Campbell, servitor to the Earl of Galloway, that the Laird of Phisgill elder did several times desire a Praeses to be chosen and notwithstanding thereof the Sheriff was continued by the Barons as formerly. And David Stuart depones that he heard Phisgill his father in name of many of the Barons go to the end of the table where the Clerk was sitting and there did protest against the proceeding of the meeting as altogether illegal and thereupon took instruments in Craufordstoun's hands that he had so protested, but his protestation was not marked by the Sheriff Clerk. And Craufordstoun depones that Phisgill protested and took instruments in his hands that the meeting proceeded illegally, not having chosen a President, and that no further procedure ought to be until a President were chosen. And Alexander Campbell depones that he heard Phisgill elder take a protestation in Craufordstoun's hands that the Sheriff's proceeding was illegal and that the Barons were interrupted in the election by the Sheriff's presiding there. And by the depositions of the said David Stuart and Robert Crauford it seems proven that the protestation was taken after several of the Barons were objected against. And by all the three depositions it seems to be proven that the protestation against the Sheriff's presiding and for choosing a Praeses was taken before the Earl of Galloway and Viscount of Stair returned to the meeting. And David Stuart by his deposition to the sixth interrogator Depones that many of the Barons did grumble at the Sheriff's presiding and desired the Lords to be called in, and Robert Crauford Depones to the said Interrogator that the Barons at the foot of the table did

all whisper one to another that they would be run down unless the Noblemen returned to see the Praeses chosen. And by the depositions of David Stuart and Alexander Campbell it seems proven that Mochrum and another were clearing the house when the Lords were called in. And the Lairds of Garthland and Corrochtrie, two witnesses adduced by Lord Basil Hamilton, Depone that they do not remember any protestation against the Sheriff's presiding before they went to make up the rolls, and Corrochtrie Depones further that all acquiesced to the Sheriff's presiding and took the oaths from him. And further Corrochtrie depones that it was in the clearing the house that Gordon of Grange was fined upon account of some ill language that he gave to the Sheriff and Lord Basil, and that it was not for claiming his vote, but that he was desired to remove and come in with his petition as the rest of the Barons did. And Garthland Depones that in clearing the house Gordon of Grange was ordered to go out until such time as the rolls were made up, Upon which the Sheriff to assert his own right made a pretence of fining him, and this was before the Barons proceeded to make up the rolls of the Electors. And both Garthland and Corrochtrie Depone that Gordon of Grange was present at the time of Castlestuart's election. And Patrick Mackdoual of Crichone and Garthland depone that Grange did vote for Castlestuart. By the depositions of Garthland and Corrochtrie it seems proven that the Earl of Galloway and Viscount of Stair came in to the meeting of the Barons at the very time of making up the rolls. And by the deposition of Patrick Mackdoual younger of Crichone it seems proven that there were several people present at Castlestuart's election who were not Barons, and that Garthland, Corrochtrie, and Crichone Depones that there was a protestation taken against any election until the house was cleared, and against the Lords and others being present. As also by the said three depositions it seems proven that while Lord Basil Hamilton was dictating his protestation to the Clerk against the Earl and Viscount their coming in,

the Viscount of Stair did put his hand to the Book in order to subscribe his protestation, as he said, and that the Lords did subscribe their protestation and desired some of the Barons to subscribe the same, and that Lord Basil refused the books until he had dictated his protestation. And it seems proven by the depositions of Corrochtrie and Crichon that Gordon of Grange filled up Castlestuart's Commission. And by the depositions of Crichon and Robert Crauford it seems proven that Craufordstoun called the rolls when Castlestuart was elected Commissioner. And it seems proven by the depositions of the said Robert Crauford and Provost Cultrane that Castlestuart's Commission was not signed in court. And David Stuart depones that the Barons sent out two of their number to invite the Lords in, who came and told them they were called in to the meeting. And the Master of Stair depones that old Phisgill and another Baron came out, and heard that they desired the Earl of Galloway and Viscount of Stair to come in in name of the Barons that they might advise with them whether or not the Sheriff had right to preside. And it seems proven by the depositions of young Phisgill, Craufordstoun, Alexander Campbell, and the Master of Stair that none came in to the tolbooth with the Earl and Viscount but the master of Stair, and that at some distance of time the door was shut up and a great many came in, And that the deponents did not hear the Lords name any person to preside or be Commissioner or meddle any thing in the election, but only that they took instruments that they were called in by the Barons and signed the said protestation, and which the plurality of the Barons also signed: And further that the Lords removed to another room before the question was put who should preside, and were removed out of the tolbooth before the election of Castlestuart to be Commissioner. And it seems proven by the depositions of Phisgill and Craufordstoun that the Sheriff Clerk was chosen Clerk to the meeting and called the rolls by asking the question who should preside, and read some

