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The Development of
English Parliamentary Judicature,
1604 - 1626

COLIN GERALD CALDER TITE



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Abstract

This thesis studies the development of the power of judicature which was exercised jointly by the two Houses of Parliament in the early seventeenth century. It examines this against the background of the medieval procedural inheritance from the century after 1350 when a somewhat similar power was being exercised by Parliament; and it also sets the seventeenth-century development alongside the growth in the jurisdiction of each House separately in the early Stuart period. This study is concerned primarily with procedural developments, but the political circumstances from which these are derived are not completely ignored.

It is argued that there was, in the early seventeenth century, a general but cautious expansion in the judicial activities of both Houses, together and separately. In this expansion, the revival of joint judicature is probably the most important theme, but it cannot be isolated from the remainder, upon which, as upon the medieval inheritance, it is, to some extent, dependent. It is suggested that joint judicature developed in a flexible and varied manner, responding more to the needs of the moment than to any long-term objectives, evidence for the existence of which is lacking. This thesis also questions the view that joint judicature was revived in any very

mature form in 1621. It is argued that this opinion conceals the very important procedural developments which occurred during the trials of the 1620s, developments which may point to a change in the type of procedure used as the trials of the period became more openly political in character.

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Abbreviations

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| <u>Bull. Inst. Hist. Res.</u> | <u>Bulletin of the Institute of Historical Research</u> |
| B.M. | British Museum |
| <u>C.D.</u> | W. Notestein, F.H. Relf and H. Simpson, eds., <u>Commons Debates, 1621</u> (New Haven, 1935). |
| <u>Ċ.F.R.</u> | <u>Calendar of Fine Rolls</u> |
| <u>C.J.</u> | <u>Commons Journals</u> |
| <u>C.P.R.</u> | <u>Calendar of Patent Rolls</u> |
| <u>C.S.P. Dom.</u> | <u>Calendar of State Papers Domestic</u> |
| <u>C.S.P. Ven.</u> | <u>Calendar of State Papers Venetian</u> |
| <u>D.N.B.</u> | <u>Dictionary of National Biography</u> (London, 1908-9) |
| <u>E.H.R.</u> | <u>English Historical Review</u> |
| <u>H.M.C.</u> | <u>Historical Manuscripts Commission</u> |
| <u>L.J.</u> | <u>Lords Journals</u> |
| P.R.O. | Public Record Office |
| <u>Rot. Parl.</u> | <u>Rotuli Parliamentorum</u> |
| S.P. Dom. | State Papers Domestic |
| <u>Trans. Royal Hist. Soc.</u> | <u>Transactions of the Royal Historical Society</u> |

Introduction

During the reign of James I, the two Houses of the English Parliament joined together to exercise a power of criminal jurisdiction which had lain unused since the middle of the fifteenth century. The revived power claimed its initial victims in 1621, when Giles Mompesson was the first, and Francis Bacon the most prominent, of the men to be ruined. Three years later, the same weapon was employed to destroy the career of the Lord Treasurer, the Earl of Middlesex. In 1626 it was used to attack the Duke of Buckingham, Charles I's favourite and chief adviser; and in 1628 the process was turned against an ecclesiastic, Roger Manwaring. From 1621 onwards there was constant resort to this type of criminal jurisdiction and Parliament found in it a potent means of attacking its enemies. Ultimately, it assisted in weakening the foundations of the Stuart monarchy.

This type of jurisdiction - in which the Commons act as accusers and the Lords as judge and jury - has long been given the name 'impeachment'. It is widely believed that 'impeachment' was evolved in the Good Parliament of 1376 as a means of punishing William Latimer, Richard Lyons and a number of other men influential and important in the closing years of the reign of Edward III. Subsequently, it was used on a number of occasions in the reigns of Richard II and his

three immediate successors, but towards the end of Henry VI's reign it sank into obsolescence, replaced by other methods which, although achieving similar results, did so by rather different processes.

It will be immediately apparent that the political circumstances which prevailed in the seventy-five years after 1376 bear some similarity to those in the early seventeenth century. In both periods monarchs were often ineffective and their governments were subjected to damaging political attack. It is also clear that Parliament's criminal jurisdiction was frequently used as an instrument in such conflict, and was, in large part, a product of it. However, it is not the purpose of this study to attempt a comparison of two sets of political circumstances, separated from each other by almost two centuries. Such a comparison would, in any case, have a strictly limited value, and such similarities as do exist can readily be observed without a detailed examination. Nor is it intended to explain in any detail the political situation in either the one period or the other. The broad outlines of this situation are well enough known, and will provide a sufficiently adequate background to this study. Instead, this thesis is an attempt to examine, largely in terms of procedure, the revival and development of the joint criminal jurisdiction of both Houses of Parliament in the early seventeenth century. Naturally, the ultimate explanation for this revival is to be found in the politics of the reign of James I - which determined the type of procedure which was adopted - but an attempt will also

be made to see this revival in the light of the practice followed in the late fourteenth and early fifteenth centuries.

It would seem tempting to call this thesis a study of 'impeachment', yet to use this word would be dangerous. There is ample evidence that, when Sir Edward Coke and his colleagues re-introduced Parliament's criminal jurisdiction, they did not confine their search for guidance to those precedents which the medieval records and later historians describe as 'impeachments'. Their gaze took in what are, apparently, other types of case, and this thesis will necessarily examine other forms of Parliamentary procedure upon which they bestowed their attention. Moreover, whether by accident or design, the cases of the earlier 1620s are rarely, if at all, described in the contemporary accounts as 'impeachments'. In order, therefore, to avoid pre-judging the character of the jurisdiction revived in those years, it has seemed best to avoid using this term except where it can clearly be justified from the records themselves. Unfortunately, such a course contains its own danger: it may implicitly attach to 'impeachment' a significance it perhaps did not possess. However, Coke referred to the judicial powers of the Houses, both when they collaborated and when they operated separately, as their 'judicature', and I have in consequence used the phrase 'Parliamentary judicature' to describe the joint criminal jurisdiction of the early Stuart Parliaments. It is possible that, in the early seventeenth century, 'impeachment' may, in fact, have been a synonym for 'Parliamentary judicature', but it

seems more likely that it formed one part of that judicature. Yet whatever name is eventually given to it, Parliamentary judicature was undoubtedly both complex and flexible in the early seventeenth century. The truth of this will become manifest when the cases themselves are examined; and, with the intention of rescuing the wood from the trees, an attempt has been made to show, in tabular as well as descriptive form, the chief procedural characteristics of each of the cases studied.

The development of Parliamentary judicature in the early Stuart period appears to form part of the same story as the growth in those years of the unicameral judicature of each House acting separately from the other. It seems likely that the Commons' decision in 1621 to revive Parliamentary judicature stemmed, at least in part, from a realisation of the limited nature of their own unicameral judicature. It therefore follows that, in describing the evolution of Parliamentary judicature in the 1620s, it will be necessary to pay some attention to the growth of both Lords' judicature and Commons' judicature in James I's reign.

This study begins with an examination of the medieval inheritance available in the early seventeenth century, and ends with the trial of Manwaring in 1628. That trial did not, of course, mark the demise of Parliament's power of criminal judicature: it flourished and remained effective long after 1628. Yet it operated subsequently in circumstances very different from those prevailing in the 1620s, and Manwaring's trial forms a fitting conclusion to the developments of those years.

Chapter I

The Medieval Heritage

During the first session of James I's third Parliament, in 1621, the House of Commons joined with the House of Lords to bring to judgment six men who had offended them. In doing so they were employing forms of procedure whose halcyon days lay in the period from 1376 to 1459. Clearly, the urgency of affairs in 1621 did not allow the Houses to embark on flights of historical fancy for their own sake: Parliament behaved as it did because of the conditions of the time and if it employed a medieval process this was because it seemed appropriate to those conditions. The Commons, in particular, were led by lawyers well versed in precedents: good use was made of these but the House did not become the slave of precedents and the lack of them merely provided it with an opportunity to exercise its procedural imagination. Nevertheless, the medieval influences upon both Commons and Lords were considerable, at least potentially, and in any examination of the judicial proceedings of early seventeenth-century Parliaments it is necessary to explore this heritage and the means by which it became available to members.

To investigate this inheritance and to relate what we find to what the lawyers of the seventeenth century would have found is not

an easy task. A twentieth-century analysis of medieval Parliamentary judicature is unlikely to bear much similarity to the deductions made from the records by the politicians and antiquaries of the seventeenth century, despite the revolution in historical processes of thought that was then in progress. Not only do our motives for making such an enquiry differ fundamentally from those which inspired the Parliaments of the early Stuarts, but our own view of the medieval procedure is inclined to be coloured by our knowledge of its further development in the seventeenth century.

In addition, the inheritance is a complex one. It can be explored only by studying the Parliamentary cases of the period, but these reveal a variety of procedure which is often bewildering. In consequence, it is very difficult to make statements about procedure which are not so hedged about with exceptions and provisos as to be rendered almost valueless. Moreover, even when classifications are devised, these normally will not fit into the seventeenth-century context. On occasion, for instance, Coke and his colleagues in the 1620s illustrated a point of procedure with precedents which appear to us to have little in common with each other, and we are left to guess at the basis upon which they were chosen.

Nevertheless, despite - or even because of - the variety and complexity of the medieval inheritance, some attempt to identify and describe procedure must be made in order to show the range of precedents available to seventeenth-century politicians and the

selectiveness of their choice.

It is often stated that in 1621 Parliament revived the medieval process of impeachment. As this study progresses, it will be shown that this statement cannot be accepted without qualification, but for the moment two points must be made about it. First, it is perfectly true that many of the medieval cases quoted as precedents in 1621 to support the revival of Parliamentary judicature are described in the records of the fourteenth and fifteenth centuries as impeachments. Yet it is also true that some of the cases used in 1621 are not identified in the medieval records as impeachments, and seem to differ significantly from those which are given this name. The second point is that historians are by no means agreed upon an exact definition of the medieval impeachment. It is, for example, not clear whether the term refers to a distinct judicial procedure or whether it refers to a particular characteristic common to a variety of judicial procedures. Nevertheless, the word cannot be ignored in an examination of the medieval heritage, and, before considering the variety of procedure bequeathed to the seventeenth century, it will be as well to summarise what are at present generally regarded as the distinguishing features of impeachment.

Until recently, historians have always set impeachment within the framework of Parliament, regarding it as essentially a Parliamentary procedure. It appears first in connection with the trial of Edward III's chamberlain, William Latimer, in the Good Parliament

of 1376; it then reappears frequently in the Parliamentary records of the next seventy-five years but fades away in the middle of the fifteenth century. From the beginning, impeachment was associated with moments of political crisis and was often enough used as a weapon in factional rivalry. Whether it would be correct to conclude from this that it was regarded as primarily a political procedure is another matter, but it certainly has claims to be considered in this way and it was employed by both the King and his opponents.

To many historians, one of the primary features of a medieval impeachment derives from the parts played by the House of Commons and the House of Lords: in the words of Professor Wilkinson, the "essence of Impeachment was, as it has always been considered, accusation by the Commons and judgement by the Lords".¹ The Commons might base their charge upon evidence supplied to them by private individuals, but the case was presented to the Lords not on behalf of such individuals but by the whole Commons, representing the interests of the community. The charge was then maintained in common before the peers, and without any naming of individual accusers. However, the prosecution was conducted in the name of the Crown, even where the monarch himself was an unwilling observer of the proceedings. A hearing took place before the upper House - normally in accordance

¹ B. Wilkinson, Constitutional History of Medieval England, 1216-1399 (London, 1948-58), ii, p.205.

with due legal form, however politically inspired the charge might be - and judgment was eventually pronounced by the Lords.¹

Some historians of the medieval process of impeachment have also laid stress upon the terminology of the records, pointing to the occasions upon which 'impeached' or 'impeachment' is, or is not, used, and relating this evidence to the procedural characteristics of the cases under examination. One of the problems of this type of approach is that the word was in general use both in the middle ages and later, carrying the connotation of 'hindrance' or 'embarrassment'. Nevertheless, the more technical meaning of an accusation in a court of law appears in the reign of Edward II, and in the records of the Good Parliament of 1376 the word is used in connection with charges brought by the whole Commons in Parliament. It is therefore possible that, when contemporaries described a case as an impeachment, they recognised that it conformed to a particular type of judicial procedure.² Yet whether or not this is true, and

¹ G. Lambrick, 'The Impeachment of the Abbot of Abingdon in 1368'. E.H.R. (1967), vol. lxxxii, no. 323, pp.268-9, 270, 273, 275; Wilkinson, op. cit., ii, p.214; T.F.T. Plucknett, 'The Impeachments of 1376'. Trans. Royal Hist. Soc. (1951), 5th Series, vol. i, pp. 161-2; T.F.T. Plucknett, 'State Trials under Richard II'. Trans. Royal Hist. Soc. (1952), 5th Series, vol. ii, p.167.

² M.V. Clarke, 'The Origin of Impeachment'. In L.S. Sutherland and M. McKisack, eds., Fourteenth Century Studies (Oxford, 1937), p.243; Plucknett, 'State Trials under Richard II', loc. cit., pp. 164-5. Miss Clarke's terminological approach to the usage of 1376 has, however, been challenged by J.P. Collas in Year Books of Edward II, vol. xxv (London, 1964: Selden Society, vol. lxxxii), pp.lxvi-lxvii.

whatever differences there were in the details of procedure, there can be no doubt that a precise linguistic formula was invariably employed whenever a case of impeachment arose. The Commons "accuse and impeach" or "impeach and accuse" their victim, and these words appear, harnessed in exactly this manner, again and again from 1376 to 1459.¹

So far we have examined those aspects of impeachment upon which some measure of agreement has existed among historians. However, we must now turn to consider three theories which extend or modify parts of what has been said.

The first concerns the character of the Commons' accusation in an impeachment. Maude Clarke maintained that these accusations were treated as indictments and that, in this respect, impeachment marked an important break with the past. Previously, judgments by the Lords had been given upon petitions presented to Parliament, often by private citizens, and the Commons were only loosely, if at all, associated with this procedure. Impeachment, however, brought the Commons to the centre of the stage to present an indictment to the Lords, and Miss Clarke contrasted "procedure by indictment, which is an assertion of right" with "procedure by petition, with all its implications of grace and favour". She saw the change in procedure as taking place between

¹ On very few occasions "impeach" or "impeachment" stands alone: see Table I.

the trial of Sir John Lee in 1368 and that of William Latimer in 1376. Lee, who was steward of the household, was accused of various malpractices. The accusation was presented to Parliament in the form of five petitions, four of them anonymous and the fifth from an inhabitant of Dorset. The charges were examined in the presence of the King, the Lords and some members of the Commons. Lee's defence proved inadequate and he was sentenced, presumably by the Lords, though at a later stage the fifth petition was the subject of a separate judgment by the Council. The whole case has its obscurities, but Miss Clarke emphasised the limited character of the Commons' part in it.

On the other hand, the Commons' part in Latimer's trial was considerable. Latimer was the most prominent of a group of people, all associated in one way or another with the King, who were tried in the Good Parliament of 1376. As will be seen, the cases of the others - men like Bury, Ellis, Lyons, Neville and Peach - show variations, but they are all described in the records as impeachments and Latimer's case may serve as a model to show the part of the Commons.

As was true of so many impeachments, Latimer's trial took place in an atmosphere of political uncertainty. In 1376 Edward III was old and his heir, the Black Prince, was dying, and half way through the trial a council of reform was appointed. Latimer, closely connected with one party in the political struggle, was accused by the Commons of indulging in treasonable and fraudulent activities.

The House, as a body, took a vital part in initiating proceedings, collecting evidence against him and drawing up a schedule of charges which ended by accusing him of "notoriously accroaching royal power". Then, in the presence of the Lords, he "was impeached and accused by the clamour of the commons", following which the lower House demanded his arrest until he had given satisfaction to the King for his misdeeds. The Commons were present during part of Latimer's defence before the Lords, and made a reply. They evidently suggested a punishment, and when judgment was given they were apparently present.¹

Although the cases of Lee and Latimer were both quoted in 1621 in support of the revival of Parliamentary judicature, without any indication that the one might be more relevant than the other, there are clearly substantial differences between them. Moreover, while Latimer's case has frequently been regarded as the archetype of impeachment, that of Lee is not, apparently, an impeachment at all. If the latter case has to be categorised, it must be placed in a class of non-impeachment cases in which the Commons were, nevertheless, involved. However, be that as it may, Miss Clarke's opinion that, in the transition from the one case to the other, procedure on petition gave way to procedure on indictment has been challenged, notably by Professor Plucknett. Plucknett has argued that the

¹ Clarke, op. cit., pp.243, 258-60, 262ff; Plucknett, 'The Impeachments of 1376', loc. cit., p.162; Rot. Parl. ii, pp.324-6.

distinction cannot be substantiated from the evidence, since there is nothing in the language of the records to suggest that the Commons ever indicted.¹ He has received support from Professor Wilkinson:

It could, indeed, be plausibly argued that the idea of Impeachment as an indictment and not a petition by the commons before the lords (and not before the king) was, like the idea of a Feudal System, a legal invention of the seventeenth century. (2)

The exact character of the Commons' accusation in cases described in the records as impeachments must, therefore, remain at present an open question.

The second of the three theories which necessitate some modification of what was said earlier about the nature of impeachment strikes at the assumption that it was a distinct judicial procedure, suggesting instead that it was a method of instituting criminal proceedings. This theory - the work of Plucknett - was derived from a study of the trial of Latimer. Plucknett drew attention to the fact that this impeachment was based upon "the clamour of the commons", and he suggested that the use of the term 'impeachment' in this context implied that it "was not a jurisdiction of the Lords, nor a mode of

¹ T.F.T. Plucknett, 'The Origin of Impeachment'. Trans. Royal Hist. Soc. (1942), 4th Series, vol. xxiv, pp.49-50, 54-5.

² B. Wilkinson, Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries (Manchester, 1952), p.87. Professor Wilkinson believes that the alteration in procedure occurred because the source from which the Commons were seeking redress was changing - from the King to the Lords: p.87.

trial, but a means of initiating criminal proceedings, based not on indictment, information or appeal of felony but on 'clamour'".¹ Although Plucknett's theory has received little support from other historians, it cannot be ignored in any attempt to investigate the essence of impeachment.

The last theory to be considered recognises impeachment as a distinct judicial procedure but questions the assumption that it could operate only in a Parliamentary context. In 1967 Gabrielle Lambrick published an account of a trial, described in the records as an impeachment, which did not take place in Parliament and in which the Commons were, therefore, not the accusers. The case is that of the Abbot of Abingdon who, in 1368, was impeached before justices of oyer and terminer for levying certain dues and for usurping royal privileges.² As was normal in Parliamentary impeachments, the prosecution was in the name of the Crown, but the accusation was instigated by a single local community - the townsmen of Abingdon - and had nothing to do with Parliament, although as in Parliamentary impeachments, the charge was maintained in common. Moreover, whereas Parliamentary impeachment was a criminal judicature, the case of the Abbot hovered in an indeterminate way "between

¹ Plucknett, 'The Impeachments of 1376', loc. cit., p.159.

² Lambrick, op. cit., pp.250-76. The Abbot was not, apparently, "accused and impeached" but merely "impeached".

criminal and civil jurisdiction".¹

One of Miss Lambrick's suggestions is that impeachment was already an established procedure before 1376, and that Latimer's case of that year represented the transfer of the process to Parliament. She concludes her study:

The Abingdon case shows us impeachment in a light so different from the traditional aura of parliamentary procedure that it becomes necessary to take a very much broader view of this versatile form of medieval legal action. It seems that it could embrace many different permutations and combinations of procedure, while resting on firm foundations of legal principle; and that it was primarily evolved to fulfil a need for a legal yet efficient method of dealing with various kinds of difficult case, arising from various kinds of special circumstance, where the interests of king and community were equally at stake and for which satisfactory remedies could not usually be provided at common law. (2)

The case of the Abbot of Abingdon clearly strikes at the root of the traditional view of impeachment as essentially a Parliamentary process,³ even though it may be possible to regard impeachment in

¹ Ibid., pp.257, 268.

² Ibid., pp.270, 275-6.

³ Ibid., pp. 270, 275. Miss Lambrick comments (p.275): "In fact, even when it is recognized to be wrong-headed, the seventeenth-century lawyers' view of impeachment as essentially a parliamentary affair, an indictment by the Commons before the Lords, has so influenced subsequent thought on the subject that it has been all too easy to ignore the significance of medieval impeachments which did not take place in parliament, or in which the Commons were not the accusers and prosecutors." This is not perhaps entirely fair, at least to the lawyers of the early years of the century. Although they maintain that impeachment was a Parliamentary process, they do not, at any point, state that it was exclusively Parliamentary.

Parliament as having a political significance which impeachment outside Parliament lacked. Miss Lambrick's work, together with that of Miss Clarke and Professor Plucknett, demonstrates the difficulties of arriving at a precise definition of medieval impeachment.

We may now turn to consider the variety of judicial procedure bequeathed by the medieval Parliament to its seventeenth-century successors. In theory, such a task involves a survey of all the records of all the medieval Parliaments; but as in practice the Parliamentarians of the early seventeenth century selected the vast bulk of their precedents from the years between the middle of the fourteenth and the middle of the fifteenth centuries, this examination will be confined to procedures used during that period. An attempt will be made to construct a composite model, to show the variety of methods which might be adopted to deal with a case as it passed through the main stages in Parliament.¹ Such a model must, of course, be based upon all cases which appear to have relevance in the context of 1621, whether or not they were actually quoted as precedents then. Some of these cases are described in the records as impeachments, some of them are not; and it must, in any case, be remembered that the Parliament men of 1621 did not select

¹ To prevent this exercise from appearing too theoretical, reference will be made to the specific cases from which the model has been derived; but, as far as possible, this information will be confined to the footnotes unless the case was one quoted as a precedent during the revival of Parliamentary judicature in 1621.

their precedents merely from among cases which are called impeachments.

Several methods of introducing criminal proceedings into Parliament were employed during the century after 1350. Proceedings might be based upon the notoriety of the crime, upon the clamour of the community, upon petitions or bills presented to Parliament, or upon appeal of treason or felony.¹ Appeal was confined to the Lords and seems to have concerned the Commons little; it need not, therefore, be discussed.² However, the first three methods formed the foundation for proceedings which often involved both Houses, and each must be examined.

At one time, a statement by the King that the facts in a crime were notoriously known had been sufficient to secure a conviction.³ By the middle of the fourteenth century this was no longer true,

¹ Plucknett, 'The Origin of Impeachment', loc. cit., pp.51, 55-6; Lambrick, op. cit., p.269.

² For appeal, see M.V. Clarke, 'Forfeitures and Treason in 1388'. Fourteenth Century Studies, pp.133ff; T.F.T. Plucknett, 'Impeachment and Attainder'. Trans. Royal Hist. Soc. (1953), 5th Series, vol. iii, pp.145ff; A. Steel, Richard II (Cambridge, 1962), pp.141ff; S. Reznick, 'The Early History of the Parliamentary Declaration of Treason'. E.H.R. (1927), vol. xlii, no. 168, p.511; J.G. Bellamy, 'Appeal and Impeachment in the Good Parliament'. Bull. Inst. Hist. Res. (1966), vol. xxxix, no. 99, p.43.

³ Mortimer, 1330. See also Plucknett, 'The Origin of Impeachment', loc. cit., pp.58-9, 64ff.

but the concept of notoriety survived as a basis for an accusation. In 1376, Latimer was accused by the Commons of having "notoriously approached royal power", and the lower House used similar language in its case against Lyons in the same year,¹ while the concept appears again in subsequent trials.²

Judicial proceedings in Parliament might also be based upon clamour. Latimer was "impeached and accused by the clamour of the commons" and similar phraseology was used in the trial of Bury in the same Parliament.³ Yet it is difficult to know exactly what meaning should be placed upon the word - which appears again in the seventeenth century. Plucknett considered that the clamour of the Commons was "the old theory of conviction by notoriety with the sole difference that it is the Speaker instead of the King who asserts that the misdeeds are notorious".⁴ Miss Lambrick suggests that it lies somewhere between "the suit of an identifiable local community ... and ... the expression of general public opinion in the 'notoriety' of the crimes

¹ Plucknett, 'The Impeachments of 1376', loc. cit., pp.158-60; Rot. Parl. ii, pp.323, 325; Lambrick, op. cit., p.269; Plucknett, 'The Origin of Impeachment', loc. cit., p.71.

² For example, the trial of Henry Despenser, Bishop of Norwich, in 1383. See also Lambrick, op. cit., p.275; Plucknett, 'Impeachment and Attainder', loc. cit., pp.150-1; Plucknett, 'The Origin of Impeachment', loc. cit., p.70; Plucknett, 'State Trials under Richard II', loc. cit., p.163; Rot. Parl. iii, pp.153-4, 378; E.M. Thompson, ed., Chronicon Angliae (London, 1874), p.lxxviii.

³ Rot. Parl. ii, pp.324, 330.

⁴ Plucknett, 'The Impeachments of 1376', loc. cit., p.159.

with which the accused was charged".¹ Neither of these theories seems capable of positive proof, and it may be that we are doomed to perpetual uncertainty about the meaning of 'clamour'; but Miss Lambrick's work, taken in conjunction with Professor Plucknett's, prompts us to ask whether we have not tried to find too deep a meaning in this word. It is possible that, as two methods of initiating proceedings, clamour and notoriety were barely distinguishable, and that it was the clamour of the people, or of the Commons, which made the facts in a case notorious.

The third method of initiating judicial proceedings in Parliament was by petition or bill - the terms are often interchangeable at this time. A petition might be presented to Parliament by an individual or a group of people from outside it, or it might originate within Parliament. Procedure by petition necessarily contained implications of grace and favour, and a recognition that the petition might be rejected. (In this connection it is as well to bear in mind the suggestion made by Miss Clarke, though not generally accepted, that the Good Parliament of 1376 translated procedure by petition into procedure by indictment - "an assertion of right" - thereby establishing one of the characteristics of impeachment.)² It appears that a

¹ Lambrick, op. cit., p.274.

² Clarke, 'The Origin of Impeachment', loc. cit., p.265. See p.15 above.

petition might become the basis of judicial proceedings in Parliament in one of two ways. In the first of these the Commons would adopt a petition as their own cause - as in Lee's case of 1368, in which the lower House made a direct accusation cast in the form of five petitions which had been received.¹ In the Good Parliament itself, the Commons certainly seem to have been less inclined than previously to adopt petitions as a means of instituting proceedings. However, at least part of their attack on Latimer took this form, and there seems to be evidence of a similar procedure during the case of Bury who, like Latimer, is recorded as having been impeached.² But such evidence is lacking in the trials of Ellis and Peach, a fact which, as these are also described as impeachments, supports Miss Clarke's interpretation. Nevertheless, one of the grounds upon which Professor Wilkinson has challenged this interpretation is that procedure on petitions adopted by the Commons continued after 1376. He thinks "it might even be argued that the idea of petition was still implicit in the 'complaint'" by the Commons of 1386 against Michael

¹ Plucknett, 'The Origin of Impeachment', loc. cit., pp.65ff; Clarke, 'The Origin of Impeachment', loc. cit., pp.257-9; Rot. Parl. ii, pp.297-8. See also p. 16 above.