petitions from electors and received in instructions, And that Lord Basil discharged him to call his name, Whereupon Castlestuart called for the rolls at the desire of some of the Barons and gave them to Craufordstoun to call, and which Craufordstoun called accordingly upon the question who should be Commissioner, and that the Sheriff Clerk was present all the time that the deponents were present in the tolbooth, as the said report of the abovewritten probation taken before the said Committee fully bears. Which His Majesty's High Commissioner and the Estates of Parliament having this day heard and considered, they have Found and hereby Find that the Sheriff's procedure in manner above mentioned does annul both the Elections above specified, and have Declared and hereby Declare that the procedure of the Sheriff and likewise of the Lords and others at the Election of Wigton as is mentioned in the above report of the Committee was an encroachment on the freedom of the election of Barons.

APPENDIX XXXIV.

Act concerning the Controverted Elections for the Shire of Ayr.

2nd Jan., 1701. [*A.P.S.* x. 237.]

His Majesty's High Commissioner and the Estates of Parliament having fully Considered the Two contested Commissions from the shire of Ayr, one to Mr. John Campbell of Shankstoun, and the other to John Birsbane younger of Bishoptoun, for supplying the place of the deceased Laird of Rowallan, late Commissioner for that shire, upon which several Commissions each of the said parties craved preference, And having likewise at length Considered the objections made by the

Laird of Kilbirnie against some of the Electors signing Mr John Campbell's Commission and expressed in two Instruments, of the date the twentieth of November last, taken before the Election in the hands of Mr. John Cockburn notary public, together with the answers made thereto before the Committee for Controverted Elections in manner aftermentioned, with the Replies and Duplies underwritten and the reports and whole other procedure of the Committee in the said affair, And His Majesty's said Commissioner and the said Estates being well and ripely advised in the said matter, They have Preferred and hereby Prefer the Commission granted to the said Mr. John Campbell as having most votes, Because at the first production of the said two Commissions in Parliament the same were Remitted to the Committee above-specified for Controverted Elections, And conform to that Remit (which was upon the twenty-ninth of November last) the said Committee having met upon the tenth of December last it was objected before them that at the foresaid Election the oath of allegiance and assurance was not taken by the Electors at their meeting before they proceeded to Elect, as is required by the fourth and thirty-eight-Acts of the second Session of His Majesty's current Parliament, and that therefore both elections are null. To which it was answered that it was not necessary for those who had taken the oaths at former Elections of new to take them at every Election, And by the sixth Act of the fourth Session of this current Parliament It is provided that such as have already taken the oaths shall not be obliged by virtue of that Act to take the same again in the same capacity. Which objection and answer the Committee offered to the Consideration of the Parliament, who after hearing of the said Acts of Parliament above-mentioned did by their Interlocutor pronounced upon the Eleventh day of the said month of December Refuse to Sustain the foresaid objection and Remitted to the Committee to proceed and take trial of the said controverted Election and to report. In obedience

whereunto the said Committee having met upon the seventeenth of the said month of December, and it being conform to one of the foresaid Instruments, Objected in the first place against Campbell of Glesnock that he was neither apparent heir nor infeft in a forty shilling Land holden of the King, nor in possession, and also that he did not take the oaths, and no compearance being made for him the Committee were of opinion that the objection should be sustained and Glesnock holden as confessed thereupon. It was also objected in the terms of the said Instrument that John Mitchell of Daldilling has no Land holden of the King, having sold and disponed what lands he had so holden to another person who is in possession thereof. Whereunto it was answered that the objection as proponed and inserted in the Instrument is no ways relevant, in so far as the same may be true and yet the party against whom the objection is made may be a fit elector. And it is positively asserted that Mitchell of Daldilling may have disponed what Lands he held of the King to another person who may be in possession and yet in that very case Daldilling may be the King's vassal and have right to vote by virtue of his freehold. To which it was Replied that the Committee was not to proceed upon what might be but what truly was the case, So that unless it were positively alleged and instructed that Daldilling at present stood infeft and was in possession of a forty shilling land, or in four hundred pound of valued rent, he could not be sustained a fit Elector, and farther, albeit he stood infeft yet if he were denuded by disposition and the acquirer in possession of the rents and duties he could not be understood to be in the terms of the Act of Parliament. And it is plain the objection can only be understood of such a disposition as excludes the disponer from the Superiority, at least to his own behoof, and that he cannot be in any kind of possession, So that the case of vassals is excluded, because if their possession be the superior's possession it cannot be said that the purchaser only does possess. Neither is it relevant

for giving right to vote that the pretender has given only a disposition to be holden of the King though the acquirer be not infeft when the disponer himself is out of possession. For as to this both the words and analogy of the Act of Parliament are opposed, and the disposition is more than a simple assignation to rents and duties. Nor can the assignee's possession be reputed the Cedent's possession when no particular interest does remain with the Cedent. Whereto it was duplied that the allegation against the objection does not concern Daldilling's present right but arises from the Irrelevance of the objection as stated in the Instrument and which by the Act of Parliament cannot now be altered, and Daldilling must be in the same case as if no objection had been made against him. And to clear that the objection is irrelevant it's obvious that Daldilling may have disponed his land to any other person who may be in possession thereof, And yet, albeit that were instructed, Daldilling may continue the King's vassal and have the sole right of voting. For *Primo* he may dispone the Lands he holds of the King to another who may be basely infeft and whose possession may be Daldilling's possession, as occurs in the case of all subaltern rights. *Secundo* he may have Disponed what lands he held of the King with or without a procuratory of resignation, and while his assignee continues not Infeft he (the Cedent) continues not denuded, and consequently reserves his right of voting. And lastly the objection as stated in the Instrument is so general that albeit Daldilling's vote were sustained the objector would not be liable to him in expenses. And farther the objection itself is general and the word disposition as properly applicable to subaltern as [to] public rights, and it is to be understood only in the objector's sense. And the distinction betwixt natural and civil possession is well known in law, that a public infeftment with possession of the very casualities without any interest in the rents and duties gives a sufficient right to vote. And it's established both by Law and Custom that the King's vassal though denuded by a naked disposition continues his right

to vote, which is farther cleared by a second disposition first completed by infeftment, which excludes the first right. *Secundo* upon the death of the King's vassal, though denuded by a disposition, all the Casualties of Superiority will arise to the King. *Tertio* the Granter of the disposition must continue his right to vote so long as the receiver cannot vote, which is never till he be publicly infeft, and therefore the objection as stated in the Instrument is most irrelevant. Which debate above-written with the foresaid Instruments produced being considered by the said Committee, They were of opinion that the objection made against John Mitchell of Daldilling as stated in the Instrument is not relevant and ought to be repelled. It was further objected conform to the said Instrument against Hugh Montgomery of Brigend and James Blair of Blairstoun that notwithstanding they be infeft yet they are not in possession of their Estates but have sold and disponed the same to persons who are and have been in possession thereof these several years bygone. As to which the former grounds are opposed, particularly that the objection is precisely in the terms of the Act of Parliament which requires not only infeftment but also possession. To which it was answered that this objection labours under the same Irrelevancies as the former. And *Primo* the objection acknowledges Brigend and Blairstoun to be infeft. *Secundo* their not being in possession cannot be sustained relevant alone, seeing though a superior possess not the property nor the King's vassal the rents and duties of his lands after they are assigned, yet both of those are understood fit Electors, seeing the vassal's and assignee's possessions are in law ascribeable to the superior and Cedent. Which debate with the Instrument produced being likewise considered by the Committee they were of opinion that the objection made against Hugh Montgomery of Brigend and James Blair of Blairstoun as stated in the Instrument is not relevant and ought to be repelled. And the foresaid reports of the Committee, and Instrument to which the same relates, being upon the thirtieth of December last read in presence