² Wilkinson, Studies, pp.88 and n.1, 91; V.H. Galbraith, ed., The Anonimale Chronicle, 1333 to 1381 (Manchester, 1927), pp.88, 90.

de la Pole.¹

The second way of proceeding by petition was for the Commons to deal with it without actually taking it over themselves. The best-known example is probably the petition brought against the Chancellor, Michael de la Pole, in 1384, two years before his greater ordeal in the Wonderful Parliament. The petition was presented to the Commons by John Cavendish, a London fishmonger, and de la Pole had to defend himself, first before the Lords and subsequently before the Lords and Commons together. His defence succeeded and Cavendish was fined for defaming him.²

It is possible that the fourteenth century recognised other methods of instituting judicial proceedings in Parliament. Perhaps to impeach somebody was, or became, one of these methods, instead of being some kind of procedure originated in one or more of the three

¹ Wilkinson, Studies, pp.86-7. He appears to ignore the fact that Miss Clarke noted the use of procedure by petition against Despenser in 1383, perhaps because Miss Clarke herself did not seem to regard this case as a genuine impeachment: Clarke, 'The Origin of Impeachment', loc. cit., p.265. Ellis was eventually complained of in petitions, but only after his impeachment had failed: Plucknett, 'The Impeachments of 1376', loc. cit., p.163.

² Plucknett, 'State Trials under Richard II', loc. cit., pp. 164-5; Rot. Parl. iii, p.168. Plucknett pointed out that the Roll is "careful not to call this an impeachment".

The process of turning petitions presented to the Commons into private bills for enactment by Parliament became quite well established in the reign of Henry IV. Private bill procedure was distinctly judicial in character: T. Erskine May, A Treatise on the Law, Privileges, Proceedings and Usages of Parliament (London, 1924), p.609.

ways which have been discussed. But enough has been said to show that several means existed for beginning proceedings, that they might all co-exist in one case, and that none of them was totally excluded from a case described as an impeachment.

Before concluding this survey of the means by which a case might be introduced into Parliament, it should perhaps be noted that attainder - a Parliamentary process which was to reach its climax in a later period - seems to have had some of its origins in the century after 1350. Professor Tout saw, in the doctrine of the high court of Parliament enunciated in 1388, a foundation for acts of attainder, and elements of this process have been found in the case of Sir John Mortimer in 1423.¹

We must now consider the procedure followed once a case had been brought before Parliament. This shows as much variety as the methods used to originate an action. It will be discussed from various angles. First of all, the fact that an accusation was introduced into Parliament did not necessarily mean that every stage of the case would be conducted there. It was possible for part of a trial to take place before the Council outside Parliament. Lee's case is

¹ Also in the case of Lord Stanley in 1459: T.F. Tout, Chapters in the Administrative History of Mediaeval England (Manchester, 1920-33), iii, p.432; Rezneck, op. cit., p.506; Plucknett, 'Impeachment and Attainder', loc. cit., p.157. See also Wilkinson, Constitutional History of Medieval England, ii, pp.258ff; Steel, op. cit., pp.152, 178-9; L.W.V. Harcourt, His Grace the Steward and Trial of Peers (London, 1907), p.338.

an example of this, while the Council may have taken a separate part in the hearing of Latimer's trial, even though the Lords dominated the later stages of it. Both the Lords and the Council heard the reply of William Weston in 1377, while the ill-defined body of "Seignurs et Baronage", whom the Commons asked to punish him and his companion in misfortune, John de Gomeniz, possibly included the Council. However, by 1386 the Council no longer receives a mention in such trials, and the Lords and King alone gave judgment on Michael de la Pole - like Latimer, described as having been impeached.¹

Central to much of the discussion of Parliamentary judicature in the late fourteenth and early fifteenth centuries has been the position and function of the House of Commons, and its part in these procedures will now be considered. Towards the end of Edward III's reign, the practice had arisen of the Commons' sending a deputation to the Lords to ask for a committee to confer with them,² and this, together with favourable political conditions, perhaps assisted the development of the Commons' part in judicature. The extent of their share fluctuated considerably. It appears to have been small in Lee's trial, where some of the Commons merely seem to have been present

¹ Clarke, 'The Origin of Impeachment', loc. cit., p.243; Wilkinson, Studies, pp.89, 98 and n.1, 99; Plucknett, 'The Origin of Impeachment', loc. cit., p.53; Rot. Parl. ii, p.298; iii, pp. 10-11, 216ff.

² H.G. Richardson and G.O. Sayles, 'The Parliaments of Edward III', Bull. Inst. Hist. Res. (1931), vol. ix, no. 25, p.15, n.3.

during part of the examination, and then only as listeners.¹ But in 1376 it expanded considerably, doubtless assisted by the lack of a Court initiative at the very end of Edward's reign. In that year, and particularly in the impeachment of Latimer, the Commons mounted a collective action through their Speaker, who insisted that all, and not merely some, members should be present during the hearings. Furthermore, the House established an effective "coalition" with the Lords, and insisted, in fact if not in words, that Latimer's trial should be held in full Parliament.² Acting through the Speaker, the Commons dealt in detail with the charges against Latimer, asked for the sworn evidence of witnesses to be given to their House, and demanded his arrest. During the trial itself, the Commons assumed corporate responsibility for their accusation and undertook the duties of prosecutor, although maintaining that they were acting on behalf of the King. In addition, while part of the defence seems to have taken place in their absence, they are recorded as having been

¹ Rot. Parl. ii, pp.297-8; Clarke, 'The Origin of Impeachment', loc. cit., p.258.

² Galbraith, op. cit., p. 84; Wilkinson, Constitutional History of Medieval England, ii, p.209; A.F. Pollard, 'The Authorship and Value of the Anonimale Chronicle', E.H.R. (1938), vol. liii, no. 212, p.588.

responsible for securing Latimer's removal from office.¹ The surviving records for the other cases of 1376 are less substantial than those for Latimer's trial, but they suggest that the Commons took a fairly prominent part in these cases, too. The House preferred charges in Parliament against Lyons, demanded his arrest and prayed for judgment upon him. It conducted its own examination of Ellis and asked for judgment upon him and Neville. It accused Peach on behalf of the King and of the injured parties simultaneously.² All these men are, of course, described as having been impeached.

The case of Alice Ferrers, Edward III's mistress, is altogether more obscure, even though it was, at one stage, referred to as an impeachment. After hearing of her great influence over the King, the Commons of the Good Parliament of 1376 petitioned for her removal. She was unable to reply to many of the charges against her and, having been declared guilty, apparently in the Lords, "by the judgement of many", she was banished from Court by an ordinance made in Parliament. But she had been restored to her place by the following spring and the

¹ Plucknett, 'The Impeachments of 1376', loc. cit., pp.156, 158, 161-2; Wilkinson, Studies, pp.88, 89, 91; Clarke, 'The Origin of Impeachment', loc. cit., p.243; Rot. Parl. ii, p.326. One of the witnesses for whose sworn evidence the Commons asked was a member of the Lords. The lower House recognised that to examine peers on oath was beyond their competence, and it therefore obtained the King's approval to do this: Plucknett, 'The Impeachments of 1376', p.156.

² Plucknett, 'The Origin of Impeachment', loc. cit., pp.69-70; Plucknett, 'The Impeachments of 1376', loc. cit., pp.156, 158, 163-4; Galbraith, op. cit., pp.89-90; Clarke, 'The Origin of Impeachment', loc. cit., p.243; Rot. Parl. ii, pp.327-9.

attack on her was renewed in Richard II's first Parliament. She was "caused to come" into Parliament - by whom was not stated - and brought before the Lords. The ordinance and charges against her were read out; she was given a day to answer; and witnesses were sworn and examined. There is no indication that the Commons took any part in the proceedings, but she was eventually found guilty on the articles "contained in the impeachment".¹

In the early years of Richard's reign, the Commons' part in Parliamentary trials seems to decline. They made a supplication against Gomeniz and Weston, and the latter, at least, addressed his reply to them as well as to the Council and Lords; but in a trial of 1383,² at the prayer of the Commons, the Chancellor conducted the proceedings and presented the charges.³ In 1386, however, "All the commons together and of one accord came before the king, prelates, and lords in the hall of Parliament to complain grievously against Michael de la Pole ... and there present to accuse him ..."⁴ When de la Pole made his defence, the Commons replied to it and demanded judgment. In

¹ Thomson, op. cit., pp.95ff; Plucknett, 'State Trials under Richard II', loc. cit., pp.160-1; Wilkinson, Constitutional History of Medieval England, ii, p.220; Rot. Parl. iii, pp.12-14.

² Despenser, Bishop of Norwich.

³ Rot. Parl. iii, pp.10, 152-3; Clarke, 'The Origin of Impeachment', loc. cit., p.265; Plucknett, 'State Trials under Richard II', loc. cit., pp.163-4.

⁴ Rot. Parl. iii, p.216.

his turn, de la Pole responded to the Commons' reply, and his arrest is recorded as having been at their request.¹

Later trials serve largely to confirm some of the Commons' functions. In 1423 the House is reported to have endorsed the accuracy of the indictment of Sir John Mortimer, but in 1450 it encountered difficulties in the early stages of its case against the Duke of Suffolk. The Duke, a member of the Council, had admitted that rumour accused him of scandalous misconduct, and on the strength of his acknowledgement the Commons asked the Lords to commit him to prison. The peers refused to do so without a specific accusation. In fact, the Commons soon provided this, charging Suffolk with making treasonable overtures to the French. Accordingly, the Lords sent him to the Tower and formal articles of impeachment were presented a few days later² - an order of events which was to be followed two centuries afterwards when Strafford was impeached.

Some understanding of judicial procedure in medieval Parliaments may also be gained by examining the requests made by the accused and the replies these received. For although many of the trials were blatantly political and Parliament, on occasion, doubtless made up

¹ Ibid., pp.216ff; Plucknett, 'State Trials under Richard II', loc. cit., p.165.

² Rot. Parl. iv, p.202; v, pp.176-7; Harcourt, op. cit., pp. 383-4; Rezneck, op. cit., p.506.

the rules as it went along, those on trial normally seem to have received a full and seriously conducted hearing, with due attention paid to legal form.¹ Latimer made at least five requests or complaints during his trial. He first asked for the charge in writing, but it is likely that he was forced to plead to each article as it was read to him. Such treatment was probably not untypical and oral proceedings seem to have been common, though in 1377 Weston was allowed to make a written answer. Latimer also asked for the presence of counsel, but he was allowed no more than expert assistance behind the scenes, and de la Pole fared no better in 1386. Latimer's complaint that there was no accuser for him to answer was perhaps hardly met when the Commons accused him as a body, but when de la Pole faced the same situation he raised no objection - and this practice, which most historians believe to be a characteristic of impeachment, became common. Latimer also asked for time to prepare his answer, a concession which would, however, have been of little use without written charges, and which was apparently refused. However, his fifth demand - that he should be tried as a peer - was satisfied by

¹ For example, careless drafting prevented some of the charges against de la Pole from being pressed. For this and other cases, see M.V. Clarke, 'The Lancastrian Faction and the Wonderful Parliament'. Fourteenth Century Studies, p.48. M. Aston, 'The Impeachment of Bishop Despenser'. Bull. Inst. Hist. Res. (1965), vol. xxxviii, no. 98, p.130; Wilkinson, Constitutional History of Medieval England, ii, pp.263-4.

the form of the trial.¹ Finally, while discussing the pleas made by the accused, it is interesting to note that two of the men "impeached and accused" in 1388 tried to defend themselves on the ground that what they had done had been at the King's express command. Although the two were convicted, the Lords reached no decision on this defence, and the point was not determined until the trial of Danby.²

Normally the judgment in the Parliamentary trials of the late fourteenth and early fifteenth centuries was given by the Lords, but some exceptions should be noted. In 1376, Lyons, Ellis and Peach were judged or punished with the assent of, or on the advice of, Parliament; and in de la Pole's case of 1386 the Commons asked for "the judgment of Parliament". It is difficult to know how significant such phraseology is, though Professor Wilkinson, basing his view on two of the chronicles, believes that its use in 1386 indicates that the Commons had advanced beyond "the simple ... judgement by Lords of 1376". In the event, however, judgment on de la Pole seems to have been given by the King and Lords.³ Yet de la Pole's earlier

¹ For these and other cases, see Plucknett, 'The Impeachments of 1376', loc. cit., pp.158-61; Plucknett, 'The Origin of Impeachment', loc. cit., p.70; Plucknett, 'State Trials under Richard II', loc. cit., p.165; Clarke, 'Forfeitures and Treason in 1388', loc. cit., p.138; Clarke, 'The Origin of Impeachment', loc. cit., pp.262, 265; Thompson, op. cit., p.lxxviii; Rot. Parl. ii, pp.324ff; iii, pp. 10, 216.

² Plucknett, 'Impeachment and Attainder', loc. cit., pp.146-7.

³ C.P.R. 1374-7, pp.439-40, 448, 455; C.F.R.1369-77, p.350; Rot. Parl. iii, p. 218; Wilkinson, Constitutional History of Medieval England, ii, pp.234-5 and n.19; Wilkinson, Studies, p.98.

case, in 1384, suggests that participation of the Lords was not absolutely essential at every stage of a judgment. On that occasion, the Lords, having cleared de la Pole, delegated to the judges the task of dealing with the man who had wrongfully accused him, though it should be added that this was not a case which the Commons had taken upon their own shoulders.¹

As for the punishments inflicted in trials before Parliament, these ranged from enforced restitution of property to execution, and included forfeiture, banishment and imprisonment. On occasion, as in Latimer's case, the Commons suggested penalties, and these were sometimes adopted. Furthermore, a sentence, once awarded, could be increased - a fate which befell Lyons when the Lords decided that they had been too lenient.²

It is difficult to be certain of the theoretical position occupied by the Crown in Parliamentary trials, but it seems probable either that the proceedings were ex parte regis, or that, at the least, the King's assent was required or assumed. It has already been observed³ that prosecution by the Crown appears to have been a consistent feature

¹ Plucknett, 'State Trials under Richard II', loc. cit., pp.164-5. For de la Pole's case of 1384 see p. 26 above. The punishment of his accuser should perhaps be regarded as an action distinct from that against de la Pole himself.

² Plucknett, 'The Impeachments of 1376', loc. cit., p.163.

³ See p. 13 above.

of impeachment, but this characteristic does not seem to distinguish such cases from cases which are not described in the records as impeachments. In the case of Lee, for instance, in 1368, the prosecution was apparently conducted ex parte regis, but there is no suggestion in the contemporary records that this was regarded as an impeachment: as for Latimer's case, which was, the Commons' repeated protestation that they were prosecuting on behalf of the King, speaks for itself. When Richard asked the judges in 1387 whether the Lords and Commons might impeach the King's officers and justices without the King's permission, he was told that they could not; and when, in the following year, these judges were themselves impeached, the King is said to have given his consent to the judgments passed upon them. Furthermore, the Commons of 1397 sought the Crown's permission before bringing the impeachments of that year.¹

Although part of the difficulty in categorising the procedures of the medieval Parliament in judicial cases arises from the fact that these procedures were so flexible, this very flexibility enabled it to deal with potentially difficult situations. For instance, the presence of the accused was not always necessary. In 1388 the judges were probably sentenced in their absence, while in 1397 the fugitive Sir Thomas Mortimer was accused. A day was appointed for the hearing

¹ Plucknett, 'Impeachment and Attainder', loc. cit., pp.147, 153; Plucknett, 'The Impeachments of 1376', loc. cit., p.162; Clarke, 'The Origin of Impeachment', loc. cit., pp.258-9; Rot. Parl. iii, p.233.

of his case, writs were issued for his arrest, and penalties laid down if he defaulted.¹ In addition, Parliament showed itself quite prepared to punish people who misled it either with evidence which they later contradicted, as in Neville's trial of 1376, or with false accusations, such as those against de la Pole in 1384.²

We may conclude this survey of judicial procedure by speculating upon the theoretical basis of the law administered by Parliament. During 1388, great use was made in the Lords of the procedure known as the appeal, a process with which the Commons were barely connected. At that time the Lords declared that "in so high a crime as is alleged in this appeal ... the process will not be taken anywhere except to parliament, nor judged by any other law except the law and court of parliament..."³ We do not know whether this lex Parliamenti was thought to operate in any other trials than the appeals of 1388, but it is a concept which reappears in the seventeenth century in the broader context of judicature in Parliament.

This survey of late-medieval judicial practices may show, if

¹ Clarke, 'Forfeitures and Treason in 1388', loc. cit., pp.136-7; Plucknett, 'Impeachment and Attainder', loc. cit., pp.147, 151; Harcourt, op. cit., p.358.

² Plucknett, 'State Trials under Richard II', loc. cit., pp.164-5; Rot. Parl. ii, p.329.

³ Wilkinson, Constitutional History of Medieval England, ii, p.280; Plucknett, 'State Trials under Richard II', loc. cit., pp.168-9; Rot. Parl. iii, p.236.

nothing else, the considerable variety and lack of definition that prevailed. It is not at all certain that impeachment was considered by contemporaries to be a special type of procedure, markedly different from other procedures - though this may have been the case. Virtually the only feature common to all cases described as 'impeachments' is the use of the formula "accuse and impeach", or some variation of it, and it may be as well to observe, at this point, that such a formula was not employed in the seventeenth century until the trial of the Duke of Buckingham. It is not, of course, surprising that procedures overlapped and became confused. Like their seventeenth-century successors late-medieval Parliaments had to deal with the crises of the moment and adapted their procedures accordingly. It may be that early Stuart Parliaments did the same, and that to refer to 'the revival of impeachment in 1621' is to over-simplify what was in fact a complex inheritance and a tentative process.

This enquiry into medieval procedure has included cases which were ignored, as well as cases which were quoted, in the Parliaments of the early seventeenth century: for this reason, if for no other, it would be dangerous to assume that Stuart England received unaltered the heritage which appears to us to have been available. It is, therefore, important to make some attempt to understand what the men who assembled in James I's Parliaments chose to regard as their inheritance. The starting point for such an enquiry must be the records which were available in the early seventeenth century.

These were the primary source of guidance - whether to those who initiated Parliament's attacks, to their victims, to the monarch whose prerogatives stood to suffer from Parliamentary pretensions, or to the Lords threatened by the Commons' encroachments. For while it may be fantasy to imagine the agents of opposing parties confronting each other across a pile of records, it is nevertheless true that those under attack made good use of precedents, sometimes formulating their theories of the Commons' power with more accuracy, if with less lasting effect, than their assailants. The story of the records is closely linked with the work of the antiquarian scholars: both will now be considered.

The seventeenth century was, of course, by no means the first to realise the value of records. A search for precedents had been going on since the days of Bracton, and during the middle ages faith in the past led men to take good care of what, sometime during the fourteenth century, they came to regard not merely as the royal records but as the public records.¹ As this notion of public ownership developed, so too did demands for right of access. In 1372 Edward III granted a Commons' petition that the records should be accessible to anyone, whether to be used in favour of or against the King's interests,

¹ F.S. Fussner, The Historical Revolution. English Historical Writing and Thought, 1580-1640 (London, 1962), p.31; V.H. Galbraith, Studies in the Public Records (London, 1949), pp.84, 87.

and on 7 March, 1621 the House of Commons remembered this concession.¹ However, in the interim, enthusiasm for looking after the records waned and by the early seventeenth century their condition had deteriorated.² Coke protested to James I that the Ordnance Office had stored gunpowder beneath the records in the Tower. In July 1620 James ordered its removal - though whether out of concern for the records or for the crown jewels which were stored nearby and therefore equally vulnerable, we have no means of knowing. In fact, nothing was done and the gunpowder was still there more than a century later.³ Nevertheless, the collections of public records had by this time been centralised in four main groups of repositories, all within easy reach of the Parliamentary committees which were appointed to search them, and in about 1606 the zealous and energetic Thomas Wilson was appointed

¹ Galbraith, Studies, p.85, quoting from Rot. Parl. ii, p.314; C.D. iv, p.132. The concession made in 1372 did not last long as a similar petition was presented in 1384, and in 1439 the King refused a Commons' petition that King's Bench and Common Plea records be made available for reference: Galbraith, p.85; Rot. Parl. iii, p.202.

² Galbraith, Studies, p.87; R.B. Wernham, 'The Public Records in the sixteenth and seventeenth centuries'. In L. Fox, ed., English Historical Scholarship in the sixteenth and seventeenth centuries (London, 1956), pp.12-16; H. Mirrlees A Fly in Amber (London, 1962), p.101; J. Butt, 'The Facilities for Antiquarian Study in the seventeenth century'. Essays and Studies (1938), vol. xxlv, pp.64-79. Marc Friedlaender takes a somewhat more optimistic view: 'Growth in the Resources for Studies in Earlier English History, 1534-1625' (Unpublished Ph.D. Thesis of the University of Chicago, 1938), p.173.

³ C.S.P. Dom. 1619-23, p.160; Wernham, op. cit., p.27. Friedlaender is wrong in stating, p.172, that the powder had been removed as a result of James' order. His source, S.P. Dom. 14/156, f.40, shows this quite clearly.

Keeper of the Records.¹ In the early seventeenth century increased use was made of the records and this must have led not only to a wider knowledge of their organisation, assisted by Thomas Powell's publication in 1622 of the first guide, but also to a greater opportunity for the medieval heritage to influence thinking.² In addition, abstracts and abridgements of the Parliament Rolls made a knowledge of these widely available; Selden certainly produced his during 1621 and a catalogue of them was compiled by Robert Bowyer who was Clerk of the Parliament from 1610 to 1621.³

Although much of the medieval evidence used by the Parliament of 1621 came directly from the Parliament Rolls, there existed at this time, in private collections but available for examination, several manuscripts of chronicles telling, inter alia, the story of some of the medieval trials. Unfortunately, as the Journals and Parliamentary diaries of 1621 refer only in the briefest possible way to the

¹ D.N.B. under Wilson: Fussner, op. cit., p.71. Repositories had been established at the Rolls House and Tower, the four Treasuries at Westminster, the State Paper Office at Whitehall, and in various offices of the courts and departments of government. In (or possibly before) 1621 the Jewel Tower in the Palace of Westminster came into use as a storage place for Parliamentary Records: A.J. Taylor, The Jewel Tower, Westminster (London, 1965), p.12.

² Fussner, op. cit., p.33. Nine years after publishing his Direction for Search of Records, Powell, until 1622 solicitor-general in the Marches of Wales, published the much fuller Repertorie of Records: D.N.B. under Powell.

³ E.R. Foster, ed., Proceedings in Parliament, 1610 (New Haven, 1966), i, p.xxii, and n.9.

precedents, it seems impossible to state categorically that such records were used by the Parliament men or their opponents. But their history and ownership makes it at least possible that they formed part of the heritage. For the trials of the reigns of Edward III and Richard II, to which the men of 1621 repeatedly turned, two chronicles are of considerable value. The first is that section of the St Albans chronicles which has been edited and published as the Chronicon Angliae and which covers the Good Parliament and the years up to 1388. Of the manuscripts of this part of the chronicle two are basic. Both these were known in the late sixteenth century when they were owned by Matthew Parker. Foxe used one in his Acts and Monuments while Stow seems to have employed a translation, though probably not the Latin originals, of the other. Much of Parker's library went to Corpus Christi College, Cambridge, but although these manuscripts were included they did not stay: one eventually found its way into the Harleian library; the other turned up on the shelves of the Cottonian collection as Otto C. ii. It is listed in the manuscript catalogue of Cotton's library in 1621, and it may therefore have helped to colour the advice that its owner was to give during and after the trials of that year. For of all the surviving manuscripts of the chronicle this is the one which adopts the line most vehemently critical of John of Gaunt, and it was Gaunt's inability to protect

his dependants that conferred success upon the impeachments of 1376.¹ The second chronicle, a record of fundamental importance for the history of the Good Parliament, is the Anonimalle Chronicle. Although its ownership in the seventeenth century is in doubt, and it subsequently disappeared from view until rediscovered forty years ago, this chronicle was known to Stow who used it in the later editions of his Annals.² In recounting the story of the impeachments of 1376 it places much more emphasis than do the Parliament Rolls on William Latimer, who has not only been traditionally regarded as the first man to be impeached, but whose trial was probably the precedent most commonly used in 1621. Further, this chronicle is the only source of the proceedings and debates of the Commons before they came into full

¹ Cotton's catalogue, which should be better known, is now in Harleian MS 6018. It is entitled 'Catalogus Librorum Manuscriptorum in Bibliotheca Roberti Cottoni 1621'. Otto C. ii is entered on f.114v. For the history and character of the manuscripts of the chronicle see Thompson, op. cit., pp.xii-xxx. Of the less important manuscripts of this part of the chronicle one, Bodleian MS 316, bears what appears to be a seventeenth-century monogram, and another is the Cottonian Faustina B. ix. (which, however, does not appear in Cotton's catalogue). The latter, which was found by Leland in Tynemouth Priory is later in date and more guarded in its views than Otto C. ii. For a passage, found only in Otto C. ii, showing Gaunt in a bad light see pp.74-5 of Thompson's edition of the Chronicle.

² Galbraith, The Anonimalle Chronicle, pp.v, xix. Galbraith believes that it had passed into the possession of the Ingilby family before the seventeenth century but this is disputed by Pollard who, however, makes no alternative suggestion: A.F. Pollard, 'The Authorship and Value of the Anonimalle Chronicle', loc. cit., p.604.

Parliament to demand the impeachments.¹

If the men of the early seventeenth century required further evidence of the peculiar relevance of the reign of Richard II to their own time it could be found, in easily digestible form, in the theatre. At least two plays, apart from Shakespeare's, dealt with Richard's reign;² Shakespeare dramatised only the last eighteen months of the reign but he makes one reference to what is almost certainly the power of judgment of the Commons and to their hostility

¹ J.G. Edwards in his review of Galbraith's edition of the Anonimale Chronicle in E.H.R., (1928), vol. xliii, no. 169, pp.106, 107; Pollard, op. cit., p.587. This account of the chronicles available in the early seventeenth century makes no claim to be exhaustive. It merely indicates the major sources accessible to, or probably accessible to, members in 1621 for the precedents which they most frequently used. It could be multiplied, but with little profit. It is perhaps worth noting, however, that several Tudor chroniclers, whose work was printed and therefore easily available, referred to many of the medieval impeachments, but did so only briefly. Furthermore, although the Historia Anglicana gives more space than the Chronicon Angliae to the case of de la Pole in 1386, it adds little to the information provided by the latter and there is no evidence that the manuscript (now B.M. Royal 13E ix) of this section was available to the Parliament men of the early seventeenth century. For a detailed study of the St Albans chronicles, see V.H. Galbraith, 'Thomas Walsingham and the Saint Albans Chronicle, 1272-1422', E.H.R. (1932), vol. xlvii, no. 185, pp.12-30; and the same author's introductory essays to his edition of The St. Albans Chronicle 1406-1420 (Oxford, 1937).

² One, in production in 1611, began with Wat Tyler's rebellion and introduced Gloucester's death, but not, apparently, Richard's deposition and death. The second, probably written in the period 1620-30, was The Tragedy of Richard II concluding with the murder of the Duke of Gloucester: A.W. Verity, ed., Richard II (Cambridge, 1899), p.xiv.

to the King's servants.¹ However, the judicial conflict with which the play is chiefly concerned is the appeal, a process in which the Commons were not involved, and which died out in 1399, to be revived, unsuccessfully, by Charles I in his attempt to "impeach" the five members.²

But it is unlikely that such uncertain literary evidence played any substantial part in the reign of James I. For active in these years were some of the very best of English antiquaries. We shall probably never know exactly how far the influence and knowledge of these men guided the development of Parliamentary judicature, but there is no doubt that their expertise was made available for use, that they were prepared to embroil themselves in the feud and that their skills were regarded as sufficiently dangerous for the government to be provoked into retaliation in and after 1621. Antiquarianism had, of course, emerged particularly strongly late in the reign of

¹ Act II, Scene 2, line 125ff. Bushy, Bagot and Green are discussing their predicament after the King's departure for Ireland and the news of Bolingbroke's invasion:

Green: ... our nearness to the king in love
Is near the hate of those love not the king.
Bagot: And that's the wavering commons: for their love
Lies in their purses, and whoso empties them,
By so much fills their hearts with deadly hate.
Bushy: Wherein the kings tands generally condemn'd.
Bagot: If judgment lie in them, then so do we,
Because we ever have been near the king.

The first quarto of Richard II was published in 1597.

² Clarke, 'The Origin of Impeachment', loc. cit., p.270. The five members were not, of course, impeached - at least, not in the traditional sense of the word as defined above (p. 13) - for the Commons did not present charges against them to the Lords.

Elizabeth with the foundation of the Society of Antiquaries: but members were concerned with the collection of facts, rather than with problems of explanation and historical context. Despite its relative harmlessness the Society had ceased to meet in about 1608 because of the disfavour of the King, and attempts in 1614 to revive it, with its sharper teeth drawn, were again blocked by James. But the torch was carried into the seventeenth century by men such as Spelman, Camden, Ussher, Cotton and Selden. Their work led to a vastly more critical approach to English historical scholarship which ultimately helped to undermine notions of the unchanging character of institutions and the common law on which many of the claims of the Parliament of 1621 rested.¹ But meanwhile, of this group of men, Cotton and Selden made their knowledge readily available for use as ammunition in the legal-cum-political disputes of their day and it is hard to believe that the historical revolution was not helped forward by the increasing

¹ P. Styles, 'Politics and Historical Research in the early seventeenth century'. In L. Fox, *op. cit.*, p.52; J.H.M. Salmon, The French Religious Wars in English Political Thought (Oxford, 1959), pp.66-7; Fussner, *op. cit.*, pp.94-102, 114. On p.95, Fussner suggests that James' refusal in 1614 to permit the Society to reform was due to the growing use of precedents in relation to contemporary constitutional issues. If so it is curious that James did not raise objections at their first appearance in the Parliament of 1621, as he was to do later in the same Parliament. For the date of cessation of meetings of the Society of Antiquaries, see D.S. Berkowitz who maintains that formal sessions ended in 1604: 'Young Mr. Selden. Essays in Seventeenth-century Learning and Politics' (Unpublished Ph.D. thesis of the University of Harvard, 1946), chapter VI, p.48.

demand for precedents and expert advice which arose from such phenomena as the development of Parliamentary judicature.

In 1621 Cotton was less committed to one side than was Selden although later in the 'twenties he was to become increasingly the adviser and friend of the Parliamentary leaders. His interests were well rooted in the past: William Camden, himself a friend of Stow, had been his schoolmaster and friend, and Cotton was a member of the Society of Antiquaries - one of the few who was not a lawyer. He was a member of James' first and last Parliaments and as early as 1607 was supplying information for use in Parliament. During the following years he was employed by both King and Parliament in searching records, opportunities which he used to augment his own library.¹ It is likely, too, that he was at this time engaged in collecting what was later published as An Exact Abridgement of the Records in the Tower of London. With friends who were influential enough to gain him access to collections of records without payment of the normal fees, with a library splendidly organised and strategically placed in his house close to Parliament, and with a wealth of knowledge of his own, he must, by 1621, have been without rival as an expert guide and adviser. Nevertheless, while he was undoubtedly of use to Parliament, there is

¹ D.N.B. under Cotton and Stow; Mirrlees, op. cit., pp.149, 365-6; Fussner, op. cit., p.132; British Museum, A Guide to a Select Exhibition of Cottonian Manuscripts (Oxford, 1931), p.33.

less evidence than one would need to claim that he had any great influence upon its activities. Shortly after the first session opened the Commons asked for his help in solving an election dispute and, later, when the lower House became entangled in its own extravagant claims to jurisdiction over Floyd, he wrote A Briefe Discourse Concerning The Power of the Peeres, and Commons of Parliament, in point of Judicature; but his identification with the Commons was not so strong as to prevent the King from appointing him to the committee of enquiry to search Coke's papers.¹ Indeed, it is highly probable that Cotton was too impartial for the liking of the Parliamentary leaders, that searching the records was still, for him, an academic exercise. He was not prepared to accept the precedents blindly: there is, in the Abridgement, a note condemning as an "Injustice in Parliament" the process there against Alice Perrers, Edward III's mistress.² The case

¹ C.D. iv, p.54; Fussner, op. cit., pp.126, 133. Cotton, whose authorship of this work has now been conclusively settled by Berkowitz, dedicated A Briefe Discourse to Sir Edward Montagu, a supporter of the Crown who was, nevertheless, prepared to join in the search for precedents and talk to Cotton in an attempt to justify the Commons' action over Floyd: C.D. iii, p.191; C.J. i, p.619; Berkowitz, op. cit., appendix E; Fussner, op. cit., pp.133-4. Fussner also points out that Cotton's The Antiquity and Dignity of Parliaments was much used as a source of precedents during the debates of December 1621.

² R. Cotton, An Exact Abridgement of the Records in the Tower of London (London, 1657), p.158. The note concludes that Perrers' "mishap was, that she was friendly to many, but all were not so to her. The Record is strange and worthy of sight". The article on Cotton in the D.N.B. suggests that the Abridgement was written by William Bowyer, assisted by Robert Bowyer, but gives no reason for this opinion.

against her was one of the precedents that the Parliament men of 1621 were inclined to quote. Furthermore, he was ready to give some encouragement to Parliament's victims. In July 1621, Michell, who had been accused in the spring, heard that Cotton has spoken in his favour at the hearing before the King which led to his discharge from prison and the remission of his fine. He hastily wrote to Cotton asking for confirmation and further help, thereby inaugurating a correspondence which, despite the discouragement of its apparent one-sidedness, was remarkable for the persistence with which its author justified himself. Shortly before this Cotton received a letter from Sir John Bennet, who had recently been attacked. Bennet asked for precedents from the Parliament Rolls of cases similar to his, adding a request that if Cotton could not supply these he should provide directions to enable Bennet to conduct his own searches in the Tower.¹ However, if Cotton himself sat on the fence in 1621, the contents of his library, with which he was always generous, were available to help transmit the medieval inheritance and it was presumably through fear of the use to which Bacon might put it that the government forbade him access to Cotton's library after his fall.² But if the library

¹ For Michell's letters see Cottonian MS Julius C. iii, ff. 253, 254 and 256. It is possible, of course, that Cotton replied to Michell but that his letters have not survived. For Bennet's letter, f.23. This letter was written on 24 June, 1621, not, as Fussner states, on 24 July: op. cit., pp.138-9.

² D.N.B., under Cotton.

was closed to Bacon it was readily available to John Selden, who had his own key, and there can be little doubt of the importance of Selden in the trials of 1621.¹

Selden was, of course, a lawyer and was probably friendly with Cotton by 1605 when Cotton was 34 and Selden 21. It was a friendship which lasted well and which, increasingly as the years passed, was placed at the service of Parliament. Less cautious in his views than Cotton, Selden probably found Cotton's help invaluable in overcoming official resistance to his requests to examine records,² and by 1621, having published his History of Tithes, he became a scholar of the first rank. Yet his realisation of the inadequacies of the previous generation of antiquaries in its approach to the past did not make him wholly immune to persuasion "to submerge his critical faculties in the tide of political sentiment", though he was "never so crudely unhistorical as his associates".³ The conjunction in Selden of outstanding scholarship and a committed point of view leads to the conclusion that, in hiring his services, in 1621, the House of Lords, and indirectly the House of Commons, acquired an employee of peculiar quality.

¹ E.N. Adams, Old English Scholarship in England, 1566-1800 (London, 1917), p.66. By a judicious marriage - to a former countess of Kent - Selden had money enough to build up his own remarkable library: ibid., p.68.

² Fussner, op. cit., p.135.

³ Salmon, op. cit., p.66. See also Fussner, op. cit., p.277.

In or about 1621 Selden's knowledge took shape in two pieces of writing, the treatise Of the Judicature in Parliaments and the collection The Priviledges of the Baronage of England. The first will be discussed later in this chapter; the second was without doubt composed during the first session of the Parliament of 1621, at the request of the House of Lords. As early as mid-February seven peers had inaugurated a search by William Noy of the Tower records, and towards the end of March, probably at the instance of the same peers, the investigation was stepped up and a committee appointed to look for precedents for judicature, accusations and judgments in Parliament.¹ This committee was doubtless responsible for recruiting Selden, who was certainly in the employ of the Lords by 27 March.² He must have worked hard, for his collection of privileges, covering more than

¹ Carte MS 78, ff. 495, 501. Thomas Knyvett was appointed, on 30 March, to make notes of the records in the Tower and elsewhere, paying no fee: H.M.C. Third Report (London, 1872), Appendix, p.21. The committee consisted of Huntingdon, Warwick and Haughton, three of the seven peers: L.J. iii, p.65. Huntingdon was especially interested in Lords' procedure and privileges. From 1607 to 1621 he sat regularly in the House of Lords and wrote accounts of the Parliaments of 1610, 1614 and 1621. Later certainly, and possibly in 1610, he received reports from the Commons of their activities: Foster, op. cit., i, pp. xxxff.

² F.H. Relf, ed., Notes on the Debates in the House of Lords, officially taken by Robert Bowyer and Henry Elsing, Clerks of the Parliaments, A.D. 1621, 1625, 1628. (London, 1929: Camden Society, 3rd Series, vol. xlii), p.48, which tells us that Hakewill was also employed by the Lords at this time. Selden was associated with the Lords earlier still, though less directly: the first roll of Standing Orders for the Lords was produced in March 1621 by Elsynge with Selden's help: M.F. Bond, 'The Formation of the Archives of Parliament, 1497-1691'. Journal of the Society of Archivists (1957), vol. i, no. 6, p.156.

250 sheets, was apparently completed by the beginning of June.¹

The Lords paid Selden for his services, so they presumably made the maximum use of his work. For their money they received what was very largely merely a translation without comment of those sections of the Parliament Rolls containing the precedents most frequently quoted in the debates on judicature in 1621. The precedents translated are similar to those Coke gave when he made his speech on judicature in March 1621. This makes it likely that Selden's work was designed to enable the Lords to weigh up, and if necessary refute, Coke's assertions, a guess which receives backing from Selden's inclusion of the case of Sir John Lee, tried in 1368. Coke said that Lee was "punished by the Lords, at the Prayer of the Commons", a claim unsupported by the Parliament Rolls which merely indicate that some of the Commons were present in the earlier stages of the examination

¹ This is inferred from a letter of 23 June, 1621 which indicates that as soon as Parliament went into recess in June Selden's Parliamentary papers were seized. It is most unlikely that he could have continued his work in these circumstances and when the second session opened the efforts of both Selden and the peers were concentrated on recovering the papers and filling the gaps found to exist on their return, preparatory to having them bound: L.J. iii, p.176; H.M.C. Third Report, Appendix, p.25; R.F. Williams, ed., The Court and Times of James the First (London, 1848), ii, pp.260-1. While engaged on these historical researches Selden also seems to have been regarded by the Lords as a proper recipient of the records of their current judicial activities. At the command of the sub-committee Elsynge lent him records of the proceedings against Mompesson: Petyt MS 538/7, f. 336. He doubtless used this material when he wrote Of the Judicature in Parliaments.

but apparently only as listeners.¹ Despite its inadequacy, for many men² in 1621 the case seems to have held all the magic of a relevant precedent. Selden was stretching the record less harshly than Coke when he translated Lee's case omitting all mention of the Commons.³

Selden's collection of privileges contains one considerable mystery. For the most part it is a word-for-word translation of the Parliament Rolls without abbreviation or editing.⁴ But when

¹ C.J. i, pp.545-6; Rot. Parl. ii, pp.297, 298. Reference has already been made to the case, but for a full discussion of it and its place in the development of impeachment see Clarke, 'The Origin of Impeachment', loc. cit., pp.258-9, 267-8 and Plucknett, 'The Origin of Impeachment', loc. cit., pp.53-4. Coke repeats the mistake in The Fourth Part of the Institutes of the Laws of England (London, 1671), p.23: "Sir John at Lee adjudged by the Lords and Commons". For Lee's case see p. 16 above. For Selden's precedents see Table I.

² Including Bacon: J. Spedding, The Letters and the Life of Francis Bacon (London, 1861-74), vii, pp.232-4. It was also one of the precedents reported to the Lords by the committee appointed in late March to search for precedents: Braye MS 11, f.105.

³ J. Selden, The Priviledges of the Baronage of England when they sit in Parliament (London, 1689), pp.34-6.

⁴ He does not translate the whole of the record of Ellis' case but this was relatively unimportant, occupying little space in the Parliament Rolls. He makes a minor change in the record on Latimer by translating "... Latymer estoit empeschez & accusez par clamour des ditz Communes" as "Latimer was impeached and accused by the Vote of the said Earls", but as he later renders "... Latymer y estoit empeschez par le dit Commune" as "Latimer was impeached by the Commons" this change is unlikely to be due to anything more than an innocent mistake, even if one favourable to the Lords. He also mistranslates part of the section recording Latimer's punishment: Rot. Parl. ii, p.324 paragraph 20, p.325 paragraph 24; Selden, pp. 42, 46, 53.

he reaches the case of Michael de la Pole, the ex-Chancellor who was impeached at the complaint of the Commons in 1386, wholesale omission and abbreviation take place. The editing is extremely spasmodic and if this were our only record of the case parts of the proceedings would be virtually incomprehensible. Selden omits or summarises part of de la Pole's defence, though he gives his most successful plea, but he prints in full the Commons' reply to the defence he has suppressed. When he comes to the judgment he omits one of the charges which went against de la Pole and he leaves out the record of the dropping of three charges brought against him. Now, when Coke discussed judicature in March 1621, he quoted de la Pole's case in substantiation of the first of his four types of judicature, that exercised by the King and magnates, and Bacon listed it as possibly relevant to his own situation when he was considering this round about Easter 1621.¹ As it was evidently regarded as a case of some significance, the reasons for Selden's editing are worth examination. The simplest explanation is that the omissions are due to the King or his servants' failure to return all Selden's papers which had been seized during the summer of 1621;² but if so it is strange that confiscation afflicted only this translation whose missing portions

¹ Spedding, *op. cit.*, vii, p.232. Coke does not seem to have mentioned de la Pole's case until the debate itself. His views on judicature will be discussed later: see pp.67ff, below.

² *L.J.* iii, p.176.

can hardly be construed as adversely affecting the royal prerogative. A man less scholarly than Selden might be accused of carelessness but this cannot possibly account for all the omissions, nor does it explain why he should summarise here when he normally translates verbatim elsewhere. These considerations, together with the fact that Selden concealed his omissions by not translating the words used in the Parliament Roll to number de la Pole's pleas, make it clear that the alterations were deliberate. The explanation of intentional falsification of the record can surely be found only in the circumstances of 1621.

If, as was suggested earlier, Selden made his collection to assist the Lords to defend themselves against the Commons, it is possible that he altered this record in an attempt to weaken the Commons' position; but it is difficult to see how the changes he made could have achieved this. Furthermore, Coke, in his speech on judicature, had not claimed - surprisingly enough - that de la Pole's case supported the Commons' claims to participate. The explanation must lie elsewhere. It may very well be that Selden was translating the Parliament Rolls during the very weeks when Bacon was being tried. It was vital to Parliamentary judicature that this attack should succeed, as Selden knew better than most. The Lords' will needed strengthening when it was on a collision course with the Lord

Chancellor,¹ and this could perhaps be achieved by judicious alteration of the record of what might appear to be the most relevant of all precedents, the impeachment of a previous Chancellor. For the overall effect of Selden's alterations was to weaken de la Pole's very successful defence, leaving a picture of a man unable to answer charges of fraud and receiving draconian punishment from the Lords.² This explanation cannot be wholly satisfying because Selden's translation fails to eliminate completely hints that de la Pole was not as great a fool as he is made to appear. Nevertheless, if Selden was less able as a forger than as a historian, he obviously felt that his part-time occupation was worth the effort involved.³ It would seem that he, as an antiquary, believed that his knowledge was so relevant to

¹ According to F.H. Relf Coke too believed in the need to strengthen the Lords' will: see p. 155, below. It is fascinating to note that, in Wilkinson's view, the impeachment of de la Pole took place at a time of great assertion of the power of the Lords in Parliament: Wilkinson, Studies, p.99; and p. 28 above.

² As already indicated, de la Pole's impeachment has been discussed by Clarke, 'The Origin of Impeachment', loc. cit., p.265; Clarke, 'The Lancastrian Faction and the Wonderful Parliament', loc. cit., pp.48-52; Plucknett, 'State Trials under Richard II', loc. cit., pp.165-6; Wilkinson, Studies, p.98; N.B. Lewis, 'Article VII of the impeachment of Michael de la Pole in 1386'. E.H.R. (1927), vol. xlii, no. 167, pp.402-7; J.J.N. Palmer, 'The impeachment of Michael de la Pole in 1386'. Bull. Inst. Hist. Res. (1969), vol. xlii, no. 105, pp.96-101. Steel, Richard II, p.123, also discusses the case but he has misread Lewis' article and fastens onto de la Pole charges of usury which Lewis was discussing (p.403) with reference to Lyons.

³ Fundamentally Selden rated the value of precedents lower than his use of them in 1621 would suggest: Fussner, op. cit., pp.288-9; Lansdowne MS 173, ff. 50v. - 52.

the events of 1621 that it could be used to guide them; it would also seem that he felt that the House of Lords, or part of it, shared his belief.

In compiling The Priviledges of the Baronage of England Selden was writing propaganda and his influence was evidently regarded as sufficiently dangerous for his arrest and examination to follow the conclusion of the first session of the 1621 Parliament.¹ But that his influence was not confined to Parliament is shown by his correspondence with Bacon in February 1622 about the latter's sentence. Paradoxically, if the explanation suggested for Selden's alterations of the record of de la Pole's case is correct, he told Bacon that he questioned the validity of his sentence because of inadequacies in the recording of the judgment.² Selden, the historian, had re-emerged.

It seems clear, from this examination of medieval records possibly available in the early seventeenth century and of the work of Stuart antiquaries in summarising and explaining their contents, that lack of information is unlikely to have circumscribed the range of procedures open to those who looked for guidance to their medieval predecessors. Early Stuart England seems to have been well provided with case histories of medieval Parliamentary judicature. It is

¹ E. Nicholas, Proceedings and Debates of the House of Commons in 1620 and 1621 (Oxford, 1766), ii, appendix.

² Spedding, op. cit., vii, pp.332-3.

therefore necessary to look elsewhere to discover what James I's Parliaments regarded as their proper authority in judicial matters. There are two main sources of this information - treatises written on the subject in the early seventeenth century, and occasional references in speeches delivered in Parliament at the time.

Two treatises survive - a book, Of the Judicature in Parliaments, and a pamphlet, 'The moderne forme of the Parliaments of England' - and they must be discussed in some detail. The first, probably by John Selden, was not published until long after it was written, and cannot be dated precisely.¹ Hargrave, in his preface to Hale's The Jurisdiction of the Lords House, suggested that it was written while Selden was employed by the Lords in 1621; if so, as Hargrave realised, sections dealing with the Parliamentary trials of 1624 and 1626 must have been added later. But the whole work was certainly completed no later than 1626.²

In introducing his subject Selden set himself a formidable task. He states that six different types of judicature belong to Parliament: judging delinquents, both for capital crimes and for misdemeanours;

¹ Selden's authorship is not established beyond question though the probability favours this attribution: Berkowitz, op. cit., chapter V.

² Ibid., chapter V, pp.42, 44; F. Hargrave's preface to M. Hale, The Jurisdiction of the Lords House (London, 1796), pp.xxx-xxxi.

reversing erroneous judgments given in Parliament; reversing erroneous judgments given in the King's Bench; deciding difficult or long delayed suits; hearing private petitions; and enforcing various Parliamentary privileges. Selden says that each of these types involves several clearly defined stages, and he implies that he will consider every type in all its stages. In fact, what survives - possibly all that he wrote - is his study of the first type, but this requires a book of nearly two hundred pages. As he makes each point, he illustrates it by reference to precedent: it is difficult to fault him on his use of many of these and he makes no attempt to conceal his occasional inability to understand a particular case.¹ The result is a manual whose author speaks with conviction.

This is equally true of the pamphlet, 'The moderne forme of the Parliaments of England', whose probable author was Henry Elsynge. Elsynge became Clerk of the Parliaments in March 1621, holding the appointment until 1635 and dying in 1636.² He was thus in an unrivalled position to gain an expert knowledge of Parliamentary procedure and the pamphlet was doubtless written during his tenure

¹ Not surprisingly he found some difficulty with the cases of Alice Ferrers and Sir John Mortimer: J. Selden, Of the Judicature in Parliaments (London, n.d.), pp.22, 59-61. For Ferrers see p.30-1 above; for Mortimer see Rezneck, op. cit., p.506. For Selden's precedents see Table I.

² M.F. Bond, 'Clerks of the Parliaments, 1509-1953'. E.H.R. (1958), vol. lxxiii, no. 286, p.83. The pamphlet has been printed, with an introduction, by Miss C.S. Sims, in American Historical Review (1948), vol. liii, no. 2, pp.288-305.

of office. Whether it preceded or followed Selden's work is unknown, but the section entitled "Proceedings in Judicature" covers almost exactly the same ground and occasional similarities of phraseology suggest a degree of plagiarism. In dealing with Parliamentary judicature, Elsynge is very brief, quotes few precedents and admits to no uncertainties. Neither work undermines the assertions of the other.

What Selden categorises as "Judgments against Delinquents" and what Elsynge entitles "Proceedings in Judicature" involve six distinct stages which both authors identify.¹ These are the accusation, the answer of the accused, the replication by the party accusing, the proofs of the witnesses, the judgment, and the execution. The form of the first stage, the accusation, determines much of the procedure in the subsequent stages. Selden says that there were four kinds of accusation - by the Commons, by information ex parte regis, by private persons, and by appeal by members of the Lords. The last two may be dealt with quickly: Selden recognises that the appeal was abolished shortly after Henry IV's accession and Elsynge states that it was "beyond the Law". Private persons proceed either by petitions or by articles in writing exhibited in Parliament, and Selden correctly quotes precedents, which include the private bills against Ellis in 1376 and the petition of Cavendish against de la Pole in 1384, as

¹ Selden, Of Judicature, p.8; Elsynge, op. cit., p.301.

examples of this procedure.¹

The first two kinds of accusation are more complex and overlap each other to an extent. The Commons may accuse either by making a complaint or by introducing an impeachment. If they impeach the suit is theirs, but if they complain the suit is the King's.² As for the second kind of accusation - information ex parte regis - it appears that this may be based on information provided directly by the King or by the Commons when they "as any other private Person accuse any man unto the Lords ..." However the information arises, the suit is always ex parte regis.³ It may, perhaps, be questioned how far there is a real distinction between proceedings based on the Commons' complaint and proceedings based on Commons' information;⁴ but what is important is that both Selden and Elsynge plainly indicate that impeachment procedure is only one of two or perhaps three types of accusation with which the Commons might be closely associated in cases of Parliamentary judicature. This fact may possibly be of significance to an understanding of some of the Parliamentary trials of the early seventeenth century.

¹ Selden, Of Judicature, pp.11, 66ff; Elsynge, op. cit., pp.302, 303.

² Selden, Of Judicature, p.14; Elsynge, op. cit., p.302.

³ Selden, Of Judicature, pp.33, 61.

⁴ Selden is inclined to use the same precedents to illustrate both, and Elsynge does not make the distinction: Of Judicature, pp. 12ff, 61ff.

According to Selden and Elsynge, the procedure in an impeachment differed from that in a trial begun by information or complaint laid by the Commons. Elsynge sets out the distinction clearly and conveniently summarises procedure after the initial accusation:

If the Comons exhibite noe Articles neither in writing nor by word of mouth by their Speaker at the Barr, then it is onely a Complaint, And in such cases, the Proceedings therein are left to the Lords, and they cause it to bee proceeded in ex parte Domini Regis, and it is not necessary that the Comons should bee further acquainted therewith, unlesse the Comons doe in that Complaint require that the Proceedings bee in their presence, or unlesse it be for Capitall causes, for in cases Capitall, whosoever complaines, the Comons are to bee acquainted with the cause, the Answer, and the Judgment ...

If the Comons doe impeach the party accused that is to exhibite Articles, or any other Declaracion against him in writing, or by their Speaker, then the suyte is theirs, and they are to bee privy to all Proceedings against the Party accused. They are to have a Copie of the Answer, and may reply unto the same. They are to exhibite the Interrogatories and the names of their Wittnesses to bee examined, and produce such proofes as they have against him, & have Copies of the Examinacions. Judgment is not to bee given till they demand it, and then to bee done in their presence, of all which, there are divers ancient presidents. (1)

Selden provides two further details. Accusations ex parte regis are exhibited by the King's attorney, and the Commons are not normally to be present at the trial unless the Lords desire it.² Finally, both authors emphasise that, if the Commons initiate proceedings the Lords

¹ Elsynge, op. cit., p.302. See also Selden, Of Judicature, pp. 14, 109, 118-9, 124, 162.

² Selden, Of Judicature, pp.54, 163. He does, however, also seem to suggest that the Commons may be present at a trial ex parte regis if they demand this: p.163.

must not be associated in the accusation, and that, conversely, in cases of Parliamentary judicature, the Commons have no power of judgment, which is solely the prerogative of the Lords.¹

There is no doubt that both Selden and Elsyng were preaching counsels of perfection: they were writing treatises rather than legal reports. The cases of the 1620s cannot necessarily be fitted into the categories which they define. For it must be remembered that Selden may not have written his book until 1626, while Elsyng's work may be a product of the 1630s - when he perhaps found himself rather less busy than formerly; and it is at least possible that their definitions acquired precision only after the cases themselves had been tried. Furthermore, both men were, to some extent, theorists, possessing an undoubtedly more profound knowledge of their subject than the average early-seventeenth century Parliament man, to whom their definitions and distinctions may have seemed legalistic and possibly even imaginary. Of course, both were in a position to offer guidance and advice on procedure, though in 1621, when Elsyng became Clerk of the Parliaments and when Selden was employed by the Lords, such counsel is more likely to have been directed towards the upper House than to the lower. It is possible that the position changed

¹ Selden, *Of Judicature*, pp.11, 133; Elsyng, *op. cit.*, pp.301, 303. The distinction drawn by Selden and Elsyng between complaints and impeachments has received scant acknowledgement by twentieth-century historians. Maude Clarke is the only exception I have discovered: 'The Origin of Impeachment', *loc. cit.*, p.269.

somewhat in 1624, when Selden entered the Commons for the first time.¹

If we are to aim at any real understanding of the views of the Parliament men of the early seventeenth century on the subject of Parliamentary judicature, we can only hope to acquire it from their speeches and from the writings of a man like Sir Edward Coke, who was a practical politician as well as a legal expert. However, there are difficulties. Such sources yield isolated pieces of information, rather than a thorough exposition. This is hardly surprising: the urgency of affairs in James I's Parliaments scarcely encouraged the delivery of elaborate pronouncements on theoretical subjects.

There is also a terminological problem. The precise meaning of the term 'impeachment' in the early seventeenth century is curiously difficult to comprehend. There are two main reasons for this.² First, although many of the Parliamentary trials of the 1620s have long been described as impeachments, the records themselves rarely use the word, and never, until 1626, in connection with these cases. On one

¹ D.N.B. under Selden. To judge by one of the questions put to Selden during his examination by the government in the summer of 1621, he was at least suspected of sympathising with the Commons' position then. He was asked, in connection with Floyd's case, whether he did not wish that the Commons had power of judicature in such matters. Whether this sympathy issued forth into advice in 1621 is not known.