of and considered by His Majesty's High Commissioner and the Estates of Parliament, they did find the objections made against the said John Mitchell of Daldilling, Hugh Montgomery of Brigend, and James Blair of Blairstoun not relevant, and Remitted to the said Committee to meet and bring in a full report as to the other Electors objected against. Which Committee having again met accordingly upon the first of January instant, and it being then objected before them in the terms of the Instruments produced that Arthur Campbell of Auchmonoch, John Reid of Markland, and Adam Aird of Katrine have only Churchlands, and that without production of their Charters it is impossible to know whether their lands be of the extent mentioned in the Act of Parliament 1681 or not, Therefore it was protested in case any of the foresaid persons had not a forty shilling land of old extent holden of the King that any vote they should give in the said Election should be of no effect. It was answered thereto *Primo* that by the Act of Parliament 1681, the freeholders were not obliged to produce their Charters the time of every Election, it being sufficient that the said persons stand enrolled in the Sheriff's books as Electors. *Secundo*, two of the said persons, viz. Arthur Campbell of Auchmannoch and Adam Aird of Kathrine, were not only enrolled but did actually vote at Killbirnie's own election and at the several elections in the said Shire since the Revolution, some whereof were Controverted and yet the foresaid persons not objected against, as appears by an Extract of the Sederunt under the Sheriff Clerk's hands, which for instructing of the said answer was produced before the Committee, so that Kilbirny was *in mala fide* to object against them. *Tertio*, the objection as stated in the Instrument is not relevant, it being only founded on that part of the Act of Parliament which mentions a forty shilling land but does not mention the other alternative part of four hundred pound of valued rent. So that albeit their Lands were not of the Extent of forty shilling, yet it is sufficient if

they be of four hundred pound of valuation. And the protestation taken against the said persons is only conditional in case they have not a forty shilling land, whereas the Act of Parliament requires that such protestations be positive and special. Whereunto it was Replied, And to the First it does not appear that the forenamed persons did ever produce their Charters or were formally enrolled, and the truth is they did never produce any such Charters. To the Second, it is not sufficient that Campbell of Auchmannoch and Aird of Katrine did vote at Kilbirnie's election, seeing at that time there was no objection made against them nor did they then or at any time before produce their Charters, So that Kilbirny was *in bona fide* to take the said protestation. To the Third, seeing the persons objected against did make no answer nor have as yet produced any thing to instruct their lands to be a forty shilling land of old extent or that they are of four hundred pound of valued rent, the objection against them is relevant, and it is yet competent, if need be, to allege that they have not four hundred pound of valued rent albeit the said objection be not contained in the Instrument. And to the last opposes the Instrument, which is positive that the persons objected against have only church lands and that their Charters were not produced to the end their Extent might appear. Which objection and answers with the Instruments foresaid produced being considered by the said Committee, they were of opinion that the objection as proponed in the Instrument against the said Arthur Campbell, John Reid, and Adam Aird is not Relevant in the terms of the Act of Parliament and ought to be repelled. And the foresaid Report of the Committee with the Instrument to which the same relates being this day read in presence of and considered by His Majesty's said Commissioner and the said Estates of Parliament, they Approved of the said Report, And in respect thereof and of the said Mr. John Campbell's oath craved and taken in the said matter, by which he deponed that

the freeholden lands by virtue whereof he was chosen Commissioner are not in his person only in trust, nor to the behoof of the Earl of Loudoun his brother, They Gave their Sentence in the said affair, preferring the said Mr. John's Commission in manner abovementioned.

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GLASGOW: PRINTED AT THE UNIVERSITY PRESS BY ROBERT MACLEHOSE AND CO. LTD.