² Apart from its absence from the dictionaries of the period. The word is not listed in Sir Henry Spelman's Archaeologus in modum Glossarii ad rem antiquam posteriorem, published in 1626, nor - except in the special instance of 'impeachment of waste' - in Dr John Cowell's book, The Interpreter, published in 1607. Spelman's Glossary claimed to deal with new meanings of words; The Interpreter was the best known law dictionary of the day. Cowell was Regius Professor of Civil Law at Cambridge.

of its few appearances in the records of 1621, it is used in the Commons Journal to describe what the lower House had done to the Catholic lawyer, Floyd, for slandering the King and Queen of Bohemia. As the Commons did not charge him before the Lords, he was not, according to the traditional definition of the process, impeached at all.¹ Nor does the term appear in Coke's writings which, as will be shown, are disappointingly sketchy on the whole subject of Parliamentary judicature. Secondly, it is difficult to know what meaning should be attached to the word on the occasions when it is used. In the late sixteenth century, as in the middle ages, the word was in general use, with the consequently rather imprecise meaning of 'hindrance' or 'embarrassment'. Yet it also carried a more technical meaning: both John Minsheu, in 1617, and Thomas Powell, in 1623, use 'impeach' as a synonym for 'accuse';² and a few years earlier, Shakespeare had used 'appeach' in Richard II to mean

¹ C.J. i, p.608.

² Clarke, 'The Origin of Impeachment', loc. cit., p.242; J. Minsheu, The Guide into Tongues (London, 1617); T. Powell, The Attourneys Academy (London, 1623). One particular instance of the use of the term should be noted. In March 1610 the servant of an M.P., Sir James Scudamore, was arrested by a sheriff and the Commons who were, of course, in session took notice of the deed, and referred the matter to the committee for privileges. On the 16th this gave advice "Not to impeach the Sheriff, not knowing that he was Servant": C.J. i, p.412.

'denounce' or 'charge'.¹ It has already been stated² that some historians of the medieval Parliament believe that in the Parliamentary records of 1376 it is possible to distinguish the meaning of an accusation brought by the whole Commons in Parliament; and they have found significance in the subsequent occasions when the word is avoided as well as when it is used - an approach which may possibly have relevance in a seventeenth-century context. Of course, it may be unrealistic to expect to understand precisely and on every occasion the meaning of a term so often used to describe a political conflict between the monarch and his opponents, when, presumably the end was more important than the means. Moreover, a word capable of bearing more than one meaning is not without value to the politician.

If 'impeachment' is conspicuous by its absence from the records of the 1620s, the reverse is true of the term 'complaint'. As will be shown, this word was frequently used to describe grievances which were brought to the Commons, as well as cases which the lower House presented to the Lords. The use of the word raises problems of interpretation similar to those already mentioned in connection with 'impeachment'. Apart from its general meaning, the word also refers to a formal accusation or charge, and in the seventeenth century was

¹ Richard II, Act V, Scene 2, line 79. For other uses of the word in Richard II see Act I, Scene 1, lines 170 and 189.

² See p. 14 above.

often embodied in the phrase 'bill of complaint'.¹ Of course, there also exists the definition which Selden and Elsynge provided for the term, but whether the Commons used it in this precise way or in a more general manner is a problem which is unlikely to be solved conclusively.²

However, if these terminological difficulties hinder our understanding of the views on Parliamentary judicature of James I's Parliament men, they do not render fruitless an examination of their speeches and writings. The views of Sir Edward Coke provide the obvious starting point. Coke could dominate the Commons with his personality and his knowledge. Untroubled by the problems of interpretation and critical analysis with which the new generation of antiquaries were grappling, a scholar in the late sixteenth rather than the early seventeenth century mould, he accepted the precedents with little hesitation and there were few who dared to contradict him in his use of them. Although he might misapply them and refuse to be put out by the lack of them or to question the reason for this lack, he was undoubtedly one of the chief channels through which the medieval

¹ Oxford English Dictionary (Oxford, 1888-1928), under 'complaaint'.

² Another word which possessed two meanings, one general and the other technical was 'grievance': E.R. Foster, 'The procedure of the House of Commons against Patents and Monopolies'. In W.A. Aiken and B.D. Henning, eds., Conflict in Stuart England (London, 1960), p.85, n.105.

heritage could make itself felt in and after 1621.¹

When Coke wrote The Institutes of the Laws of England he included in the fourth part, written during or after 1628, a chapter on Parliament as a court. This has a section on judicature in which Coke declares that the Houses both separately and together have a power of judicature. However, this is not an introduction to a detailed discussion, because Coke at once adds that "the handling hereof according to the worth and weight of the matter would require a whole Treatise of it self; and to say the truth, it is best understood by reading the Judgments and Records of Parliament ..."² He then contents himself with listing precedents in a way which does very little to illuminate the subject. He records that, in the 1620s, there were

divers notable judgments, at the prosecution of the Commons, by the Lords at the Parliaments holden 18 and 21 Jac. Regis against Sir Giles Mompesson, Sir John Michel, Viscount St. Albone Lord Chancellor of England, the Earl of M. Lord Treasurer of England, whereby the due proceeding of Judicature in such cases doth appear. (3)

¹ Coke had a library of c. 1200 volumes, particularly strong in the texts of English medieval historians: W.O. Hassall, ed., A Catalogue of the Library of Sir Edward Coke (London, 1950), pp. xii, xx. Coke annotated many of his books but unfortunately these notes give little or no indication of his opinions.

² Coke, op. cit., p.23; C.D. Bowen, The Lion and the Throne. The Life and Times of Sir Edward Coke, 1552-1634 (London, 1957), p.436.

³ Coke, op. cit., p.23.

But he provides no explanations or classifications, and we are left to wonder why he used a phrase like "at the prosecution of the Commons", which, when compared with the contemporary record, seems to exaggerate substantially the part taken by the lower House in these cases.

This is disappointing, but rather more information can be gleaned from two speeches Coke made early in the first session of 1621.

These are particularly important because, unlike the more random remarks made on judicature by his colleagues in this Parliament, they were delivered before that Parliament had progressed far in any real exercise of its judicature, and were therefore perhaps less influenced than they might otherwise have been by the experiences of 1621 itself.

The first speech was delivered on 28 February, during a discussion in committee of Mompesson's offences. Coke said:

The Courte of Parliament a Courte of Counsell and a Courte of Pleas. When the Howses were devided, The indevisible things remayned with the Lords. Pleas continued in the Upper-Howse longe after the Stattute.

Complaints and Examincions of greevances have been ancient in the Howse of Commons, the matter of fact tryed there; they have often resorted to the Lords for Judicature. The proceedings have beene with some varietye. In some cases the Howse of Commons made Plaintiffs and Delinquents to answeere there, sometymes the Steward of the Howse made a Complaint and the Comons were made a partie, And sometymes the Commons would have the Connizance alone. Never anie that was fowned guiltie hath been able to beare out the storme of the Common Forces. There hath beene noe iudgment in this kind since 2 H. 6. (1)

¹ C.D. iv, pp.115-6. "2 H. 6" should presumably read "28 H. 6" (the impeachment of Suffolk in 1450), a common enough error in the diaries of the early seventeenth century.

Coke seems here to be identifying three types of procedure. In the first, the Commons appear to be responsible for initiating the hearing before the Lords; in the second, the Commons are associated with the proceedings as a party, but the "Complaint" is instituted by an official of some sort. In speaking of the "Steward of the Howse" Coke is presumably thinking either of the steward of the household who prosecuted Gomeniz, Weston and Ferrers in 1377, or of the steward of England who performed the same function in 1397, though to both Selden and Elsynge the function of the steward, whether of England or of the household, is to preside rather than to prosecute, and then only in capital cases and not in misdemeanours.¹ Coke's third type of procedure is that where the Commons in certain unspecified instances have sole jurisdiction, without reference to the Lords.

Coke may have illustrated each type of procedure with selected precedents, but the surviving records do no more than list a few at the end of the speech, without classifying them. However, some days later, on 8 March, during the preparations for presenting Mompesson to the Lords, Coke again gave his views on judicature and the precedents he used to illustrate his categories are clearly recorded.² On this occasion, he listed four types of judicature. Proceedings might take

¹ Plucknett, 'Impeachment and Attainder', loc. cit., pp.148ff; Rot. Parl. iii, p.12; Harcourt, op. cit., p.347; Selden, Of Judicature, pp.176-7; Elsynge, op. cit., pp.303-4.

² For Coke's precedents see Table I.

place before the King and the Lords, before the Lords alone, before the Lords and Commons, and before the Commons alone. Coke's elaboration of these categories shows that, although he was here looking at the subject of judicature from a slightly different angle and discussing four types rather than three, he is not contradicting his statement made a week previously.

As evidence of proceedings before the King and the Lords, Coke quotes the case of Suffolk in 1450. Although this has certainly been thought of as an impeachment, it was one in which the King's part was much greater than normal, and it may have been this characteristic which led Coke to use it as an illustration for this category.¹ Although he provides no further explanation of this first type of procedure, what he understands by it becomes clearer when he turns to the second type. He states that, when the King is a party, the Lords judge alone. They can do so either on writs of error arising out of judgments in the King's Bench, or in cases originating before them, or on complaints of the Commons. As an example of original jurisdiction, he quotes the case of Alic Perrers in 1377. In so doing, he was presumably influenced by the obscure character of this case: it will be remembered that the Parliament Roll refuses to state

¹ C.D. ii, p.195; v, p.280; vi, p.307. It is possible that he also mentioned Michael de la Pole's case in 1386, though not all accounts are agreed on this.

who was responsible for presenting her to the Lords.¹ As one example of proceedings before the Lords on complaints of the Commons, Coke gives the case of Sir John Lee - the case which Maude Clarke contrasted with the impeachments of 1376 - but he also lists, under the same heading, the cases of Lyons, Ellis, Neville, and Peach, which were among those very impeachments.²

However, Coke does not include Latimer, the most important of the men impeached in 1376, in this list. He uses this case, together with - according to one account - the cases of Gomeniz and Weston from 1377, to illustrate his third type of judicature, the type which involved proceedings before the Lords and Commons. His reason for assigning Latimer's trial to this category is evidently Latimer's pardon, which states that he was judged before the Lords and Commons; but the Commons' part in the two trials of 1377 was far less substantial.³

Coke's fourth type of judicature - procedure before the Commons alone, requires little discussion for the present. His precedents

¹ C.D. v, pp.32, 281; Rot. Parl. iii, p.12. See also p. 31 above. Whether or not the Lords possessed an original jurisdiction was, of course, to be a matter of fierce argument later in the seventeenth century.

² C.D. ii, pp.195-6; v, p.281; vi, p.44. For these cases see pp. 25, 29-30 above.

³ C.D. ii, p.196; vi, p.44; Nicholas, op. cit., i, p.134. This is Coke's interpretation of Latimer's pardon; but see Wilkinson, Studies, p.90, n.2. As for Gomeniz and Weston, it is interesting to note that Selden states that they were arraigned before the Lords and Commons in full Parliament: Of Judicature, p.42.

indicate that he is thinking largely in terms of proceedings against those who offended against the privileges of the House.¹

These two speeches by Coke obviously contain some puzzling features in their references to the judicial powers of the Houses. It is not easy to understand the principles upon which Coke allocates his precedents to their various categories, and it was Maude Clarke's view that his use of these indicated that he did not understand the "special character of procedure by impeachment".² But whether or not this verdict is fair, Coke clearly did believe that the Commons might be associated with the Lords in more than one way in Parliamentary judicature. On 28 February, he seems to be stating that the lower House might either initiate proceedings before the Lords, or be brought in as a party to complaints introduced by the steward; on 8 March, he says that judicature may be jointly exercised by the two Houses, or that it may be exercised by the Lords on complaints brought by the Commons. It is tempting to see in these distinctions a foreshadowing of the rigid definitions of impeachment and complaint set up by Selden and Elsynge; but it would be dangerous to make too much of this. Procedure on complaint may have meant much the same to all three men, for Coke does seem to use the word to describe the processes in which the Commons had a lesser, rather than a greater,

¹ C.D. ii, p.197.

² Clarke, 'The Origin of Impeachment', *loc. cit.*, p.267.

share; but this may be accidental rather than deliberate and, as he does not appear ever to have used the word 'impeachment', we cannot be sure that he would have recognised any procedural distinction between impeachment and complaint. Furthermore, it would be hard indeed to establish real distinctions between Coke's various types of judicature merely on the basis of the precedents he cites: that he genuinely believed in these distinctions, his speeches prove as conclusively as is ever likely to be possible, but that his precedents really support the existence of all his distinctions is rather more doubtful. However, it does seem reasonably safe to say that Coke understood that Parliamentary judicature - the judicature resulting from the co-operation of the two Houses - could manifest itself in two forms, in one of which the Commons were more closely, or more fundamentally, associated than in the other.

Whether or not other members of the Commons shared Coke's views on procedure in judicature, there is no means of knowing. No reports survive of other speeches on the same theme. The confusion in some of the diary accounts of Coke's second speech suggests that their authors found the subject unfamiliar.¹ On the other hand, those members who were lawyers must have had an acquaintance with this

¹ Their confusion could, of course, have been the result of a poorly constructed speech, but this seems an unlikely explanation as Pym's account of Coke's speech is very clear. This very clarity, in its turn, suggests that Pym may have shared Coke's familiarity with the subject.

procedure, and there is no reason to suppose that Coke's views were untypical of his profession. But only William Hakewill, a man who shared Coke's legal background as well as his antiquarian interests, made any comment which might be construed as being related to Coke's theme. Towards the end of April, 1621, during proceedings against Bennet, he said: "I have observed when we have gone to the Lords it hath been by impeachment, clamor or accusation".¹ This remark, which is not explained, probably raises more difficulties than it solves. It does seem that, to Hakewill, impeachment was only one of the methods by which the Commons could approach the Lords, but it would indeed be useful to know what Hakewill regarded as the procedural characteristics of each of his three methods, especially as this is one of the few occasions before 1626 when the word 'impeachment' appears in the records. Furthermore, his remark must lead us to wonder what he would have made, or did make, of the report in the Parliament Roll of 1376, which states that Latimer was "impeached and accused by the clamour of the Commons".²

Apart from his comments about procedure, Coke made another point in his speech of 28 February. He states that when "the Howses were devided, The indevisible things remayned with the Lords", and in the

¹ C.D. ii, p.314. Another account reports this speech as follows: "... to send theis things to the Lords. But we not to condemn him. 3 fold grounds: 1, clamor; 2, accusation; 3, impeachment by the Commons....": ibid., iii, p.55.

² Rot. Parl. ii, p.324.

following paragraph he adds that "Complaints and Examinacions of greevances have been ancient in the Howse of Commons, the matter of fact tryed there; they have often resorted to the Lords for Judicature."¹ He is here referring to a division of function between the Houses which virtually compelled the Commons to depend on the Lords for the punishment of a man, unless his offence was against their own privileges. What Coke was saying - before the trials of 1621 had really got under way - was that the Commons' power was limited to the examination of alleged grievances and a pronouncement as to whether the allegation was valid. The Commons could not, for example, punish the author of a grievance: this was the Lords' function; and it may be noted, in passing, that it was the need to do this, rather than to persist in the ineffective condemnation of the grievances themselves, which was to lead to the revival of the process by which the Commons presented offenders to the Lords. Now, this limitation on the power of the Commons was to prove irksome in 1621 during Floyd's case, but if the intemperate speeches delivered on that occasion are recognised as untypical of the normal mood, as they undoubtedly were, Coke's statement appears to have been generally acknowledged as correct. During the course of the trials of 1621, Pym, Samuel Sandys and Noy all confirmed Coke's view, though Pym maintained that, in the past, the Commons had been present at the

¹ C.D. iv, p.115.

judgment and had influenced the terms of the punishment.¹

As has already been pointed out, Coke's two speeches possess the great virtue of having been delivered before there had been much experience of Parliamentary judicature in 1621. In consequence, the interpretation which they place upon the medieval heritage cannot have been influenced by the outcome of the trials of 1621. This is not true of the contributions on Parliamentary judicature made by other members during this session, which may well have been substantially influenced by the results of those trials. Nevertheless, despite the obvious dangers, it seems appropriate to attempt a summary of these views. On the other hand, opinions given in subsequent Parliaments are likely to have been so influenced by the judicial developments of the 1620s that it would be unwise to include them in this section.

It has been suggested that the Commons of 1621 did not seriously quarrel with Coke's view of their dependence on the Lords in most cases of judicature, but it was also recognised that, except in matters concerning their own members and privileges, the Lords could not deal with public grievances unless these were presented to them by the Commons. The most forceful assertion of this doctrine occurs during and after Floyd's condemnation by the lower House - an

¹ Ibid., ii, p.303, 312, 370; iii, p.136; vi, p.90; Nicholas, op. cit., i, p.283.

assertion of power which it proved unable to justify - so that members' protestations may contain an element of wounded pride; but the doctrine gained the support of men like Hakewill, Pym, Sir Thomas Roe and possibly Noy, and Hakewill produced two precedents to show that judgments had been reversed in cases where the Commons had not made an accusation.¹ Hakewill also maintained that, on occasions when the Lords had not pronounced judgment, the Commons had gone to the King; while Rich asserted, very radically, that if the Lords refused to punish those complained of, the Commons should pass judgment themselves, "which is our ancient course".²

It seems to have been implicitly accepted in 1621 that accusations brought by the Commons had to be precise, rather than vague, and the consequences of the deficiencies in the first attack on Suffolk in 1450 certainly supported this view.³ Furthermore, Pym made the point that the Commons might jeopardise their power of inquisition in Parliamentary judicature unless they ensured that evidence handed to the Lords was already fully proved. An anonymous

¹ C.D. ii, pp.352, 362; iii, pp.166, 177, 288; iv, p.361; vi, p.141; C.J. i, pp.608, 610, 624. Sackville may have had doubts about the doctrine, but his position is not very clear: C.D. v, p.162.

² C.D. ii, p.371; iii, p.178.

³ Harcourt, op. cit., pp.383-4; Rot. Parl. v, pp.176-7; Nicholas, op. cit., ii, p.83. The Lords refused to order Suffolk's imprisonment until the Commons made a specific accusation against him. Selden draws attention to this aspect of the case: Of Judicature, p.29.

speaker in mid-May claimed that the House had some right to select punishments, and Alford, Hakewill and Pym on separate occasions declared that the Commons could demand a second judgment, if they were not satisfied with the first.¹

One aspect of the procedure of demanding judgment caused anxiety in 1621. On 14 May, when the Lords appeared to be taking little action on the Commons' complaint against Field, Hakewill complained of the custom, which, he said, had grown up during the session, by which the Commons waited to be invited by the Lords to demand judgment before actually doing so. Alford, Roe and Sackville make it clear that the result of this habit was that cases presented to the Lords might remain there unsettled, or that the Commons might never know the details of a Lords' judgment. Hakewill provided the remedy - to demand judgment uninvited - and the implication is that this was believed to be the ancient custom.²

In general, there was probably little quarrel with the belief that the Commons' part in judicature was one of considerable

¹ C.D. ii, pp.303, 368, 370; iii, pp.250, 264; Nicholas, op. cit., i, p.228.

² C.D. iii, pp.249, 271; vi, p.156; Nicholas, op. cit., ii, p.69. It is interesting to note that, in his definition of impeachment, Elsynge says that "Judgment is not to bee given till they (i.e. the Commons) demand it...": Elsynge, op. cit., p.302. In the case of Field, it was resolved to send a message to the Lords warning them that the Commons proposed "in dew time" to demand judgment, though in fact they did not do so: C.D. iii, p.271.

importance, and one which had, in the past, led to attacks on some of the most prominent men in the land. In April 1621 Pym said that Parliament was the "great eye of the kingdom to find out offences and punish them", and at the end of the session he told the House that "We have donn greate works ... Judgment, the which hath slept theis 300 yeears and is the greatest benifit that may be, is now revived."¹ Although his arithmetic was wrong, his confidence was probably justified. It is possible that, in the course of their searches among the medieval Parliament Rolls, members had come across two statements which helped to convince them of their own ancient worth. In a Commons' petition of 1377 the claim was made that it was "only to parliament that men may come when they are unjustly aggrieved by the king's ministers", while eleven years later, in the Merciless Parliament, the Lords declared that high crimes could be tried only in Parliament, by its law and procedure.²

One of the dangers inherent in making statements about the inheritance of the Commons of 1621 is that these can exaggerate the degree of certainty felt by members. Sometimes, no doubt, the House whistled loudly only to keep its courage up, and it is possible to

¹ C.D. ii, p.303; iii, p.353. The figurative meaning of 'eye' in the seventeenth century was the seat of intelligence or light: Oxford English Dictionary, under 'eye'.

² Rot. Parl. iii, pp.23, 236; Richardson and Sayles, op. cit., pp.1-2; Clarke, 'Forfeitures and Treason in 1388', loc. cit., p.125.

catch glimpses of uncertainties lurking beneath its perhaps too confident gestures. Maude Clarke believed that the Master of the Wards, Lionel Cranfield, was giving expression to a widely held point of view when he observed, referring largely to Coke's statement of 8 March on judicature:

Sorry, we (are) so uncertain in the Power of this House. - More puzzled this Parliament than ever before. - Told, in the beginning of this Parliament, we (are) an absolute Court: That, in some Cases, we (are) to judge alone; in others, with the Lords; in others, the Lords alone. (1)

But his remarks may be less significant than they sound: Cranfield seems by this time to have retreated from the rather advanced and aggressive position he had adopted in assisting in the early stages of the Parliamentary onslaught,² and he was speaking during the anxious days when the Commons were claiming the right to punish Floyd - a claim which many members quickly recognised to be untenable. This is not of course to deny that uncertainties existed, but they were perhaps surprisingly few. Although the Commons of 1621 may not have had the assurance of their successors who, in Plucknett's opinion, framed a theory of impeachment which asserted that they were "the grand inquest of the nation, and the whole proceeding was merely the common law trial on indictment transferred to the larger scene of

¹ C.J. i, p.602.

² See pp.137, 168, below. He was also at this time (May) accused of having told the Lords that the Commons were not a court of record: M. Prestwich, Cranfield. Politics and Profits under the Early Stuarts (Oxford, 1966), pp.316-7.

parliament",¹ nevertheless they had the confidence and knowledge to carry through, relatively smoothly, proceedings against men of the stature of Bacon.

There was clearly ample opportunity for the medieval heritage to influence events in the early seventeenth century. It was a complex inheritance and there is evidence that Coke and his contemporaries were aware of its variety. Coke's influential belief that Parliamentary powers were static and unalterable,² combined with Pym's faith in the blessings of medieval judicature, make it likely that their colleagues had some realisation of the worth of their inheritance. How far that inheritance influenced their actions cannot be precisely calculated. The men who guided the development of Parliamentary judicature in 1621 lived in 1621, not in 1376 or 1386, but it is possible to believe that when they looked over their shoulders or studied the records, they were not doing so merely to search out convenient excuses for their present actions.

¹ Plucknett, 'The Origin of Impeachment', loc. cit., p.47.

² Clarke, 'The Origin of Impeachment', loc. cit., pp.266-7.

Chapter II

Judicature before 1621

This study has so far been concerned with what Selden called "Judgments against Delinquents", and with the antecedents of that Parliamentary judicature - the process involving the co-operation of both Houses - which decisively re-emerged in 1621. But it must be remembered that "Judgments against Delinquents" was only one of six different types of judicature which, in Selden's view, belonged to Parliament. Although he did not discuss them, he listed the remaining five: reversing erroneous judgments given in Parliament; reversing erroneous judgments given in the King's Bench; deciding difficult or long delayed suits; hearing private petitions; and enforcing various Parliamentary privileges.¹ Now Selden was writing in about 1626, and although his phraseology suggests that he believed that these powers resided in the Houses at that time, his list is not necessarily valid for the period preceding this. James I's Parliaments, for instance, did not necessarily possess all these powers. However, if they possessed any of them, it is worth asking whether such powers

¹ J. Selden, Of the Judicature in Parliaments, pp.8410.

had any connection with the development of that type of judicature which is the main concern of this study. Unlike that judicature, the exercise of these powers did not depend upon co-operation between the two Houses: the first three were the peculiar responsibility of the Lords, while the last two might be used by either House alone. Such unicameral judicature might seem to have little to do with a judicature which depended upon the joint action of both Houses, but, as will be shown, there is evidence to suggest that the exercise of unicameral judicature assisted the re-birth of Parliamentary judicature. Moreover, while Parliamentary judicature developed, so too did certain aspects of unicameral judicature: in some ways, both form part of the same story.

The Lords and Commons of the early seventeenth century possessed the right to apply their separate judicial powers in a number of areas, which gradually became more clearly defined and, in some respects, extended. But in the century and a half which preceded the accession of James I, these powers, like those of Parliamentary judicature, were little used. This was the conclusion reached, in the eighteenth century, by Francis Hargrave, and there is little reason to question his findings, which were based on an intensive study of the

Parliamentary Journals.¹ Hargrave acknowledged the existence of a unicameral judicature by Lords and Commons in cases of privilege, but apart from this he found only occasional instances of a Lords' jurisdiction on writs of error, arising from judgments in other courts, and only one order by the Lords for a writ of scire facias.² Later in his survey, Hargrave recalled another type of judicature, represented in the medieval records by the appointment, at the beginning of each Parliament, of receivers and triers of petitions. But this judicature, too, was slumbering by the beginning of the seventeenth century.³

In practice, therefore, in the early years of James I's reign, the separate judicature of the two Houses was hardly extensive. In and after 1621 this was to change, and attention will be paid to these changes in subsequent chapters, but for the moment the judicature of the Commons extended only to matters concerning their privileges and their members, while the similar powers of the Lords were augmented only by their jurisdiction in cases of error.⁴ Although these powers

¹ F. Hargrave's preface to M. Hale, The Jurisdiction of the Lords House, pp.vi-viii. This preface, provided for the eighteenth-century edition of Hale's treatise, is still the most thorough work on the subject of the Lords' jurisdiction: F.H. Relf, ed., Notes of the Debates in the House of Lords, officially taken by Robert Bowyer and Henry Elsing, Clerks of the Parliaments, A.D. 1621, 1625, 1628, p.x.

² Hargrave's preface to Hale, op. cit., pp.vii-ix.

³ Ibid., p.xxxdiii.

⁴ Ibid., pp.iii-iv.

might be refined and improved in specific ways - and the Commons clearly gained a notable victory in winning the right to determine disputed elections - such jurisdictions did not necessarily point the way to the revival of a procedure involving the co-operation of the two Houses. Judicature on writs of error concerned the Lords alone, and this was unequivocally acknowledged by Noy in 1621;¹ while matters involving members and privileges were normally settled by the House concerned, without reference to the other. As far back as 1542 the Commons had realised that, if they were to maintain their privileges, they must stand on their own feet.²

Yet, largely in the name of privilege, James' first two Parliaments dealt with a number of cases which exhibit some unusual features, and which therefore require examination. The cases were those of John Thornborough, Bishop of Bristol, in 1604, Dr John Cowell, Sir Stephen Proctor and Henry Spiller in 1610, and Richard Neile, Bishop of Lincoln, in 1614. Apart from a number of detailed procedural points, these cases are of interest in two ways. First, in those

¹ C.D. ii, p.338. Also by Coke, The Fourth Part of the Institutes of the Laws of England, p.21.

² In the case of George Ferrers, M.P. for Plymouth, who had been arrested for debt. The Commons first turned to the Lords for help, but subsequently refused the Lord Chancellor's offer of a writ on the ground that their serjeant's mace was sufficient warrant for Ferrers' release: Petyt MS 538/1, ff.lv.-4. For the dating of this case, see H.H. Leonard, 'Ferrers' Case: a Note'. Bull. Inst. Hist. Res. (1969), vol. xlii, no. 106, pp.230-4.

concerned primarily with privilege, circumstances compelled the Houses to act together, however unwillingly. Secondly, Lord Chancellor Ellesmere thought that the Commons of 1610 usurped judicial power, citing as examples their proceedings against Proctor and Spiller,¹ and there is no doubt that, although the Commons were partly concerned with Proctor's offence against their privileges, they were also anxious to punish him for other sins. Before these five cases are examined, it is worth noting that when Robert Bowyer, Clerk of the Parliaments from 1610 to 1621, worked over his own and his predecessor's Parliamentary records, compiling reports on special topics, three of the six were devoted to the cases of Thornborough, Cowell and Proctor.² There is no means of knowing why he chose to write up these proceedings, but he clearly regarded them as in some way significant.

The Bishop of Bristol offended the House of Commons because he had written a book in which he discussed a debate there on the

¹ He also gave other examples, but as these suggest a different type of trespass, it will avoid confusion if they are considered separately: see pp. 123-4, below.

² These reports are in Petyt MSS 538/1, ff. 147ff. (Thornborough), 538/2, ff. 148-55 (Proctor), ff. 158-65 (Cowell). The other three reports are of the debate in 1614 on impositions, in which Bowyer devotes a good deal of space to the complaint against Neile, and of the cases of Shirley and Goodwin in 1604. They are, respectively, in Petyt MSS 538/2, ff. 247-64v., 538/1, ff. 93-131v., ff. 182-96. In the account of the first session of 1610 in Petyt MS 537/14 which differs slightly from the printed Commons Journal the passages relating to Proctor are frequently marked in the margin with a line (-) or a P.

subject of the proposed union with Scotland. In his work, he had answered objections raised against the union, as well as made public what had been discussed in the Commons. In consequence, he had, in the opinion of the lower House, increased the risk of dissension in the kingdom and dishonoured both Houses. Two proposals for action were advanced: that he should be summoned to the Bar of the Commons, as was usual in cases of privilege; or that the House should go to the King, who had presumably authorised the publication of the book. But because the Bishop was a member of the Lords, the Commons appointed a committee of eleven members to draw up a message about the book and their grievance for despatch to the upper House. On receiving the message, the Lords asked for time to read the book. They replied on 30 May, proposing a conference in three days' time "at the Outward Chamber, near the Parliament Presence", in the meantime calling before them two men, Field and Chard, whom they examined and charged with offences in connection with their printing of the Bishop's book.¹ The Commons next appointed a committee of fifty or more members, charged with the task of examining the book and preparing for the forthcoming conference. Sir Henry Hobart was appointed to open the Commons' statement, described as the "Complaint of the House", to the committee of twenty-four nominated by the Lords. Having

¹ Petyt MS 538/1, ff. 148-149v; L.J. ii, pp.306, 308, 309; C.J. i, pp.226-8; J. Spedding, The Letters and the Life of Francis Bacon, iii, p.208.

heard the objections raised by the lower House, the peers excused themselves from discussion to report to their House which, on 5 June, decided that the Commons could best be satisfied by a voluntary acknowledgement from the Bishop of his error. This, together with an apology, was eventually extracted from Thornborough, who insisted that he had acted in ignorance and without malice, having intended only to show his support for the projected union.¹ On 9 June, at a further conference, Salisbury reported the Bishop's submission, declared that the Lords had rebuked him, and stated that only his rank and position had deterred them from greater severity. Several members of the Commons reacted unfavourably to Bacon's report of these proceedings: demands were made that the Bishop should either submit in person to the Commons or that his written submission should be examined and incorporated in the records of the House.² After a further reference to the committee these rather extravagant demands were eventually reduced, and on 21 June a group of members, headed by Sir Francis Hastings, was sent to the Lords with a temperately worded message. Wishing to be more fully satisfied, the Commons asked for a copy of the account which they presumed the Lords had compiled of the Bishop's acknowledgement of his error, so that they

¹ L.J. ii, p.314; C.J. i, pp.230-2.

² L.J. ii, p.315; C.J. i, pp.234, 236; Spedding, op. cit., iii, pp.208-10. The speakers in this angry debate were Sir Thomas Ridgeway, Sir John Holles, Sir Herbert Crofts, Sir Robert Wingfield, Mr Secretary Herbert.

might incorporate it in their own proceedings.¹

At this point the record begins to fail. The Lords replied to the Commons' request by proposing a conference for 30 June. This meeting certainly took place, but what transpired we hardly know. The Commons Journal has only the slightest mention of Hastings' report: it contains words which may indicate that the Lords had handed over the Bishop's submission, but we cannot be sure.² In any case it perhaps hardly matters. The struggle between the Houses had ended in a draw: the Commons had jostled the Lords into rebuking one of their own members at the insistence of the lower House; but in doing so the Lords had preserved their dignity and protected the Bishop from the worst excesses of the Commons' anger.

This case was concerned purely with a matter of privilege, but because the Bishop was a member of the Lords and the issue was raised by the Commons, the two Houses were forced into some kind of collaboration in order to settle the matter. This involved them in a joint committee meeting, a practice which was to assist in the successful revival of Parliamentary judicature in the 1620s; and the Lords had to acknowledge the Commons' initiative in the case by making arrangements to satisfy them on its outcome.

In addition, by preparing their case in committees rather than

¹ L.J. ii, p.325; C.J. i, p.244.

² L.J. ii, p.332; C.J. i, p.251.

at meetings of the whole House, the Commons were making use of a procedure which was to serve them well in the 1620s. This procedure had been increasingly used in the last years of Elizabeth's reign, and by 1621 it had reached considerable maturity. In the 1620s, when the use of committees by the Commons materially assisted the development of Parliamentary judicature, the House was employing an established procedure which, apart from minor modifications, does not seem to have required much further development in those years: there is, in the field of Parliamentary judicature, little difference between the powers exercised by committees in 1621 and in 1626. In the earlier years of James' reign important developments did occur in the use of committees in connection with judicature, and these will be noted, but our knowledge of them is limited by the sparse nature of the material surviving on the Commons of these years compared with the period from 1621 onwards.¹

In between the case of the Bishop of Bristol and those of 1610 an abortive attempt was made to create a special type of judicature to deal with the authors of the Gunpowder Plot. It appears that Sir Robert Wingfield and others wanted to petition the King to permit the trial in Parliament of those involved, so that punishments in excess of those provided by the law might be imposed. The mind

¹ J.E. Neale, The Elizabethan House of Commons (London, 1954), p.377; W. Notestein, The Winning of the Initiative by the House of Commons (London, 1962), pp.43-4.

boggles at what might have been devised, but the proposal came to nothing, though after the trial and execution of the conspirators a bill of attainder was passed.¹

The cases of Cowell and Proctor began at virtually the same moment, in the last days of February 1610, but that of the latter was much the more protracted. Cowell's book, The Interpreter, a law dictionary, had been published at Cambridge in 1607 and the row which broke out shortly after the beginning of the Parliamentary session of 1610, derived from its definitions of the words 'Subsidy', 'King', 'Parliament', and 'Prerogative'. Cowell had emphasised the King's absolute power, thereby damaging, in the Commons' view, the authority of Parliament.² In origin, therefore, the case was similar to that of the Bishop of Bristol; but although it developed along much the same lines, the Commons' approach was both more sophisticated and more determined, and Cowell was not let off as lightly as the Bishop.

¹ L.J. ii, pp.366, 367, 370, 399, 401, 404-6, 435, 445; C.J. i, pp.293, 303, 308; L.B. Osborn, The Life, Letters and Writings of John Hoskyns 1566-1638 (New Haven, 1937), p.24; D.H. Willson, ed., The Parliamentary Diary of Robert Bowyer, 1606-1607 (Minneapolis, 1931), p.7. On 9 November, 1605, James himself, in a speech to Parliament, said that he might arrange for the trial of the conspirators in Parliament: Lansdowne MS 513, ff. 10-10v. The version of the speech given in this manuscript differs from that in the Lords Journal which makes no mention of this proposal: L.J. ii, pp.357-9.

² E.R. Foster, ed., Proceedings in Parliament, 1610, i, pp.18, 25. In 1604, the Bishop of Bristol had offended the Commons rather than the whole Parliament, though the Commons claimed that he had dishonoured both Houses: see p.87, above.

The complaint against Cowell was introduced into the Commons on 23 February, probably by Hoskyns; it was at once referred to the committee of grievances, a committee of the whole House, which appears for the first time in 1610. This committee was destined to perform a function discharged, in Elizabeth's reign, by the Secretaries and other councillors, and was to have a vital share in the preparation of cases presented by the Commons to the Lords in the 1620s.¹ Even at this stage it was already very busy touting for and investigating complaints. The committee read the book but, in order to investigate it more closely, set up a sub-committee. This sub-committee reported presumably that there was a case to answer because on the 24th it was asked to consider a charge. At the same time, the House discussed procedure: there must have been a proposal for unilateral action by the Commons alone, because Francis Bacon objected to this on the ground that Cowell's views were not merely the concern of the lower House, but of the King and the whole body of Parliament. He then proposed that the Commons should "have Conjunction with the Lords, for the Punishment of this Man"² and the sub-committee was asked to

¹ Notestein, *op. cit.*, pp.32, 40 n.1. The first committee of the whole House appeared in about 1607: *ibid.*, p.37.

² S.B. Chrimes has suggested that Bacon made this proposal to ensure that any attack on Cowell would be by both Houses, supported by the King, rather than by the Commons alone with its implications of challenge to the King and his prerogative: 'The Constitutional Ideas of Dr John Cowell'. *E.H.R.* (1949), vol. lxiv, no. 253, p.468.

consider how this could best be arranged.¹ On the 27th it recommended to the House that a message be drawn up and sent to the Lords, pointing out the dangerous nature of Cowell's book and asking for their participation in examining it and punishing its author. To this the House agreed and a delegation of forty members presented the message to the Lords.

Because the Commons chose to act in this way, it might at first sight seem as though they were abandoning their own unicameral jurisdiction in the case. As the issue was one of privilege and as Cowell, unlike Thornborough, was not a member of the Lords, the Commons might well have determined to deal with him themselves. Indeed, eleven years later, the Recorder reminded the Commons of Cowell and said that "we might have iudged him ovr selves".² But Bacon had made the really telling point: Cowell had offended against the privileges of Parliament and not merely of the Commons. A few days later, the Lord Treasurer confirmed this view: the case concerned all parts of Parliament - King, Lords and Commons - and was sufficiently unusual for him to propose a search of the precedents.³ Yet if the

¹C.J. i, pp.399-400; Spedding, op. cit., iv, p.161. Beaulieu in a letter of 1 March to Trumbull, appears to be the only source for a story that the Commons had petitioned the King for permission to proceed against Cowell. He says that if the King grants it the Commons will, it is thought, punish him severely: E. Sawyer, ed. Memorials of Affairs of State in the Reigns of Q. Elizabeth and K. James I. Collected (chiefly) from the Original Papers of the Right Honourable Sir Ralph Winwood (London, 1725), iii, p.125.

² C.D. iii, p.207.

³ Foster, Parliament, 1610, i, pp.186, 189.

reasons which now persuaded the Commons to join with the Lords differed from those which dictated their decision in 1604, the result was the same. The lower House was once again associating with the peers and venturing into unfamiliar territory in defence of Parliamentary privilege.

The receipt by the Lords of the Commons' message gave rise to some debate. The Archbishop of Canterbury, embarrassed by the fact that The Interpreter had been dedicated to him, criticised the Commons for wasting time and neglecting the King's business, and for using the opportunity to air their prejudices against the civil and ecclesiastical law. The Lord Privy Seal and Lord Knollys suggested that the Lords should be prepared to hear what the Commons had to say but that they should avoid entering into argument with them. Saye wanted the request dealt with sympathetically, while Salisbury warned the House not to forget the King's interest in a matter of this kind but commended the Commons' desire as reasonable. He said that if the Commons would exhibit the cause of offence the Lords would examine and, if need be, punish.¹ At the end of the debate the Lords agreed to hear the Commons' complaints and on 2 March the meetings of committees took place.² In a cordial atmosphere Martin explained which parts of the book the Commons found objectionable and the meeting ended

¹ Ibid., i, pp.18-19, 180; C.J. i, p.400; Petyt MS 538/2, f.161v.

² L.J. ii, p.560; Foster, Parliament, 1610, i, pp.19, 23, 181, 183-4.

with the Lords stating that they could make no reply until they had consulted their House. There, three days later, the Lord Chancellor declared that three courses of action were open to the Lords: they could join with the Commons as requested, in which case decisions about procedure would be needed; they could refuse to join, in which case the Commons would expect an explanation; or they could hold a second meeting with the lower House to consider what to do next. The Lord Treasurer helped the House to make up its mind. He again said that he approved of what the Commons had done but he felt unable to agree to punish Cowell for a book written "out of parliament and not touching any particular member, without knowing whether there have been like precedents". He therefore proposed that the clerk be ordered to search for precedents and that the Commons be asked for another conference.¹

This conference was in fact used to announce that the King had intervened in the case. Salisbury told the Commons' committee that James rejected the views expressed in the book and would have prevented its publication if he had known of it. He now intended to have all copies suppressed.²

This virtually ended the matter as far as Parliament was concerned. In an audience on the 21st the King reiterated his intention and four

¹ Foster, Parliament 1610, i, pp.25, 27, 186; L.J. ii, p.561.

² Foster, Parliament 1610, i, pp.29-31.

days later the proclamation calling in the book was published. The Commons were apparently satisfied because, in sending thanks to James, they abandoned the usual procedure of using the Speaker as their messenger and appointed a delegation led by the Chancellor of the Exchequer.¹ But in reality this solution was a compromise, if some of the letter-writers of the time are to be believed. Parliament had abandoned the chase out of respect for the King's wish that Cowell should not be harassed further; but James had been compelled to place him under house arrest because he had been unable to justify some of his definitions when the King had examined him.² The House of Lords may or may not have been on the verge of collaborating with the Commons when the King intervened, but James had not been able to exercise complete control over the situation and the measures taken against Cowell and his book would doubtless not have been adopted

¹ Foster, Parliament, 1610, i, p.45; C.S.P. Dom. 1603-10, p.594. The change in customary procedure is specifically noted in Foster, ii, p.363.

² Winwood, op. cit., iii, p.131, gives Beaulieu's letter of 15 March explaining Parliament's attitude. Two days earlier Edmondès had reported to Trumbull that James' first reaction to the book had merely been one of disapproval but that he had been persuaded to examine Cowell a second time. From this had stemmed Cowell's committal to the house of an alderman until he could make answer: Winwood, iii, p.137; Foster, Parliament, 1610, i, p.189n; H.M.C. Report on the Manuscripts of the Marquess of Downshire (London, 1924-40), ii, p.262. Cowell remained under arrest for at least the next six weeks: on 30 April Bancroft asked Salisbury for his release: C.S.P. Dom. 1603-10, p.605. It should, however, be noted that Professor Chrimes regarded the decision over Cowell as largely a victory for the Crown and prerogative power: op. cit., pp.471-3.

but for the proceedings in Parliament. Furthermore, the circumstances of the case had compelled the Houses to associate with each other in Cowell's prosecution, and had forced them to devise procedures to combat an assault on the privileges of Parliament, rather than to deal with the more normal infringements of the privileges of one chamber or the other. Furthermore, such joint action was valuable preparation for the years ahead, when the Houses dealt with cases concerning the public interest rather than their privileges. Indeed, it seems possible to observe a progression from the lesser to the greater - from a defence of the privileges of one House to a defence of the privileges of both Houses, with a concern for the public interest as the third stage.

When Ellesmere wrote his Observations on James' first Parliament, he drew attention to the willingness of the Commons in the fourth session to usurp judicial power. In particular, he protested that they "did ... convent before them Sir Stephen Proctor, knight, and Henry Spiller, esq., upon private information and suggestions. A case of rare example, and if it be drawn to a precedent may have a dangerous consequence".¹ In and after 1621 it became common practice

¹ Foster, Parliament, 1610, i, p.280. Ellesmere does not elaborate and we therefore do not know his precise objections. As both Proctor and Spiller were minor servants of the King and therefore supposed to be immune from Commons' examination or punishment, he may have been objecting on these grounds. But he does not mention that the two men were the King's servants - and James did not make this point when he reprimanded the Commons for their dealings with Proctor. In fact,

for the Commons to "convent" men before them, but at this date such procedure was normally associated with issues of privilege. In Proctor's case, no question of privilege arose until the hearing was already in progress; while in Spiller's case, this issue probably did not appear at all. The proceedings against both men seem to indicate that Ellesmere's strictures were justified.

In the course of their dealings with Proctor, the Commons doubtless widened their procedural experience. In addition, by acting against a man whom James claimed was his servant, they were venturing on to unfamiliar territory and taking an important, if on this occasion largely unsuccessful, step towards the position they were to establish in the 1620s. Moreover, the case enabled them to test the strength of purpose of the Lords, as Cowell's had done.

Proctor had been employed in executing the penal laws and in collecting the resulting fines. Of course, many members regarded this as a most worthy occupation, but there is no doubt that they also believed that the laws were being insufficiently enforced. Moreover, Proctor's appointment had adversely affected the power and profits of the justices of the peace, many of whom sat in the Commons. The case against Proctor should perhaps be seen in this context, though his

the implication of Ellesmere's remarks is that he was quarrelling with the methods of the Commons rather than with the category of person attacked, though the two cannot be completely separated from each other and, probably, both worried him.

offence was more specific.¹

In the course of his duties Proctor had discovered the existence of a number of abuses, including what would now be called a protection racket. Although he reported his findings and proposed remedies, he also proved unable to resist the temptations of his office and his sins provided the lower House with exactly the material it was looking for in the early weeks of the session of 1610. On 24 February the Commons heard a complaint against Proctor - we do not know from whom - and would doubtless have punished him rapidly had not the King intervened and imprisoned him.² Instead, they seem to have referred the matter to their committee of grievances for, on 8 March, Sir Edwin Sandys reported that in the committee's view the commission under which Proctor had acted was grievous, and had been obtained from the King by deceit. The position of the Commons at this point seems to bear some resemblance to that of their successors eleven years later. In 1621, having condemned various patents in a manner which resembled their predecessors' treatment of Proctor's commission, the Commons had to decide how to punish the patentees. On that occasion, they resolved to go to the Lords. However, the Commons of 1610 chose to "convent"

¹ C. Roberts, The Growth of Responsible Government in Stuart England (Cambridge, 1966), pp.12-13.

² Spedding, op. cit., iv, pp.96, 104; Foster, Parliament, 1610, ii, p.33. For the view that the Commons, if left alone, would have proceeded against Proctor, see Beaulieu's letter to Trumbull of 1 March: Winwood, op. cit., iii, p.125.

Proctor before their own House. But they were faced with the difficulty that Proctor, as the King's prisoner, was beyond their reach: they therefore resolved to petition the King to release him to them for censure. At the same time a member, Sir John Mallory, who appears to have been the author of the whole attack on Proctor, declared himself ready to present detailed evidence in the case.¹ The House was thus firmly embarked on proceedings against the man, and not merely against his commission. Whether the Commons of 1610 really had jurisdiction over the latter is perhaps a moot point: no theoretical justification is to be found in the records, but in 1621 action against patents was vindicated on the ground that grievances were the special province of representatives of the realm.² But there is little doubt that in 1610 they had no right to deal as they did with Proctor himself, as Ellesmere pointed out.

The King assented to the Commons' petition to release Proctor to them for censure, and the House arranged for its committee of grievances to conduct the investigation, thereby delegating to it important powers which were to be used many times in the future. Little is heard of this examination in the records of the next fortnight, though on 21

¹ C.J. i, p.407. Clayton Roberts says that Mallory was engaged in a personal feud with Proctor: op. cit., p.11.

² E.R. Foster, 'The procedure of the House of Commons against Patents and Monopolies'. Conflict in Stuart England, p.75.

March the committee heard Proctor and his accusers face to face; on the same day, in an address to both Houses, James professed that he had been ignorant of Proctor's abuses until they had told him of them, but stated that he was now willing to see them reformed.¹ At the beginning of April the Commons adjourned for a fortnight, but after Easter the examination continued, and reached a climax in the early part of May. On the 2nd Proctor was brought from the Gatehouse, where he lay as the King's prisoner, and at the Bar of the Commons was committed as their prisoner to the custody of the serjeant. A week later, after fairly intensive preparations, he was brought once more to the Bar where he was charged by the Speaker. He used the occasion to deliver an attack upon his chief accuser, Sir John Mallory, thus introducing the question of privilege, and he seems to have denied at least some of the charges, though, unfortunately the record at this point is very sketchy. The proceedings certainly included a discussion of possible punishments, but Proctor appears to have remained in the serjeant's care. On 10 May he petitioned the Commons for a trial and on the 12th they debated their next step.² They were now faced not only with the original charges against him, but also with the breach of privilege resulting from his speech against Mallory. They debated

¹ C.J. i, pp.408, 412, 415; Foster, Parliament, 1610, i, p.48; ii, pp.63, 361.

² C.J. i, pp.423-8; Foster, Parliament, 1610, ii, pp.76, 366, 368.

whether they might fine him and whether for the "abuses offered to the commonwealth" they ought not to ask the King to commit him, but the only conclusion they seem to have reached was that for his attack on Mallory they were entitled to commit him either to the serjeant or to the Tower.¹ They arranged to resume their discussion on the 14th but on that day a second intervention by the King brought matters to a head. Through the Chancellor of the Exchequer James complained that the Commons had exceeded the authority he had bestowed upon them: he had given them licence to censure Proctor; they had exceeded this by committing the King's prisoner to the custody of their serjeant. James instructed them in what he considered to be the correct procedure: they should censure Proctor and then return him to the custody of the King, who would take cognisance of the Commons' censure and deliver him once more to the House. It could then proceed against him either by bill or by petition and the King would eventually deal with the one

¹ C.J.i, p.428; Foster, Parliament, 1610, ii, p.368. It may well have been in this debate that Moore made the speech that S.R. Gardiner printed on pp.124-5 of Parliamentary Debates in 1610 (London, 1862: Camden Society, no. lxxxix). Although Gardiner could not date the speech, it presumably occurred between 9 May (when charges against Proctor were read in the Commons) and 15 May (when a committee was appointed to frame a bill against him), for Moore proposed drawing up a bill to enumerate his offences and attainting him of praemunire. As precedents he gave the case of Peach and the attainder of Hugh Despenser.

or the other in a suitable manner.¹

Before considering the debate which followed this message it is perhaps worth speculating upon the motives for James' intervention. Ostensibly he was objecting to what the Commons had done twelve days previously but if this explanation is to be accepted it is then necessary to account for his very slow reaction. It seems more likely that the King had become increasingly alarmed at the growing boldness of the Commons in dealing with one of his servants and that he used this excuse to divert them in a more harmless direction. To propose to the Commons procedure by bill or petition was to do just this. Both methods involved securing the King's consent. Moreover, it is possible that, by suggesting to the Commons that they should draw up a bill, James was proposing something very like the course they should have adopted in the first place, if an order of 1621 is any guide: "... if a particular Man desire that his Grief should be heard and remedied in this House (i.e. the Commons) ... he must prefer a Bill

¹ Foster, Parliament, 1610, ii, p.374. It has recently been stated (Roberts, op. cit., p.13) that the Commons had the right to employ procedure by bill: to deal with infringements of the law, and procedure by petition to secure the redress of grievances that were merely onerous and not unlawful. However, this statement can be challenged. In 1614, a committee considering impositions recommended to the Commons that they should proceed "first by bill to the lords and for fear itt might be thear stopped as itt was the last parliament that therefore we should put up our petition to the king to, as desiring rather itt should dy att his maiesties feet then in the hands of ill nurses": Bodleian MS Eng. Hist. C. 286 p.67. This proposal tends to blur this distinction between bills and petitions, and indicates that the House might employ both methods simultaneously.

to that Purpose into the House".¹ This order is, of course, not contemporary with Proctor's case, but it is a reference to the procedure, well established since the middle ages, by which petitions presented to the Commons were translated into private bills designed to remedy the complaint.² If, as seems likely, James was proposing the adoption of this procedure, he was really telling them to revert to a time-honoured practice - a practice which could probably have coped quite well with Mallory's original complaint against Proctor.

At any rate, James' intervention in the case worked, in a way rarely to be repeated, as the debate on his message showed. Proctor was returned to the Gatehouse where the King had originally imprisoned him and, for the moment, even escaped the censure which James had authorised. Furthermore, the House acknowledged that he was no longer in its hands. It then resolved to petition the King to release him a second time for censure and execution of judgment, and it seems to have been very ready, though no decision was taken, to fall in with James' proposal of procedure by bill to deal with Proctor's abuses of his commission. On the 15th the King agreed to release his prisoner to the Commons, but explicitly told the House that it could not

¹ E. Nicholas, Proceedings and Debates of the House of Commons in 1620 and 1621, i, p.75. This was, of course, to be altered by the judicial developments of 1621.

² T. Erskine May, A Treatise on the Law, Privileges, Proceedings and Usages of Parliament, p.609; Relf, op. cit., p.xix.

punish the misdemeanours against the state. Immediately after receiving this answer the Commons set up a committee¹ to frame a bill and then debated how they should punish Proctor for his speech against Mallory. They dismissed a proposal that he should be required to submit personally to Mallory, on the ground that he had committed contempt of the whole House; and they concluded this phase of the case by resolving to censure him for the contempt and imprison him in the Tower.²

On June 6 the Commons received the bill from their committee, and during the next month passed it through all its stages. They refused the petition of Proctor for counsel to plead for him on that part of the bill dealing directly with the abuses in the exercise of his commission, but they agreed that he should have legal advice for the section which concerned the sale of his lands, from which it was intended to repay his creditors and those he had wronged. Private bill procedure required that the supporters and opponents of the bill should be heard: though the record at this stage is scanty, there is evidence that some such hearings took place. On 5 July the House of

¹ Mallory was not a member, so that even if the Commons were reverting to correct procedure by having a bill framed, Mallory, as the person accusing, was apparently not being required to undertake the work.

² C.J. i, p.428; Foster, Parliament, 1610, ii, pp.374-5.

Lords entered the case for the first time when it received the bill from the Commons.¹

The bill is to be found in the House of Lords records under the date on which it was received from the Commons.² It begins by reciting Proctor's offences and says that having been

... openly convented and heard at large in parliament, (he) was censured to be most faulty and deserving to be punished in some other degree than such as by ordinary course of justice could be laid upon him, the offences being so exorbitant.

Among its subsequent clauses it cancels his patents and commissions, disqualifies him from office, degrades him from knighthood, makes provision for the payment of his debts and debars him from the presence of the King, Queen and heir apparent.

Having failed to influence the Commons, Proctor now turned his attention to the House of Lords. On the day of the bill's second reading he petitioned the peers to hear him with his counsel and drew their attention to the Commons' rejection of this request. The Lords then debated the reasons for the Commons' refusal, decided to accede

¹ Petyt MS 537/14, f. 97v; C.J. i, pp.436, 440, 442-3; L.J. ii, p.635; Foster, Parliament, 1610, ii, pp.149, 381. Private bills have long been recognised as judicial or semi-judicial in character. Parties appeared by counsel and witnesses were examined: Erskine May, op. cit., p.609; A.F. Pollard, The Evolution of Parliament (London, 1920), p.118; C.H. McIlwain, The High Court of Parliament and its Supremacy (New Haven, 1910), pp.222-4; Foster, 'Patents and Monopdlies', loc. cit., pp.75, 84 n.95.

² It is printed by Foster, Parliament, 1610, ii, pp.412-4.

to Proctor's petition, and appointed 17 July for hearing him and "those that could object against him".¹ On that day, Proctor and his counsel were duly heard at the Bar, though what they said we do not know. The bill was certainly read out and Mallory and his supporters were present to put their case, but matters cannot have progressed very far when the Lords interrupted proceedings.

Explaining that they had insufficient time for the case, they referred the whole question, including the bill, to a committee which was appointed to meet on the following day. One wonders - with little hope that the issue can be resolved - whether this was an excuse, designed to withdraw the weaknesses in the Commons' case from the glare of publicity and to make the proceedings more palatable to the King who was on that very day being petitioned by both Houses to allow his servants to be arrested and sued as freely as other men.² For having examined the bill in the presence of the parties the committee reported that Proctor had committed no offence which would justify passing it.³ However,

¹ Foster, Parliament, 1610, i, pp.137-8; L.J. ii, p.644. In the debate on the petition Lord Saye showed most sympathy for the Commons' point of view, but he declared himself in favour of hearing Proctor.

² Foster, Parliament, 1610, i, p.146; L.J. ii, p.647; Roberts, op. cit., p.1. There is a "Breviate of the Bill and Answer" in S.P. Dom. 14/54, ff. 63-64v. The answers are merely brief rejections and denials of the charges and there is no indication when they were made.

³ It was doubtless influenced in reaching this conclusion by the character of the witnesses against Proctor: Roberts, op. cit., p.11; Lansdowne MS 167, f.27v.

this conclusion failed to commend itself to a group of peers, of whom Salisbury was the most prominent. Some members wondered whether evidence had been suppressed and felt that the Commons would not have passed the bill without justification. Presumably as a compromise, it was decided to ask the Commons for a conference, but although this was held the Commons had previously resolved to withhold their reasons for passing the bill. At the last minute, the lower House did produce supplementary evidence against Proctor, but the peers were unconvinced and the bill failed to secure their approval. In consequence, as the session ended, the only consolation available to the Commons and their sympathisers in the Lords was the exemption of Proctor from the scope of the general pardon which was then being proclaimed.¹

The proceedings against Proctor were obviously unusual in certain respects. The early attempts of the Commons to deal with the case implied claims to a judicature they did not possess, and, if private

¹ C.J. i, pp.452-4; L.J. ii, pp.650-1, 655, 657; Foster, Parliament, 1610, i, pp.156-8, 165-6; ii, pp.287, 386; Petyt MS 538/2, ff.151v-152. Clayton Roberts expresses surprise at the persistence of the Commons in pressing the charges after their failure before the Lords' committee on the 18th. In explanation of this persistence he suggests three highly sophisticated reasons, based upon the nature of Proctor's activities and the threat these implied to the position of J.P.s, and upon the desire of the Commons to proceed against royal officials on common fame: Roberts, op. cit., p.12. The third reason seems to be much more relevant to the situation in 1614 (see pp.116ff., below) and the explanation here to be much simpler - that the Commons persisted because the Lords encouraged them to do so, by rejecting their own committee's conclusion and by asking the lower House for a conference.

bill procedure was subsequently followed, it did not start in the orthodox way. The substantial part taken initially by the Commons dictated their interest in the subsequent proceedings, and the Lords' refusal to pass the bill was a rebuff to them as well as to Mallory, who can probably be regarded as the bill's sponsor. The bill itself was concerned with punishing the man, rather than with remedying the situation he had exploited: in effect, as Clayton Roberts has pointed out, it was a bill of attainder, though the description is not used in the records of the case.¹

The failure of the bill doubtless influenced members' views on the effectiveness of this procedure. The King had successfully protected his servant, hardly losing the initiative in the case, and even if the bill had passed the Lords, James could still have refused his consent. If Ellesmere's comments on the Commons' aspirations are correct, this procedure was unlikely to assist the development of their judicial powers, however respectably medieval its ancestry. It is interesting to notice that in February 1621 Coke was objecting to

¹ Roberts, *op. cit.*, p.13 n.2. Although, as he points out, it was never called this it is interesting to note the precedent for attainder given by Moore (p. 103 n. 1, above). The process of attainder was presumably fairly well understood from what followed the trial and execution of the Gunpowder Plot conspirators (p. 92 above) though in the case of Proctor (as in that of Strafford) the bill was resorted to when other means of punishment had failed.

Bills of attainder are, of course, a variety of private bill.

private bill procedure:¹ perhaps the case of Proctor helped to eliminate from the Commons' repertoire one process bequeathed to them by their ancestors.²

Ellesmere also drew attention to the case of Henry Spiller as another example of usurpation of judicial authority by the lower House.³ The case began in much the same way: a private petition on behalf of one Felton was presented to the House of Commons by Sir Francis Hastings, one of the knights of the shire from Somerset. It alleged that Spiller, a clerk of the Exchequer, had used his position to protect recusants from fines. The House referred the matter to the committee of grievances, making arrangements for both parties to be heard, together with counsel. But Felton proved unable to substantiate his charges and, as a false accuser, was imprisoned in the Fleet.⁴

¹ Relf points out Coke's dislike of the method: op. cit., p.xix. He objected to it because too often those sponsoring the bill were not well enough known to the Commons: Nicholas, op. cit., i, p.89. Even if his real objection was that it gave the Commons inadequate scope, he could hardly say so.

² It seems to have had few supporters as a possible alternative to the exercise of Parliamentary judicature in 1621, but it may be relevant to note that it was suggested as a way of resolving the Commons' difficulties over Floyd (see p.189, below). In this case, perhaps an ineffective procedure was better than none at all.

³ Foster, Parliament, 1610, i, p.280.

⁴ The committee's opinion was that Spiller was a knave, but a crafty one: ibid., ii, p.131.

So far, the House seems to have been following correct private bill procedure, and with the failure of Felton's petition the matter should, presumably, have ended.¹ Yet, a fortnight later, early in July 1610, Hastings made an attempt to have the House re-examine the matter. Not surprisingly, this gave rise to a debate concerning the extent of the Commons' authority; but although it was resolved to resume the examination little came of this and doubtless the failure of the case against Proctor played its part in causing the collapse of proceedings against Spiller.²

The attack on Spiller demonstrates the Commons' determination to press forward proceedings on their own responsibility, and it seems probable that it was this feature of the case which particularly worried Ellesmere. Yet in the end they failed, as they had failed against Proctor. The circumstances were different, but the two cases appear to highlight weaknesses which were fundamentally similar. The Commons could not justify the powers on which they were depending,

¹ One manuscript has, at this point, "... the matter laid to sleep": ibid., ii, p.131.

² Foster, Parliament, 1610, ii, pp.128-31, 377-8; R.F. Williams, ed., The Court and Times of James the First, i, p.116; C.J. i, pp. 435, 437, 440, 446-8; Lansdowne MS 486, ff. 148-148v; Spedding, op. cit., iv, p.47n; Roberts, op. cit., pp.11-12, 14. There is evidence that Spiller's behaviour continued to cause anger after 1610. In 1614 a complaint against him was presented to the Council, while in 1621 the Commons grumbled about him and in 1626 resolved to present him to the King as a recusant: C.S.P. Dom. 1611-18, p.239; Nicholas, op. cit., i, pp.143-4; C.J. i, p.838. I am grateful to Mr Conrad Russell for this last reference.

and legitimate procedures were inadequate to secure the desired results. On their own authority, they could not punish men who were not members and who had not violated their privileges, whether or not they were the King's servants. It was to be their successors in 1621 who found a way out of the impasse with the aid of an upper House which was prepared to co-operate and thus to assist the revival of Parliamentary judicature. On the other hand, in addition to the wisdom produced by disillusionment, the case against Spiller provided a further opportunity to test the inviolability of royal servants, and it revitalised the medieval concept of punishment of false accusers - a notion which may partly underlie the penalty inflicted on Davenport in 1621 for his accusation against Field.¹

As the fourth session of James' long Parliament drew to its close negotiations over the Great Contract became increasingly difficult, and in the fifth session, in the autumn of 1610, broke down altogether amid considerable acrimony. James declared himself tired of Parliament's insolence, but during the next three years he did little to remove the underlying grievances which in part explained Parliament's attitude. When therefore the assembly which was to become known as the Addled Parliament met in 1614, reasons existed for criticism of the government which the row over the undertakers aggravated. This

¹ See below, pp. 209-10.

tension should be remembered when one considers the case of Bishop Neile, who was known to be a member of the high-church party. This case was confined to matters of privilege, but the Commons were noticeably more belligerent than previously and the hearings led to the raising of two issues which were to be of significance in the 1620s.

Impositions were a subject which raised great passion in 1614 and it was in connection with these that Neile uttered the intemperate remarks which caused the Commons to turn on him in fury. By the middle of May a committee of the lower House had reported that impositions not authorised by Parliament were illegal, and it recommended that the Commons should confer with the Lords on what was clearly an issue of fundamental importance.¹ The request was duly sent to the Lords who debated it on 21 May, first as a House and then as a committee. Opening the debate the Bishop spoke against the proposed conference on the ground that those who had taken the oaths of allegiance and supremacy had sworn to uphold the privileges of the Crown, one of which the conference would be questioning. However, the committee

¹ T.L. Moir, The Addled Parliament of 1614 (Oxford, 1958), pp.110, 112. In the previous month the Commons had begun to take action against patentees holding a glass monopoly and a monopoly in trade with France. They ordered the patentees to appear before them with their patents, and prepared for a committee to examine these. The cases of Lyons and Peach were quoted as precedents for proceeding against monopolists and as Clayton Roberts points out the Commons might well have embarked on the path they took in 1621. However, nothing seems to have come of these preliminary investigations, partly because the House became much occupied with impositions: Roberts, op. cit., p.21; C.J. i, pp.469-70, 472, 475.

decided that the House should meet the Commons to listen to their point of view but not to discuss it with them. Yet when this was reported to the House on the following Monday, the 23rd, the decision was altered: the Lord Chancellor repeated a suggestion he had made on the previous Saturday, that the House should first consult the judges upon the legality of impositions. Neile emphatically supported this proposal and it was adopted, but in the course of his speech he said that if the Lords met the Commons the latter would probably deliver "vndewtyfull and seditious speches vnfitte for us to heare".¹ Consulting the judges proved to be a fruitless exercise because, through Chief Justice Coke, they excused themselves from giving an opinion. Moreover, implicit in Coke's speech was the conviction that the Lords should hear the Commons. On the 24th the peers therefore had to discuss the proposed meeting once more. For the third time Neile spoke against it and finally, on the 26th, the Lords replied to the Commons' request, turning it down.²

¹ H.M.C. Report on the Manuscripts of the late Reginald Rawdon Hastings (London, 1928-47), iv, pp.249-53; Moir, op. cit., pp.118-9; C.S.P. Ven. 1613-15, p.133; Lansdowne MS 513, ff. 146-150v.

² H.M.C. Hastings, iv, pp.256-65; Spedding, op. cit., v, p.58; Moir, op. cit., pp.120-2; Petyt MS 537/8, ff. 285v.-286 (which here is either part of, or a copy of, Bowyer's last scribbled book for 1614: cf. f. 285 and Foster, Parliament, 1610, i, p.xxiv). Some of the speakers in these debates are of interest in the light of the development in the Lords of a party sympathetic to the Commons. Chandos, De la Warr, Dorset, Knyvett, North, Rich, St Hohn, Saye, Sheffield, Southampton, and Spencer spoke in favour of hearing the Commons. They were opposed by the Lord Chancellor, the Lord Chamberlain, the Archbishop of Canterbury, the Bishops of Bath, Durham, St Asaph, and Winchester, and by Howard de Walden, Knollys, Nottingham, Worcester, Zouch, and rather lukewarmly by Pembroke. Of this second

By this time reports had already reached the Commons of the Bishop's speeches and the reaction which stemmed from these was to occupy a great deal of their time right up to the dissolution early in June. They began with a lengthy debate on 25 May, opened by Sir Mervyn Audley and Sir Robert Phelips, who were jointly responsible for reporting the offensive speeches and naming the Bishop as their author. The Commons then found themselves face to face with a difficulty which was to haunt them during the coming days: Neile's speeches were not to be found in the Lords' official Journal, so that their knowledge of them derived merely from rumour, or common fame, not a satisfactory basis for a reasoned complaint. Indeed - though this never came to the surface - the fact that the Bishop's words were reported to the Commons at all was a breach of the Lords' privileges.¹ However, the more hot-headed members contributed to the debate in a manner uninhibited by the nature of their information. Hoskyns indulged in a typically violent outburst and another member, possibly Thomas Crew, speculated on the very different treatment that would have been

group, all but Howard de Walden and the four bishops were privy councillors. In the division on the 23rd almost all the privy councillors and bishops supported the proposal to consult the judges.

¹ C.J. i, p.496; Moir, op. cit., p.123; Williams, op. cit., i, p.313. Spedding, op. cit., v, p.62, makes the point about the breach of the Lords' privileges. He considers that the Lords showed great restraint, but what were the Commons to do? They had been refused a conference, a very unusual development as Spedding himself points out (p.57). The Lords had taken five days to reply to their message and reports of the Bishop's words were not confined to Parliament.

meted out to one of their members for an attack on the Lords. In his view the Lords should have considered handing Neile over to the Commons. On the other hand Sir Dudley Digges and Edward Alford advised caution, the latter suggesting a search of the precedents for guidance about the best course of procedure. Finally, after a discussion of the relative merits of an approach to the Lords or to the King, the House set up a select committee to consider the Bishop's words and the basis of the Commons' case, and to advise on procedure.¹

The following day, with Hakewill as its spokesman, the committee reported that, as the words were spoken in the Lords, common fame was "certain Ground enough" for considering Neile's remarks. It had discussed three courses of procedure: to ask the Lords to confirm the accuracy of the rumours; to complain to them of the wrong and to ask them for redress; and to go to the King for redress. By a narrow majority it had resolved on the third course, but the argument that had taken place in the committee was renewed in the House when Sir Edwin Sandys, one of the committee members, spoke against the recommendation. He argued that it would create a dangerous breach with the Lords and might establish a precedent enabling the King to punish a member of one House on the complaint of the other. Digges supported him, suggesting that without the consent of the Lords, of whom there was no reason to despair, Neile would not be punished

¹ C.J. i, pp.496-8.

sufficiently. He added that if the Commons did not receive satisfaction from the Lords, then they should go to the King. These arguments, indicative of some procedural maturity, convinced the majority of members and eventually Hakewill changed his mind and agreed. Roe volunteered the encouraging, though inaccurate, information that the upper House had sent Latimer to the Commons for punishment, and the House then set up a small committee to frame the message to be sent to the Lords. It also resolved to transact no further business until an answer had been received from the Lords.¹ This last decision produced a protest from the King, but such was the mood of the House that his message was virtually ignored.²

The draft of the message to the Lords was presented for approval on the 27th and, after a dispute over part of its wording, a revised version was despatched next day. It reveals the accuracy of the Commons' information and makes no attempt to hide the weakness of their position. It expresses astonishment that anyone could have misconstrued their first message by putting a sinister interpretation on it. It goes on to record in some detail what "by public and constant Fame"

¹ Ibid., pp.498-9; H.M.C. Report on the Manuscripts of His Grace the Duke of Portland (London, 1891-1931), ix, p.133; C.D. vii, p.646; Notestein, op. cit., p.46, presumably referring to this episode, says that the Commons ignored Sandys' advice. This is clearly incorrect, though Sandys' earlier arguments seem to have been less convincing than his later ones: Moir, op. cit., p.125.

² Moir, op. cit., pp.127-9.

the Bishop is reported to have said, and it concludes by asking the Lords to take notice of this scandal and to join with the Commons to determine how they may be given satisfaction. It adds that the Commons will undertake no further business until they receive a reply.¹ The Lords' first reaction seems to have been complete silence, but then, having told the Commons' messenger that they would reply as soon as possible, they began to debate their answer. Some of the Privy Councillors² who had previously opposed consultation with the Commons now came out against Neile, but Ellesmere, the Lord Chancellor, maintained that the Commons must either set down Neile's words or that some member of the Lords must charge the Bishop with the words, if the House were to proceed against him. But, he told them, "your Lopp^s are Judges, and theirfore cannot be his accusers, and by lawe

¹ Ibid., p.126; C.J. i, pp.499-500; L.J. ii, p.709. Petyt MS 537/18, ff.49-49v. appears to be a copy of the exact message which Sir Edward Hoby delivered to the Lords. It is similar to the message printed in the Lords Journal but has greater emphasis and numerous minor alterations in wording. It also suggests (f.49v) that the Commons claimed that, in them, the King, the Lords and the whole kingdom had been wronged.

In the margin it contains instructions to the messenger: by the first paragraph: "The Introduction Arbitrary att yo^{ur} Discretion - upon this ground"; by the second (main) paragraph: "For this the body wee tye you p^{re}cicely to the words and see to the End of this direction without other conclusion".

² Knollys, Worcester, and, to some extent, the Archbishop of Canterbury. Knollys said that as Neile's words had been spoken in the Lords there was more evidence of the matter than that provided by common fame: H.M.C. Hastings, iv, pp.268-70.

their must be a partie accusinge".¹ This was a point of some significance, and one of the advantages of impeachment, at least in its fully developed form, was that it avoided the difficulty by making the Commons accusers. Yet even as early as 1621 the problem had evidently ceased to be insuperable: the Lords asked their own committees to draw up the accusation against Bacon, and this was done.²

The Lords' reply to the Commons was framed by Ellesmere and the Archbishop of Canterbury, and delivered to the Commons by their own messenger, Sir Edward Hoby, on the 30th. Predictably, it declared that the Commons' complaint was grounded upon insufficient proof, but it promised that if the lower House would state exactly what words were spoken and show how they were to be proved the Lords would give full justice. In delivering this message Hoby also reported that Neile had spoken to him privately, denying some of his remarks and saying that others had been misconstrued. Neither of these messages satisfied the Commons, but Edwin Sandys persuaded them to persevere

¹ Ibid., p.271. This point may have been in Saville's mind on 25 May when he tried to persuade the Commons to go to the King rather than to the Lords: "If we go to the Lords, this to make the Lords Accusers": C.J. i, p.497.

² However, Selden confirms Ellesmere's point: "the Lords who are only judges may neither accuse any to themselves..." In addition, Selden and Elsynge both make the somewhat different point that, when the Commons accuse, "the Lords are not to ioyne therein...": Selden, Of Judicature, pp.11-12; H. Elsynge, 'The moderne forme of the Parliaments of England', American Historical Review (1948), vol. liii, no. 2, p.301.

with the Lords rather than turn to the King.¹ They therefore appointed another committee to frame their reply. This largely reiterated the previous message, but recognised that common fame would not have been acceptable as a basis for proof in any ordinary court of justice, though claiming that it was sufficient to induce the Lords to consider the matter. It virtually challenged the peers to say whether or not the words had been spoken.

The determination of the Commons led to another lengthy debate in the Lords, in which very few speakers still supported Neile. The result was that he solemnly protested that he had meant no harm to either House, but it was only with reluctance that he was later induced to add that he would accept any punishment the Lords might impose upon him. The Lords then told the Commons that Neile had stated that he meant no disrespect to the lower House and that he was deeply disturbed that his words had been strained further than he ever intended. This message concluded by saying that the Lords were satisfied with Neile's reply but that had they not been he would have received severe punishment; it warned the Commons, however, that in future common fame alone would not be a justifiable ground for accusation against a member of the Lords.²

¹ H.M.C. Hastings, iv, p.272; L.J. ii, pp.710-11; C.J. i, pp. 501-2; C.D. vii, p.648. Sandys proposed that the Commons should send the Lords "for Accusation, the Words in writing".

² H.M.C. Hastings, iv, pp.274-7; L.J. ii, pp.712-3; C.J. i, p.502.

Despite this warning, the Lords had made an important concession by accepting the accusation against Neile. The Commons had had to base their case upon common fame because they could obtain no definite proof that Neile had spoken as they alleged. But although their position was a weak one, as the Lords told them and as they doubtless recognised, this did not nullify their accusation. Perhaps the similarity between the concept of common fame and the medieval notion of an accusation based on notoriety helped them. At any rate, when in 1626 the Commons encountered similar difficulties in accusing Buckingham, they again resorted to common fame, although the cool reception which they had encountered in 1614 was used by Buckingham's supporters as an argument against the course which the House adopted.

As for Neile's case, the Commons were deeply dissatisfied with the Lords' reply. In normal circumstances, this would almost certainly have provided the basis for an acceptable compromise, but the Commons were by now almost ungovernable. They held another debate in which they were bitterly critical of the Lords and ended by appointing the inevitable select committee. But this was to be their last act in the drama because the King, exasperated beyond measure by the character of the session, stepped in to threaten the dissolution which rapidly followed on 7 June.¹ Thus, proceedings against Neile were abruptly

¹ C.D. vii, pp.649-50; C.J. i, p.504; H.M.C. Portland, ix, p. 135; Moir, op. cit., pp.136, 145. After the dissolution a number of the leaders of the Commons' opposition were punished: Hoskyns was among those imprisoned in the Tower, and Edwin Sandys, Digges, Owen, Crew, Hakewill and others had their notes burnt: Williams, op. cit., i, pp.322, 325.

ended, but it is perhaps questionable whether the Commons would have achieved more if the session had lasted longer. Handicapped by the fact that Neile's offences were contained in his speeches, whereas those of Thornborough and Cowell were embalmed in their writings, the Commons received as much, if not more, satisfaction from Neile than from the other two men. They had sustained an insecurely based accusation and had compelled the Lords to listen to them, even though the power to punish remained firmly in the hands of others, as it had done previously.

The cases which have been discussed all exhibit some novel or unusual features, and several of them provide evidence of attempts by the Commons to extend the scope and nature of their judicature. All of them were conducted within Parliament, and were not concerned with the judicature of other courts. But when Ellesmere wrote about the first session of 1610 and of the irregularities in the proceedings against Proctor and Spiller, he also complained that the Commons had interfered in the jurisdiction of the Courts of Admiralty and Chancery. They had passed a bill to allow an appeal from a sentence given in the Admiralty Court, although the Privy Council had examined the case and decided that an appeal was not justified. They had examined "in point of equity and conscience divers decrees made in the Chancery", and they had granted injunctions to stay suits being prosecuted there and in other courts. They had approved a bill attacking a point in

law upon which a judgment had been based.¹

Ellesmere illustrates some of his assertions by naming the cases in which the interference occurred. Unfortunately, in almost every instance, diaries and official records add only minor details to the account given by Ellesmere. However, they do provide factual confirmation of his accusations of trespass.² To what extent the Commons were successful in their poaching is difficult to say. Certainly the result was not always what they intended: for instance, the bill to permit the appeal against the Admiralty Court's sentence failed to pass the Lords.³ But perhaps this is not the most important consideration. What is more significant is that the Commons' endeavours to extend their jurisdictional powers inside Parliament were running parallel with similar attempts to expand their jurisdiction outside Parliament. As a part of the story of the development of Parliamentary judicature, the latter may be less important than the former, but as an indication of the assertiveness of the Commons on

¹ Foster, Parliament, 1610, i, pp.280-1.

² There is one exception. There is a full account in the Lords Journal of Lord Abergavenny's case, which settled a dispute with Lady Le Despenser over the precedence of the two baronages and the sale of some lands. From the entries in the Commons Journal it appears that the Commons were only required to pass a bill sent to them by the Lords: L.J. ii, pp.613, 615, 618, 622-3, 625-8; C.J. i, pp.446-7, 449-51.

³ Foster, Parliament, 1610, i. 280 n.11. It had its first reading by the peers only three days before the prorogation: L.J. ii, p. 653.

which the development of that judicature in part depended, such attempts are equally revealing.

In the Parliaments of the 1620s, only occasional reference was made to the cases which have been discussed, although they were not totally ignored.¹ This was no doubt partly because the actions were not very successful. In addition, the types of judicature which were being exercised shortly before 1621 were not necessarily of great relevance to the Parliamentary judicature re-introduced then. To find close parallels with what they were trying to do, Coke and his associates had to look back to the middle ages. But this is not to say that nothing could be learnt from more recent experience. The Commons had discovered something of the reaction of the Lords and of James to their more extravagant claims, and may have learnt, in spite of disappointments, that they could skate on thin ice with reasonable safety, provided that they pressed forward with sufficient determination. They had compelled the Lords to get used to the idea of collaborating with them in the realm of judicature. They had had some indication of the weaknesses of procedure by bill, and their experience with Proctor may have reminded them that they lacked power to punish non-members except when their privileges had been infringed.

¹ Cowell: C.D. iii, p.207; Proctor: ibid., iv, p.77; vi, p. 353; Neile: C.J. i, p.847.

They had also developed the use of committees to carry out detailed work, to conduct examinations, and to advise on procedure. Insofar as these cases helped to define the opportunities and limitations of the existing judicature, they may also have contributed to the noticeable smoothness and ease with which Parliamentary judicature was revived in 1621.

If the Commons in James' first two Parliaments did gain the type of experience suggested, the means for its transmission to their successors was not lacking. Membership did not change completely from one Parliament to the next. Men like Robert Phelps, Hakewill, Edwin Sandys and Digges, who were among the leaders in 1621, had sat in either or both of these earlier Parliaments. Coke was in attendance on the Lords before he entered the Commons in 1621. Sir Robert Cotton was already searching for precedents in 1610 as he was so often to do later.¹ There was to be no shortage of either antiquarian knowledge or more recent experience in the 1620s.

¹ C.J. i, p.422. In 1614, while ill at Cambridge, he sent the key of his study to enable several of the Commons' critics of impositions to search for records "for the benefit of the Common wealthe". The following day, 21 May, one of them, Sir Roger Owen, challenged Wootton's suggestion that the King could impose by his own authority: C.D. vii, p.644.

Chapter III

The Parliament of 1621

In the story of judicature in Parliament, the trials and hearings before the Commons and Lords of 1621 have long held an important place. In the eighteenth century Francis Hargrave drew attention to the increase in Parliament's judicial business, both civil and criminal, in that year.¹ Undoubtedly, part of the explanation of this activity lies in the political circumstances of the time, which gave rise to much dissatisfaction, though this is not to say that politics dictated these judicial developments. The presence in the Commons of Sir Edward Coke is another part of the answer, and much of the progress made in 1621 was due to his guidance. But whatever the explanation, pride of place in this development must go to the revival of Parliamentary judicature - the procedure commonly named impeachment. Yet although this is the best known and probably the most important aspect of the development, it is not the only one, nor did it occur in isolation: there was also an expansion of the unicameral judicature

¹ F. Hargrave's preface to M. Hale, The Jurisdiction of the Lords House, pp.viii-ix.

of both Houses.

In the Commons this took various forms. First, the House evolved an efficient procedure for dealing with grievances. Petitions presented to the House led to enquiries conducted in accordance with a procedure evolved from that used for private bills. This procedure has been carefully examined by Mrs Foster, but it will be necessary at a later stage to summarise her findings because the first case of Parliamentary judicature stemmed directly from the Commons' investigation into grievances.¹ Secondly, the Commons of 1621 attempted without success to establish a jurisdiction of their own over non-members who had not violated their privileges. This endeavour appears most strongly in the case of Floyd, but it is perhaps not entirely absent in the early stages of the proceedings against Michell. Had the attempt prospered, the effects on the evolution of Parliamentary judicature would almost certainly have been profound, and it must therefore be contrasted with that evolution. Thirdly, as in 1610, there are signs that the Commons were prepared to intervene in the jurisdiction of other courts.² However, the future of this

¹ E.R. Foster, 'The procedure of the House of Commons against Patents and Monopolies'. Conflict in Stuart England, pp.59-85, especially p.78.

² Two cases may be mentioned. In March 1621, the Commons adjudicated in a jurisdictional dispute between the Courts of Chancery and Wards. The case emerged from their enquiries into abuses in courts of justice. Lawyers pleaded at the Bar on behalf of each Court: the Commons decided that both had been at fault: E. Nicholas, Proceedings and Debates of the House of Commons in 1620 and 1621, i,

type of judicature lay more with the Lords than with the Commons, and the activities of the latter in this respect in 1621 appear to have no connection with the development of Parliamentary judicature.

This Parliament also saw an extension of the unicameral judicature of the Lords.¹ In the course of the first session, the peers employed an original civil jurisdiction on petitions presented to them by private citizens, which, before the end of the Parliament, seemed about to widen into an appellate jurisdiction - a development which did, in due course, take place. These private petitions, like those previously mentioned which complained of grievances, were often first addressed to the Commons, but as they normally asked for judicial remedy, the Commons did not regard them - as they did grievances - as falling within their special province, and through their committee of grievances, may have taken the initiative in

pp.178-83. The second case, which has something of the flavour of an appeal, arose from a Chancery decree awarding Sir George Marshall 1,000 marks in conclusion of a long-standing dispute with Sir William Pope. Pope asked the Commons to reverse this decree and a committee pronounced it grievous. The two men were then ordered to plead their causes before the committee of grievances. After this hearing, members debated the next step. Some favoured an approach to the Lords in order to secure a reversal of the decree but this procedure was not followed, doubtless because the King intervened to give the Commons permission to judge the case themselves. The House concluded the case by ordering the removal of the decree from the Chancery files: C.D. iii, pp.2, 111, 116; iv, pp.270, 285; v, pp.106-7; vi, p. 467; Nicholas, *op. cit.*, i, p.366.

¹ F.H. Relf, ed., Notes of the Debates in the House of Lords, officially taken by Robert Bowyer and Henry Elsing, Clerks of the Parliaments, A.D. 1621, 1625, 1628, pp.ix-xxxii, especially pp. xviii ff.

redirecting the petitioners to the peers. The stages by which the Lords assumed responsibility for adjudicating on such petitions have been analysed by Miss Relf, who has found similarities in the origins of both this jurisdiction and Parliamentary judicature. She has argued that the Lords undertook judicature on petition at the urging of a small group of members of both Houses, because the Commons possessed no means - apart from private bill procedure, which Coke disliked - of dealing with the large number of private petitions being received.¹ She has also pointed out that Coke gave much the same reason - the insufficient power of the Commons - for the recommendation to transmit Mompesson to the Lords, the decision which led to the revival of Parliamentary judicature.² Miss Relf concludes that it was "in keeping with the move made by Coke in Mompesson's case that ... the commons should call upon the lords to answer petitions by judicial procedure": in order to increase the Lords' confidence in their ability to deal with Mompesson, Coke had stressed their power

¹ Relf, op. cit., p.xix; Foster, 'Patents and Monopolies', loc. cit., pp.62, 78. For Coke's hostility to private bill procedure, see pp.110-11 above. Since the reign of Henry IV there had been a "tendency to address petitions to the Commons to gain their mediation": Relf, pp.xix-xx.

² Relf, op. cit., p.xiii. The Commons were ham-strung in dealing with both civil and criminal cases because they could not hear evidence on oath.

to judge alone.¹ It therefore appears that Parliamentary judicature and the Lords' judicature on petition shared a common origin, at any rate in one respect, in the Commons' realisation of the limitations upon their own power. But despite this the two procedures developed very differently. Although the first petitions may have been re-directed by the Commons to the Lords, the upper House rapidly acquired the habit of receiving petitions direct from their sponsors.² The Commons took no part in this judicature, which remained firmly unicameral, and was, of course, fundamentally civil, while Parliamentary judicature in the seventeenth century was basically criminal. It therefore seems that this extension of the Lords' judicature is procedurally separate from the development of Parliamentary judicature. That development grew much more from the Commons' procedure for dealing with grievances, and from their unsuccessful attempt to punish men who were outside their customary jurisdiction.

¹ Relf, *op. cit.*, p.xix. The power of the Lords to judge alone formed the second of the four types of judicature listed by Coke in his speech of 8 March, 1621. Miss Relf comments that, in asserting that such a procedure existed, "Coke had gone beyond anything justified by medieval precedent": p.xv. It will be remembered that when he discussed this judicature, Coke specifically stated that cases could originate before the Lords: see p.71 , above.

² Relf, *op. cit.*, pp. xi, xxf. The procedure embodied a committee for petitions. There is little doubt that this came to be "recognised as performing the function which was once performed by the tryers" of petitions: *ibid.*, p.xxvii and p.85 , above. The Lords' records of 1628 contain the first sign of conflict between the old procedure by private bill and the new procedure by petition: *ibid.*, p.xxviii.

A considerable part of the Commons' energies in the first, and main, session of the 1621 Parliament was absorbed in the investigation of grievances. Two months before the first meeting, the shrewder political observers had been urging the King to remove some of the more obvious grievances in order to forestall criticism, but little was done.¹ Moreover, the Government's supporters faced an additional handicap. Investigations into grievances inevitably cast shadows over important people and were to lead on to several trials of major significance, but James was not a King who was easily persuaded to deny his subjects the opportunity to complete a serious enquiry into the alleged errors of individuals, however eminent these men might be. The very fairmindedness of the King prevented him from seriously interfering with investigations which were, ultimately, to weaken the whole monarchical position.

Although the Commons seem to have been determined to leave no complaint uninvestigated, regardless of how trivial it might appear to be, they concentrated on patents, monopolies, and grants of dispensation from the penal laws, as the major grievances. Such abuses were widespread, and it was the Commons' work on the first two which provided the basis for the revival of Parliamentary judicature in 1621. To deal with patents and monopolies the Commons evolved a fairly stereotyped procedure. The complaint might originate from

¹ C.S.P. Ven. 1619-21, p.479.

any source, from privy councillor to private citizen. The committee or sub-committee charged with the task of detailed investigation summoned before it the patentee and his opponents, together with witnesses and documents on both sides. Either party might seek permission to appear with or by counsel, while refusal to obey a summons was treated as contempt. Both sides were entitled to a hearing, though defendants were not allowed written copies of the charges. The chairman of the committee probably led the questioning but members were free to intervene; evidence was not given on oath - though this possibility caused a good deal of discussion in both 1621 and 1624 - but the House compensated for its impotence in this respect by being prepared to punish witnesses who lied. The committee acted as a fact-finding body, but it also heard discussion of these facts and considered the effects of the grant's existence. When it had completed its investigations, it pronounced judgment on the patent or monopoly and reported this to the House. In every case of which records remain the Commons confirmed the report of their committee. After the patent had been formally condemned, the House might proceed either by passing a special bill to deal with it, or by including it in a general petition to the King at the end of the session; and in 1624 an attempt was made to deal with the whole problem of such grants by passing the Statute of Monopolies.¹

¹ Foster, 'Patents and Monopolies', loc. cit., pp.66, 67, 69, 72, 76-8, 81 n.44.

Mrs Foster has emphasised the essentially legal nature of these enquiries into patents and monopolies. "The Commons had, in fact, evolved out of the old private Bill procedure a method of investigation and of passing judgment very like a court procedure."¹ But although the judicial or semi-judicial processes employed to deal with private bills might lend an air of respectability to these investigations, the House had effectively extended its jurisdiction. "Patents and monopolies could not be construed as offences against the House. For their jurisdiction in this field the Commons relied on the idea that grievances were the special province of the representatives of the realm."² It may be noted in passing that this concept was to prove useful to the Commons in the slightly different context of Parliamentary judicature.

The procedure which has been described was no doubt effective in dealing with the patents and monopolies themselves: often enough the grant was cancelled. But although the voiding of a grant might damage the livelihood of its holder, the machinery did not extend to the punishment of the patentee or monopolist. The Commons did have some debate on how to punish patentees, but only those who happened also to be members of the House were actually punished.³ Moreover,

¹ Ibid., pp.74-5.

² Ibid., p.75.

³ Ibid., p.84 n.98. They were sequestered or expelled from the House.

even if a patentee came within this category, the House might decide that the punishments which it could inflict were inadequate. It was to cope with precisely this situation in its proceedings against Mompesson that the Commons of 1621 turned to the Lords, and thereby revived Parliamentary judicature. It is now necessary to consider the development of that judicature as revealed by this case and its successors.

On 6 February, 1621, the Commons, on a motion of Alford and Sackville, arranged for the reference of grievances to a committee appointed for the purpose of considering them. This was one of four committees of the whole House which were set up with various functions at different times in 1621. These and their sub-committees were to carry out much of the detailed work connected with the cases of Parliamentary judicature, using powers already largely established in previous Parliaments.¹ There were two levels at which the committee of grievances and those with the narrower purpose of investigating trade and courts of justice could operate. In the first place, they could concern themselves with the more superficial aspects of the allegations brought before them, earnestly calling to account the rather unimportant men who had been responsible for the day-to-day

¹ C.D. iv, p.19; W. Notestein, *The Winning of the Initiative by the House of Commons*, p.37.

enforcement of the patents which were alleged to be grievous. This level of activity was unlikely to bring down upon their heads any significant anger from the King, but equally it was unlikely to be of any lasting benefit to the community. The alternative course open to the committees was to strike at the real heart of the matter in the hope of producing a lasting cure; but this would involve identifying and examining the referees - the men, often the most prominent in the kingdom, responsible for advising the King on the legality and suitability of the patent under consideration. To avoid impairing the deeply held doctrine that the King could do no wrong¹ involved fixing responsibility for the poor state of affairs upon these advisers, but as the King had appointed them he was likely to disapprove strongly of suggestions that they were really inadequate.² Nevertheless, certain members of the Commons were prepared to take this risk and Sackville suggested that while the committee was examining the patent for the sole manufacture of gold and silver

¹ Just how deep was the belief in this doctrine is one of the greatest problems of the 1620s. Adherence to it undoubtedly had its uses in dealing with unpopular ministers. Raleigh had discussed some of its implications in The Prerogative of Parliaments in England (London, 1657), p.99. See also C. Roberts, The Growth of Responsible Government in Stuart England, pp.4-7, 35, 41, 59, 69, 74, 75.

² Although James was quick to shift responsibility from himself to the referees, an attack on them was fundamentally an attack on the legality of the King's grants: Foster, 'Patents and Monopolies', loc. cit., pp.71-2.

thread it should try to find out who had acted as referees in granting the patent "that so his Majesty may be cleared, and the Saddle set on the right Horse". Nine days later the Master of the Wards, Lionel Cranfield, urged the Commons, meeting as a committee of the whole House, to a course of action which would clearly identify the source of the errors in the patents. He said that as the King always referred projected patents it would not dishonour him to call to account those that had abused him.¹ How strong was the wish to deal directly with the referees it is difficult to say² but the investigating committees and the Commons adopted a compromise position between the two extremes of behaviour open to them.

During the last two weeks of February the committee for grievances met very frequently and on the 19th Mompesson's patent for the licensing of inns was first discussed. The declared intention of this patent was to regulate the management of inns by granting

¹ C.D. iv, pp.20, 58-9; C.J. i, p.511. It is interesting to note that this speech gained the approval of John Chamberlain: N.E. McClure, ed., The Letters of John Chamberlain (Philadelphia, 1939), ii, p.345. At the end of February, Chamberlain was taking a pessimistic view of the Commons' chances of success against the referees whom he considered "such as are like to be out of their reach". He also observed that the House had "so many hares on foote at once that they hinder one another": McClure, ii, p.347.

² Unrestrained comments were certainly made, as, for example, in the hostile diary, Rawlinson MS B 151. This states categorically that many great men were doers in the patents and should be questioned for such an abuse of the commonwealth for if they had not certified the fitness of the patents the King would not have granted them. C.D. vi, p.377.

licences so that good behaviour might be assured in those licensed, and that unlicensed inns might be closed down. Fees were charged for licenses and punishments inflicted upon offenders. Mompesson had made use of his patent to enrich himself, causing much hardship.¹ The committee, with Sir Edward Coke as its chairman, ordered Mompesson and his fellow patentees to produce the documents connected with the patent, and on the 20th the patent was read to the committee.² Coke stated clearly that as the King had granted it only after taking advice he was free of all blame. In the ensuing debate strong criticisms of the patent were made and Mompesson declared that if it were shown to be evil he was ready to be the first to suppress it. After hearing Coke's report on the 21st the Commons ordered the sequestration of Mompesson from his place in the House while the case was being dealt with, though he was commanded to be available every day - a jurisdiction which it was, of course, entitled to exercise

¹ D.C. Spielman, 'Impeachments and the Parliamentary Opposition in England, 1621-1641' (Unpublished Ph.D. thesis of the University of Wisconsin, 1959), p.23 and n. 8. For example, Bath had had six inns, apparently sufficient to satisfy the needs of the populace, but Mompesson had gradually increased the number to twenty: E. Nicholas, *op. cit.*, i, p.66. Among the later evidence against Mompesson was an allegation that he had issued more than 3500 writs of quo warranto against inn-keepers, bringing only two of them to issue. He had also declared at least a hundred outlawries: C.D. v, pp.488-9.

² The patent had been granted to Mompesson, Gyles Bridges and James Thurborne: C.D. iv, p.84. According to Wentworth's account the committee had first to obtain the approval of the House before making this order, but this is not confirmed by other diarists: C.D. ii, p.106; v, p.476.

over its own members. At the same time an attempt was made by Seymour to have the House consider the possible fault of the referees in this patent and Sir Thomas Wentworth, looking ahead one stage, proposed that enquiries be made to discover what laws existed by which patentees could be punished.¹

While witnesses were being examined and evidence collected in Mompesson's case, the Commons and their committee for grievances dealt with another patent, that concerning recognisances for alehouses. This patent operated on similar lines to that for inns and infringed one of the powers of the justices of the peace. The chief target for the Commons' attack was Sir Francis Michell, who was not an M.P. As commissioner for enforcement of the patent, he had not only profited directly from it but received a steady income of £40 a year from Newgate prison on condition that he made use of its services for his prisoners. On 21 February Michell admitted to being a dealer in the patent and the committee extended its authority by judging the patent to be a grievance both in grant and execution, a sentence confirmed by the House next day. Its appetite whetted, the committee continued its investigations and Michell, apparently thoroughly alarmed and privately advised by some of his inquisitors, resolved to

¹ C.D. ii, p.109. Mompesson was a member for the borough of Great Bedwin, Wiltshire: Members of Parliament (London, 1878-9), part i: Parliaments of England 1213-1702, p.454. The referees of his patent were Bacon, Croke, Nicolls, Winch, and Finch for law; Bacon, Suffolk, Winwood, Lake and Finch for conveniency: Nicholas, op. cit., i, pp.103-4.

petition the House.¹ The petition was read on the 23rd, just before Coke was due to make a further report from the committee. In it Michell denied having had any part in the creation of the patent, which he said had been approved by some of the most learned men in the kingdom, and claimed that he had merely endeavoured to execute the King's grant to the best of his ability. Angered by what it regarded as the offensive wording of this petition and its author's attempt to take refuge in the prerogative, the House held a debate which was far from being coolly judicial. It did, however, heed the warnings of Glanville not to over-reach itself and it ignored the irrelevant precedents for punishment produced by Hakewill.² Without giving any specific reason, it declared Michell unworthy to be a J.P. or to hold any future commission and sentenced him to imprisonment in the Tower during pleasure. Michell's attempt to reply at once was refused and Coke told him that he could say what he had to say when he made his expected submission.³

It is not easy to be sure whether the Commons were justified in

¹ C.S.P. Dom. 1619-23, p.225; C.D. iv, p.89; vii, pp.499-502.

² Hakewill gave two precedents: a mayor of Westminster who, in 13 Elizabeth, accepted a bribe from a burgess to return him to Parliament; and an M.P., Arthur Hall, who wrote an attack on the House and its proceedings: C.D. ii, p.131. For Hall see J.E. Neale, Elizabeth I and her Parliaments, 1559-1581 (London, 1958), pp.407 ff.

³ C.D. ii, p.132. Michell's sentence perhaps bears some similarity to the medieval notion of conviction by notoriety.

punishing Michell in this way. Within a few weeks the Lords were hearing that the Commons had committed him for contempt, and Michell's action could certainly be construed in this way. But this does not seem to be the only reason for the Commons' sentence. The entry in their Book of Orders for 23 February says that he was imprisoned "for his many misdemeanours in and aboute the procureing and execucion of the pattent concerning the forfeitures of the Recognizances of Ale howses Keepers ..."¹ Moreover, in rejecting Hakewill's precedents, Phelps pointed out that they were concerned with offences against the House whereas Michell had offended against the country.² Perhaps the Commons had extended their existing jurisdiction in a direction difficult to justify, but for the moment the case rested.

Within a few days the Commons were possibly regretting the hastiness of their action over Michell as the need emerged to justify a rather different course of procedure in dealing with Mompesson. But their quick success had the effect of increasing their boldness so that when, on the 24th, Mompesson hoped to curry favour by a submission which promised the discovery of "some things which shalbe for the publick good", his petition was rejected and he was ordered

¹ L.J. iii, p.63; C.D. vi, p.453; J.P. Kenyon, ed., The Stuart Constitution (Cambridge, 1966), p.93; Harleian MS 158, f. 239.

² C.D. ii, p.131. See also the full debate on the report from the committee of grievances: C.D. ii, pp.127-33.

to appear before the committee the following Monday. At the same time further attempts were made by Seymour and Cranfield to have enquiries widened to include examination of referees, and Coke suggested that this become standard practice.¹ Cranfield's suggestion, which related specifically to the Mompesson case, was agreed to and men must have felt that a small encroachment had been made upon the entrenched position of the Villiers family: Mompesson was a relation by marriage to Buckingham; Christopher Villiers was involved in the alehouse patent; and within the next few weeks Buckingham himself was to protest his innocence to the Lords and to declare that he would not protect his brothers against legitimate censure.²

When Mompesson was questioned by the committee for grievances on 26 February he was asked about a number of other patents he was thought to have held. Of these, the two most important were the

¹ C.D. ii, p.134; iv, p.99.

² Arthur Wilson, who was strongly anti-Stuart, said that "All the world knew that Montpesson was Buckingham's creature". Quoted in J. Nichols, ed., Progresses, Processions and Magnificent Festivities of King James the First, his Royal Consort, Family, and Court, collected from Original Manuscripts, Scarce Pamphlets, Corporation Records, Parochial Registers, etc. etc. (London, 1828), iv, p.660, n.3. Mompesson and Sir Edward Villiers had married Catherine and Barbara, the daughters of Sir John St John of Lydiard Tregoze: D. Mathew, James I (London, 1967), p.291n. There is a letter of January 1618 in which Buckingham asks for Bacon's help in furthering the alehouse patent referred to him, because it concerns Patrick Maull and Christopher Villiers. Bacon agreed provided that the grant was not one of the grievances put down in Parliament: C.D. vii, p.312.

patent for the manufacture of gold and silver thread¹ and the patent for the investigation of the concealment of wards' lands. He did his best to minimise his share, both administrative and financial, in both, but when the following day the committee reported to the whole House Pym made much of the patent for the concealment of lands and Coke compared Mompesson to Empson, whose fate he mentioned.² Up to this point the method of dealing with Mompesson had closely resembled that employed against Michell, but a new pattern now emerges.³ Instead of condemning him and passing sentence the Commons this time proceed much more circumspectly, despite the fact that, unlike Michell, Mompesson was a member of the House. There are several possible reasons for this. First, Mompesson had not enraged the Commons with excuses to the same extent as Michell so that there was little justification for proceeding against him summarily. Secondly, there was doubt as to the degree of punishment that the

¹ Sir Edward Villiers had invested money in this patent. No separate charge was preferred against him to the Lords, but he was eventually cleared by them in the aftermath of their investigations into Mompesson's offences: C.D. ii, pp.412, 426; iii, pp.131-4.

² C.D. iv, p.107. It is interesting that Pym's careful determination appears even at this early stage in this, the first Parliament in which he sat. In the course of his speech he outlined the three stages of justice to which a guilty man was liable - inquisition of the fact, judgment, execution of judgment - and said that only in the third is there room for mercy: C.D. iv, p.110. Speakers subsequently made much of the similarity of the names of Mompesson and Empson.

³ His patent, like Michell's, had been condemned by the committee: C.J. i, p.530; C.D. ii, p.145.

Commons could inflict upon him. Coke pointed out that they could do no more than punish him for an indignity to the House and send him to the Tower, but the suggestion implicit in the mention of Empson was that imprisonment was too good for him.¹ Again, doubts had been raised about the legality of the Commons' action against Michell;² and finally, the House might understandably have been worried about the nature of the King's reaction to a repetition of its earlier proceedings but on this occasion with a more important victim. Some of those considerations may have lain behind Sackville's suggestion, made before Coke spoke again, that the Commons should collaborate with the Lords in Mompesson's punishment. This proposal met some opposition, but the House did agree to a suggestion of Sir Edwin Sandys that a search be made of the records in the Tower to determine the extent of the Commons' powers.³ By the moment, later in the day, when Coke rose to speak again, there were therefore several reasons to persuade him to leave the choice of action as open

¹ Relf, op. cit., p.xiii.

² C.D. vi, p.431. Michell, writing afterwards to vindicate himself, discussed it in terms which Floyd's case later made familiar: "I conceived that howse had no power of Judicature, and I being no member of the howse that they could not comitt me". He also drew attention to what he obviously believed to be procedural innovations: as he had not made a confession, he had expected the Commons, before censuring him, to require evidence from at least two witnesses. He had also assumed that he would be given an opportunity to speak before judgment was pronounced against him: Harleian MS 158, f.229.

³ C.D. ii, p.146; iv, p.111.

as possible. His speech made a deliberate distinction between the cases of Michell and Mompesson. He defended the Commons' punishment of Michell on the grounds that Michell, although having committed his offence while Parliament was not in session, had defended his action before the Commons after this had been condemned. He had thus offended the House and had been punished for so doing.¹ Mompesson had not done this and the Commons must therefore consider what power they possessed independently of the Lords. He accordingly proposed a search for precedents.² When Coke had finished speaking a committee of twelve was appointed, on Pym's suggestion, to examine the particulars of Mompesson's offences, and two of its members, Noy and Hakewill, were sent to the Tower to carry out the search, "to show how far, and for what offences, the power of this House doth extend to punish delinquents against the State as well as those who offend against this House".³ Seymour once again raised the question of

¹ C.D. vi, pp.14-15. If, as suggested above (p.141), this was not the whole reason for Michell's punishment, it may be that it was at this moment that the Commons began their withdrawal to a more defensible position: S.R. Gardiner, The History of England from the Accession of James I to the Outbreak of the Civil War, 1603-42 (London, 1896-1901), iv, pp.43-4. See also Kenyon, op. cit., p.93.

² The suggestion appears to have originated with Sir Robert Phelips but Coke gave it firmer support than Gardiner suggested: C.D. iv, p.111; v, p.260; vi, pp.14-15. Cf. Gardiner, op. cit., iv, pp.43-4.

³ C.D. ii, p.146; Nicholas, op. cit., p.103. It will be remembered (see p. 141 above) that Phelips had asserted that Michell's offence was against the country, not merely the House.

examining the referees and received the support of Cranfield.

Mompesson then made a confession in which he named the referees and was, apparently, placed on his honour to remain at home until required again.

The following day Noy and Hakewill reported to the committee about their search in the Tower. We do not know exactly what they said, but it seems probable that they stated that the House lacked power to punish any except those who offended it. The present grievance was, of course, harmful to the interests of the community, not merely to those of the House; and the committee concluded that Mompesson had been the author of "no Offence against our particular House, or any Member of it, but a general Grievance". Coke then addressed the committee on the subject of the Commons' powers. In this speech, already analysed in some detail,¹ he drew a distinction between the matters of fact, which were tried in the Commons, and the judicature for which the House had "often resorted to the Lords". He said that sometimes the Commons had merely presented the case to the Lords, sometimes they had been made a party to it, and sometimes they had had sole cognisance of it.² As a result of the committee's work Coke proposed to the House that the Commons, in accordance with the precedents,

¹ See pp.69-70 above. This was the first of Coke's two speeches on the subject of judicature.

² C.D. iv, pp.115-6; Nicholas, op. cit., i, p.109.

should address themselves to the Lords.¹ The House agreed to this and handed Mompesson over to the serjeant for safe keeping.

The decision to go to the Lords was obviously of crucial importance: without it, Mompesson and those who came after him would probably have emerged virtually unscathed from the enquiries of 1621. A number of considerations seem to have brought about this decision. First of all, as the committee had concluded, the House alone simply did not have jurisdiction in this type of case. There existed neither recent experience, historical fact, nor pious legend to disprove this finding. Secondly, Coke said that the records indicated that "on a great and general Grievance we are to join with the Lords for the punishing of the Offenders", while a few days later he told the Lords that the case concerned them as well as the Commons.² Coke, of course, produced precedents to support the proposal to join with the Lords, but the accounts of his speech give only the briefest indication of what he said on this aspect of the matter. Indeed, it is possible that he said very little: perhaps the power to go to the Lords was sufficiently well known and needed little proof. However, he did claim that relevant evidence survived from the time of Edward I to that of Henry VI, but the Commons Journal suggests that he made only

¹ C.D. ii, pp.148-9; iv, p.116.

² Nicholas, op. cit., i, p.108; C.D. ii, p.158. On 1 March, Hakewill reported that, in the committee's view, the case should have a full hearing by both houses: Nicholas, i, p.112.

a passing reference to what might, presumably, have been his richest quarry: "In Ed. III time (a most happy Time) adjudicata Parliament."¹ It is probable that another reason why the Commons decided to approach the Lords was that they believed that the peers were willing and able to act in the matter. Yet it is difficult to be certain of this. Contacts between a few members in both Houses certainly seem to have developed as the session progressed, but it is hardly possible to say at what stage they became really useful.² On the other hand, on 3 March Coke did tell the Lords that they had power to punish Mompesson and he was to dwell on the same theme in his speech on the four types of judicature less than a week later.³ It does not seem unreasonable to conclude that the Commons resolved to join with the Lords because

¹ C.J. i, p.531; Nicholas, i, op. cit., pp.108-9. Curiously, if the accounts summarise fairly, Coke gave most attention to the case of Speaker Thorpe in 32 Henry VI. Thorpe had apparently been imprisoned at the instance of the Duke of York, and the Lords had confirmed the sentence. The Commons complained to the Lords that they had been deprived of their Speaker, but the judges, whom the Lords consulted, said that his offence was too great for Parliamentary privilege to protect him. The Commons therefore had to choose another Speaker. Coke's comment on the case is "... this was done by our joining with the Lords": Nicholas, i, p.109; Rot. Parl. v, pp.239-40.

² Relf, op. cit., p.xx. When Coke told the Commons that they must address themselves to the Lords, he also said that he was glad that relations within the House, with the Lords, and with the King were happy. One wonders how far this was wishful thinking or whether he already had reason to believe that the Lords would give the Commons a fair hearing. If he had, this confidence was not shared by Rich who, to reserve the liberty of the Commons, proposed that if the Lords would not join with them the Commons should punish Mompesson themselves: C.D. ii, p.148; iv, p.116.

³ C.D. ii, p.158.

they believed that the peers possessed the power which they realised they themselves lacked.

The vital decision to go to the Lords was taken on 28 February, but the first fruitful contact between the Houses, at which the Commons asked for a conference, did not take place until 3 March. There is some evidence that this delay was, at least in part, the result of an intrigue involving the Court. On 1 March Bacon wrote to the King in reply to a letter which he had received from James on the previous day. Bacon's reply makes it clear that the King had warned him of the Commons' intention to go to the Lords about Mompesson. Because of this warning Bacon had met the Prince and the Lord Treasurer shortly after 7 a.m. that morning, such an hour being chosen to avoid notice. The meeting had decided that the Commons should be told that time would be required to prepare an answer so that the proposed conference might be more fruitful. According to Bacon's letter messengers appeared from the Commons on 1 March (presumably to ask for the preliminary meeting) but "as good luck was" Bacon had just adjourned the Lords to 3 March. The motion of adjournment had been proposed, in all innocence, by the Archbishop of Canterbury, but Bacon had done nothing to hinder its adoption. Bacon adds gleefully that many lords would have liked an immediate recall but that was not possible. If therefore it was the government's intention to manufacture a delay this had come about quite legitimately, without the need to resort

to the rather transparent excuse devised at the early morning meeting.¹

However, no hint of discomfiture appears in the arrangements made by the Commons during the three days after 28 February. On 1 March the House agreed that Coke, the privy councillors, the committee responsible for collecting the evidence, and anyone else who so wished, should be sent to the Lords on 3 March to request them to join "with us after the fashion of former tymes" to punish Mompesson. The following day instructions were given to the delegation: care was to be exercised over the presentation and content of the message; subservient language - "words of dutie" - was not to be used because both Houses were counsellors in Parliament; Coke was to deliver the message orally although he had it written down; Mompesson was to be described as having dishonoured the King and state. At the same time evidence against Mompesson was still being collected and the committee

¹ J. Spedding, The Letters and the Life of Francis Bacon, vii, pp.189-90. One is still left wondering what the government hoped to gain. Such a delay would certainly not stop the Commons in their tracks but it is perhaps not wholly without significance that Mompesson escaped on 3 March, only minutes before he was due to appear before the Commons again. If the delay was to enable him to make preparations for his escape he left matters dangerously late. Perhaps, like Strafford in 1641, he could not believe that his protectors would permit the situation to deteriorate so disastrously. He certainly hoped that Buckingham would be able to obtain details in writing of the charges against him: C.D. v, p.22; vi, p.28; S.R. Gardiner, ed., Notes of the Debates in the House of Lords, officially taken by Henry Elsing, Clerk of the Parliaments, AD. 1621 (London, 1870: Camden Society, no. ciii), p.150. It has been suggested that Bacon was also behind the disruption of the Commons' proceedings on 8 March: D.H. Willson, The Privy Councillors in the House of Commons, 1604-29 (Minneapolis, 1940), p.151n.

was examining the patent of gold and silver thread.¹

This steady development was interrupted by the news of Mompesson's escape from the serjeant's supervision.² When, therefore, the Commons' representatives met the Lords to request a conference Coke also asked for their help in apprehending Mompesson. Coke gained the Lords' assent to both requests, telling them that the conference was a method hallowed by precedent and that they had an interest and power in the redress. The conference was arranged for the following Monday, the Lords exhibiting considerable pleasure at the notion.³ Coke undertook to arrange matters to cause least trouble to the Lords and returned, with his associates, to report to the lower House. The Commons then expelled Mompesson from his seat in the House and arranged for the examination of two further sources of evidence, Michell and the ex-Attorney General Yelverton, both of whom were

¹ C.D. v, pp.17, 19, 266, 268; vi, pp.25-6.

² He escaped through the window of his wife's closet and fled to the Continent. Arthur Wilson says that this was with Buckingham's connivance: Nichols, op. cit., iv, p.660 n.3. Camden says that Buckingham forsook him at this time: The Annals of Mr William Camden in the Reign of King James I. In J. Hughes and W. Kennett, eds., A Complete History of England: with the Lives of all the Kings and Queens thereof (London, 1706), ii, p.656.

³ The Prince was "verie forward" against Mompesson. Was this genuine? Buckingham also protested his innocence in dealings with Mompesson, blaming the referees who misled him: C.D. v, pp.22, 270. Although Monday was 5 March, the conference did not take place until the 8th.

imprisoned in the Tower.¹

The examination of Yelverton bore interesting fruit. He was in the Tower as a result of revelations by Buckingham of illegalities in his conduct as Attorney General.² He had been one of the referees when the patent of gold and silver thread was established and he was now to be questioned about his part in imprisoning people whose attitude to that patent had offended Mompesson. Yelverton provided evidence of unjust imprisonment, implicating Buckingham's brother, Edward, but excluding the favourite himself, and claimed that he had passed the patent against his better judgment because of fear and threats.³ The report of these revelations to the Commons led Sir Henry Vane to renew the proposal to examine the referees. He made it clear that he did not believe that the Commons could punish the great but that his suggestion would enable the Commons to examine matters so that "the King may have his dew honor". The House referred his motion for consideration by the committee examining Yelverton.⁴

¹ The examination was to be conducted by Coke, Cranfield, Phelps, and Sackville: R.F. Williams, ed., The Court and Times of James the First, ii, p.235.

² Nichols, op. cit., ii, p.703.

³ He claimed that at the insistence of Edward Villiers, who had invested £4,000 in the venture, Bacon had imposed sentences of imprisonment. This situation encouraged Mompesson and Michell to break into men's houses and seize their property: Nicholas, op. cit., i, pp.138-9; C.D. vi, p.311.

⁴ C.D. vi, p.31; C.J. i, p.539.

On the same day, 5 March, Hakewill reported the advice given by the committee on the procedure to be followed in the forthcoming conference with the Lords. The matter was to be discussed under six heads and each of these was to be the responsibility of one man. After debate the House accepted this advice and the speakers were agreed to.¹ Cranfield warned the House that the conference should be asked to consider only what was both important and proved.²

By this time the peers had begun to take an active interest in the case and both Houses were concerned with the accumulation of yet more evidence. Bacon reported to the Lords on 5 March the search and seizure of papers concerned with the thread patent found in the office used by the patentees and in the houses of Mompesson and Michell,³ and shortly afterwards the House granted a Commons' request to hand over either this or similar evidence to them. On the 7th the Commons had a full debate on the patents and eventually pronounced them

¹ The heads were: introduction, abuses of inns and hostelries, gold and silver thread patent, concealments, aggravation of these, precedents for the course taken: C.D. ii, pp.163-4. Those chosen were, respectively, Digges, Crew, Heneage Finch, Hakewill, Edwin Sandys, Coke. Pym was to assist with concealments: ibid., ii, pp.170-1.

² E.R. Foster points out that by insisting that charges sent to the Lords be fully proved and that judgment be based on the charges presented, the Commons "were raising their role from mere informers to partakers in the act of judicature itself": 'Patents and Monopolies', loc. cit., pp.75, 85 n.102.

³ The Lords Journal has a blank in place of the name of another whose house was searched: L.J. iii, p.36. No one seems to have suggested that these activities of the Lords might compromise their position as judges.

illegal in inception, grant, progress and execution.¹

The House had now reached the eve of the conference which represented its real hope of scoring a decisive victory over the monopolists and even of reducing some of the arrogant self-assurance of the men who lurked in the shadows behind them. Nevertheless, the prospect did not look too unhealthy to one of these very men. Writing to Buckingham on the day before the conference Bacon said that he did not expect it to be troublesome over the matter of referees. Cranfield was not intending to meddle in this and most members of the Commons seemed to agree with him. Bacon's only source of anxiety was Coke and he told Buckingham that he believed that a warning would silence him, though it would have to come from no one but the King.² One wonders whether Cranfield, previously one of the most determined advocates of boldness in dealing with the referees, had already received a warning.³

¹ C.D. ii, pp.174-6. The way was therefore clear for naming the referees. The debate was perhaps fuller than the government's critics intended. Spielman believes that the courtiers' resistance successfully prevented a full rehearsal of the following day's conference. If so this may help to explain the confusion on the 8th: Spielman, op. cit., p.31.

² Spedding, op. cit., vii, pp.191-2.

³ On 2 March he had addressed the House on the limits of its power. He said that it had no power to determine the jurisdiction of the courts: this belonged to the King. The Commons could enquire and complain but only the King could reform. Alford disagreed with him, saying that the jurisdiction of courts was to be limited by Parliament: C.D. v, p.20. Cranfield's attacking methods seem also to have been used against him. Locke wrote to Carleton on 3 March that he had admitted to abuses in his court - but had claimed that these were much more numerous in Chancery: C.S.P.Dom. 1619-23, p.231. If he did receive such a warning its effect quickly wore off (see below) but Cranfield harboured a deep resentment towards Bacon and took pride

Bacon's optimism was, at first at least, justified. The Commons met the Lords on 8 March in the Painted Chamber and the presentation of the evidence took place as planned. Coke closed the conference with his long speech on the four types of judicature exercised in Parliament. He stressed the right of the Lords to judge without the King, undoubtedly to convince them that they were justified in trying Mompesson.¹ But not one of the speeches mentioned the referees. When, on the following day, the Commons held a post mortem on the conference, great anger was exhibited at this omission and the speakers did their best to excuse themselves.² Cranfield returned to his normal theme,

in the part he played in his ruin: C.D. Bowen, Francis Bacon (London, 1963), p.146; M. Prestwich, Cranfield. Politics and Profits under the Early Stuarts, p.287. Such warnings were not unknown in 1621: both Sandys were threatened by Cranfield and Sir Dudley Digges was probably warned by the Court: D.H. Willson, Privy Councillors, p.158.

¹ Relf, op. cit., xiv-xv. For an analysis of Coke's speech, see pp.70-74 above. Miss Relf considers that Coke's advocacy of the Lords' power to judge alone exceeded "anything justified by medieval precedent". However, he may not have exaggerated as greatly as she suggests: most (but not all) of his precedents in support of this judicature are taken from the Good Parliament of 1376, when, with Edward III senile and the Black Prince dying, the judicature was, for all practical purposes, vested in the Lords alone.

² It seems impossible to know exactly why this omission occurred. The committee dealing with Mompesson's case may or may not have recommended that the referees be mentioned, though if it did Bacon's optimism is surprising (but it may not, perhaps, have reached its decision until after Bacon's letter to Buckingham was written). In the feverish and incomplete preparations in the Commons on the 8th, just before the conference, Mallory proposed that the referees be named, but the Speaker either did not hear or did not want to hear, and, according to all but one account, he adjourned the House without putting the question. Because of this the Commons' speakers could justly claim that they had received no authority to mention the

maintaining that if the referees were not involved all the blame for the grant would fall upon the King, and the House agreed to request another conference with the Lords at which the omission might be repaired.¹

Coke carried this request to the Lords who consented to a further conference to be held on 10 March and the Commons arranged for their speakers to be sent back to the Lords then "with theyre lesson punctually set downe to them what to say". James at this point seems to have made two further attempts to divert the danger implicit in this decision. He asked the Commons to postpone the conference because it would delay discussion of the subsidy, and received an assurance that this would not happen.² He also addressed the Lords before the conference on 10 March, apparently in an attempt to impose his guidance upon the forthcoming developments. He spoke of the procedure

referees whose names they did not officially know. It is, however, clear from the indignation aroused that many members had expected the subject to be raised and in a letter to Mead, on 9 March, his anonymous correspondent actually said that the Lords and Commons had met the previous day to consider the punishment of monopolists and referees. Camden said that the Commons complained that the members sent to the Lords "acted deceitfully, and prevaricated": Camden, op. cit., p.656; C.D. ii, p.171; v, p.282; Williams, op. cit., ii, p.235.

¹ C.D. ii, p.202; C.J. i, p.547; Nicholas, op. cit., i, p.137. On 10 March Chamberlain wrote to Carleton that the Commons were not willing to spare the referees "be they never so great". A comparison with his opinion only eleven days previously (see p.137 n.1 above) provides an interesting yardstick of the Commons' achievement in this vital matter: McClure, op. cit., ii, p.350.

² McClure, op. cit., ii, pp.350-2; C.D. ii, p.205.

in cases of the Mompesson type, stating that the Commons should act as accusers and the Lords as judges. "The accusers are to lead, but it must either be confessed or proved by witnesses. Accusers are good informers but bad judges. The clamor must be well proved otherwise it is a Calumie."¹ James also commented upon the use of precedents. These were valuable but he had warned Coke to use only those arising in the reigns of good Kings, not weak ones. He tried to draw the sting from Yelverton's accusations by describing him as a rash attorney whom he had been compelled to dismiss, and, as a logical extension, he defended Buckingham. However, he encouraged the Lords to proceed with the matter of Mompesson - giving him a fair trial and not accepting the Commons' legal opinions too uncritically - but not to spend too much time on him.² The King also showed that he was not prepared to protect Bacon or Mandeville, whom the Commons were shortly afterwards to name as referees; but he did distinguish between punishment of persons and examination of the legality of patents,

¹ Relf, *op. cit.*, p.14. Attention must be drawn to James' reference to "clamor". Is he thinking in the same terms as Hakewill who, a few weeks later, was to remark: "I have observed when we have gone to the Lords it hath been by impeachment, clamor or accusation"? (See p. 75 above).

² He said that the Lords, unlike the Commons, were a court of record and could act as such. There was no need to search precedents to prove this.

saying that the latter must be left to the judges.¹ If the speech was an attempt to seize control of the situation and divide the Lords from the Commons it was not very successful: it contained too many subtle changes of emphasis and revealed weaknesses of attitude that was to make the concessions derived from it lasting. The King had made a speech which he would not have chosen to make had not the pressures upon him and his favourite, Buckingham, been mounting.²

The first consequence of the King's speech was that Bacon and Mandeville, clearly thoroughly alarmed by the King's lack of support for them, made grovelling and submissive speeches at the conference of the two Houses. To speak in this way in their own defence was against the orders of the House and the Lords later expressed their irritation by censuring both men.³ The Houses then made arrangements

¹ Relf, *op. cit.*, p.14. E. de Villiers, ed., 'The Hastings Journal of the Parliament of 1621'. *Camden Miscellany*, vol. xx (London, 1953: Camden 3rd Series, vol. lxxxiii), pp.viii-ix. In a letter to Carleton on 12 March Locke said that the King had thrown all blame on the referees: *C.S.P. Dom. 1619-23*, p.234.

² Miss Relf, *op. cit.*, p.xv, believes that James' speech shows that he disliked the whole proceeding on which the two Houses were engaged, but that he could find no grounds for objection although, as one of the diarists points out, Mompesson was a servant of the King: *C.D.* v, p.35. Lady de Villiers, *op. cit.*, p.ix, however, sees the speech as winning for the King a tactical victory, and says that James believed that, if the trials were conducted on the lines he had laid down, the Crown had nothing to fear from the revived judicial power.

³ de Villiers, *op. cit.*, pp.29-30; *L.J.* iii, p.42. Southampton and Wallden led the attack on Bacon and Mandeville: ff. 7-8 of Braye MS 11 which is Elsynge's first draft of the *Lords Journal* for the period 12-27 March, 1621. Mandeville tried to clear himself on the patent for alehouses "which was not by us (the Commons) spoken of". As a result the Commons resolved to examine it and Noy was put in charge of reporting on it: *C.D.* iv, p.146; vi, p.54.

for another conference, the Lords choosing twenty-four of their number who, with the Prince, were to meet fifty members of the Commons.¹

From 13 March until the Lords' sentencing of Mompesson on the 26th the two Houses met in frequent conference. Assured of the King's encouragement the meetings made solid progress. The Commons acceded to the Lords' request to present their evidence in writing provided that this did not become a precedent.² Buckingham acknowledged his mistakes but asked that these be excused on the ground of his youth and inexperience. He declared that if his brothers were found guilty he would be the first to condemn them.³ But the Villiers family was still too entrenched and the Commons were not prepared to jeopardise their chances of success against Mompesson by a reckless chase after Buckingham's brothers. Perhaps for the same reason, when Coke

¹ C.D. ii, p.209. Curiously, the Lords Journal lists twenty-five members of this committee, apart from Charles: L.J. iii, p.42. Elsynge's first draft journal for 12 March records a proposal that a committee of the Lords should be appointed to examine the Commons' evidence so that "the worlde (might know) whether the blame thereof (i.e. for the grievances) ought to be layed on the Referees of the sayd graunts, or uppon them whoe unduly (as yt is reported) executed the same". This account which was written by Elsynge on the first day he presided at the Table, was rejected by the Lords' sub-committee, and in his next draft - which he calls his first draft - this proposal is omitted as it is in the final Journal: Braye MS 11, ff. 1-13; Braye MS 69, ff. 2-2v (the rejected draft); L.J. iii, p.42.

² Coke said that in all conferences between the Lords and Commons, business had always been transacted orally: Nicholas, op. cit., i, p.167.

³ C.D. ii, pp.212, 227.

handed the Commons' written evidence to the Lords on 15 March he made little mention of the referees.¹ He compared Mompesson with Empson and Dudley, to the detriment of Mompesson, and asked the Lords for condign punishment. His report ended, he received the congratulations of both Prince Charles and the Commons.² The Lords then appointed three committees to examine Mompesson's patents, one each for inns, gold and silver thread, and concealments, and arranged that these should examine witnesses on oath because their evidence before the Commons had not been sworn. As some of these witnesses were members of the Commons, and others its prisoners, the lower House at first found the Lords' intention unpalatable: if the evidence they had collected required confirmation on oath this reduced their status.³

¹ *Ibid.*, ii, pp.227ff; vi, p.66. But their names were handed to the Lords, contrary to what Gardiner said: *ibid.*, ii, p.230; vi, p.66; Gardiner, *History*, iv, pp.53-5. Gardiner believed that the Commons' change of attitude was due to the King's conversion to support for their proceedings under the influence of Williams, Dean of Westminster. But was this the main reason for the change? The referees, as referees, had always looked fairly secure and since the uncovering the day before of another type of evidence - of corruption - against Bacon there was perhaps less reason for the continuation of the rather forlorn hunt (see p.169 below). Furthermore, if the bill against monopolies, which was then under discussion in the Commons, went through, there was less cause to worry about referees as such.

² Two days earlier Buckingham had ridiculed those who doubted Coke: *C.D.* vi, p.381.

³ *L.J.* iii, pp.46-7; *C.D.* vi, p.70. That this might lead to an awkward situation was shown later when Davenport made accusations against Field which he was unprepared to repeat, on oath, before the Lords. Chamberlain said that there was a suspicion that the matter of witnesses was being used to break the amity between the Houses; McClure, *op. cit.*, ii, p.355.

Brooke maintained that the Commons acted as a grand jury for the whole commonwealth, and that it was therefore improper to require oaths of members. Coke objected to the Lords' request on the ground that, as judges of fact, members should not be sworn as witnesses. Hakewill suggested unsuccessfully that precedents be examined; and the debate meandered along in a fashion which revealed how uncertain the House was of its position.¹ Eventually, it was persuaded to consent to the attendance of witnesses at the Lords by a calmly practical speech from Sir Edwin Sandys:

The Question before us was of the Pattents and the Projects, which we have adjudged to be greivances both in the originall and in the execution. The Question before the Lords is of the punishment, which may reache to life, and God forbid they showld proceede 'upon an implicite faith of the examinacions taken by us without oathe. (2)

Sandys also challenged Brooke's point about the grand jury, pointing out that it was well known that a grand jury's verdict did not lead to condemnation without further trial. Eventually, a compromise was reached: witnesses who were members said that they were prepared to take the oath as private individuals so that no order of the Commons was required on this issue. In consequence, the argument about the Commons' jurisdiction died down for the time being, and a few days later in a message of appreciation to the Lords for their concern in

¹ L.J. iii, p.48; C.D. iv, p.162; v, p.303; vi, p.70; C.J. i, pp.557-8.

² C.D. iv, p.163.

examining grievances the lower House specifically thanked them for "giving the Oath unto the Examinants, which they cannot do".¹

However, this was neither the first nor the last time that this issue was debated. Bound up as it was with the question whether or not the Commons were a court of record, the power to administer an oath was central to any discussion of the jurisdiction of the House. The right was vigorously claimed and as vigorously denied. In 1610 a committee had been appointed to consider whether the Commons possessed the right. In the middle of February 1621 Coke had explained why the House could not administer an oath - "because Nothing should be brought before them but that which is Notorious and knowne"; and in the debate just discussed Glanville gave another explanation: as the House was the representative body of the realm it was "not to be presumed to be ignorant of the affaires of the countrie". Later in the session, after the Floyd affair, Samuel Sandys claimed that the House might administer an oath in examining matters which were within its cognisance; and in 1624 Edwin Sandys repeated this but acknowledged that there was an unresolved doubt about the existence of such power in areas where the Commons lacked the right to give a final judgment.² That the right to use an oath was for so long a

¹ L.J. iii, p.61.

² Foster, 'Patents and Monopolies', loc. cit., pp.82-3 n.63; C.D. v, p.46; vi, p.430; Nicholas, op. cit., ii, p.49; E.R.Foster, Proceedings in Parliament, 1610, ii, p.361.

matter of debate is a measure both of the Commons' growing judicial authority and of their frustration.

To return to Mompesson. Once the question of re-examination of witnesses had been settled the Lords' committees were able to proceed with their work and by 22 March the Commons' accusations against Mompesson were declared sufficiently proved for the peers to sentence him. They reserved the right to deal, after the Easter recess, with Michell and the patentees for gold and silver thread, but hurried on arrangements for completing the Mompesson case so that the extent of Parliament's justice might become known.¹ The Lords appointed a committee to survey the precedents of "Judicature, Accusations, and Judgments", and this almost certainly took the expert opinion of John Selden who was employed by the House at this time.²

¹ L.J. iii, p.63. Michell was associated with Mompesson in the thread patent, as well as being commissioner for enforcing the patent for recognisances of alehouses, so that if the case against him were to be kept alive the examination of the thread patent had to remain open. In fact, all these investigations continued after the recess, bringing under scrutiny the activities of men like Fowle and Geldard, agents and associates of Michell and Mompesson. Fowle was examined by the Lords on a complaint which the peers said had been transmitted to them by the Commons; but there seems to be no evidence that the Commons had resolved on this or that they had sent Fowle himself to the Lords - as the peers also claimed: L.J. iii, pp.63, 65, 91, 92, 123; Gardiner, Debates, 1621, p.24.

² L.J. iii, p.65. The committee reported on the day it was appointed, presenting the Lords with a list of precedents. This named Sir John Maltravers, Borges de Bayons, John Deverill, Thomas Gurney and William Ogle (from 1330), Sir John Lee (1368), and William Latimer and Richard Lyons (1376); and a note in the manuscript indicates that other cases were also reported: Braye BS 11, f. 105. The cases from 1330 illustrate action by the Lords on capital offences. The Commons evidently took no part in these cases, which, interestingly,

On 26 March the King addressed the Lords, giving his consent to the sentencing of Mompesson. The House then debated the punishment and considered the precedents now presented to it. Empson's indictment was read but Charles carried the peers with him when he said that the precedent was irrelevant: Empson had been indicted for treason and his trial had been before commissioners in the country, not the Lords. Mandeville, the Lord Treasurer, then proved that none of the actions of which Mompesson stood accused was more than a misdemeanour and he proposed a punishment which the House debated and then adopted.¹

Meanwhile the Commons had been discussing their own part in the punishment of Mompesson, citing precedents to show whether they merely had a right to be present, or to be present and to demand judgment, or even to insist on an increase in a sentence which they found inadequate.² When the summons came to them to attend in the House of Lords they demanded judgment through the Speaker.³ Mompesson was

appear here in exactly the same order as they do in Selden's work, The Priviledges of the Baronage of England, which was composed at this time.

¹ Relf, op. cit., pp.42ff.

² The precedents were all drawn from 1376: Neville, Peach, Latimer. According to Hakewill the Commons had demanded an increase in Latimer's punishment: C.D. ii, p.268; iv, p.200; v, p.323; Nicholas, op. cit., i, p.228. I have found no evidence that the Commons formally demanded judgment or that they asked for an increase in Latimer's sentence, although they were, of course, active in all three cases.

³ Chamberlain felt that the Commons were present merely to give their assent and were summoned purely out of courtesy: McClure, op. cit., ii, p.357.

sentenced to fine and outlawry. He was excluded from office, banished from the King's presence, his Court and the law courts, and exempted from any general pardon. He was degraded from knighthood and was to suffer life imprisonment when found.¹ To mark the day it was proposed not only that sermons should be preached at each anniversary, but that brass statues should be raised to the King and Prince. Part of the following day was spent in mutual congratulation and thanks.² The King approved the sentence and used the opportunity provided by an address from the Commons to ask for an increased subsidy. Earlier Coke had grumbled that the patent of concealments had not been judged, but in the goodwill and satisfaction of the royal

¹ Selden claimed that, by the precedents, the procedure adopted was faulty. As Mompesson had fled proclamations should have been sent out that he must appear on a certain day, or a (specified) judgment would be given against him. He gave precedents for this and suggested that the failure to do so stemmed from the long disuse of the judicature of Parliament: Of the Judicature in Parliaments, pp.90-1, 95. The procedure of issuing a proclamation was followed during the impeachment of Sir Thomas Mortimer in 1397.

An interesting sidelight on the novelty of the proceedings against Mompesson is provided by Elsynge who was clearly worried about how these should be entered in the Lords Journal. He had only recently become Clerk of the Parliaments: House of Lords Main Papers, 4-27 April, 1621, f. 22.

Gardiner saw the sentence on Mompesson as an indirect censure on James. Buckingham's action in excusing himself from attendance at the sentencing perhaps lends support to this view: Gardiner, History, iv, p.84; L.J. iii, p.71. Charles had protested against degrading Mompesson, maintaining that only the King might impose this punishment: Relf, op. cit., p.45.

² Relf, op. cit., p.49; C.J. i, p.576. Brooke and Montagu in the Commons thought that the Lords had been thanked sufficiently.

audience the House made no mention of this and members adjourned happily for the Easter recess. Three days later the King, by proclamation, cancelled the patents of thread, inns and alehouses.¹

The trial of Mompesson marked the revival of Parliamentary judicature. Although this process had lain unused for so many years, its resurrection was achieved with remarkably little difficulty. Mompesson was probably a very suitable victim - neither so important that the proceedings would suffer from undue interference, nor so unimportant that they would pass unnoticed. Subsequent trials, both in 1621 and later, would exhibit significant procedural changes, but the trial of Mompesson had established a precedent which did not have the disadvantage of being two and a half centuries old.

When Selden wrote about this case in his treatise Of the Judicature in Parliaments he said "The Commons accused and impeached by word of Mouth Sir Giles Mompesson...", but later he indicates that the proceedings were conducted ex parte regis.² Now it will be remembered that, when both Selden and Elsynge drew a distinction between impeachment and complaint, they said that in cases of the first the suit belonged to the Commons and in the second to the King.³ Selden

¹ C.D. iv, p.207; C.S.P. Dom. 1619-23, p.241.

² Selden, Of Judicature, pp.30, 63.

³ See pp. 61-2, above. According to Selden, the suit also belonged to the King in cases where the Commons presented information.

therefore seems to have had some difficulty in classifying Mompesson's case, which does not fit easily into either of his categories, and as will be seen he faced similar problems with Middlesex. Unfortunately, the records of 1621 are of no help in classifying the first case of Parliamentary judicature - or indeed any other. Coke's two speeches on judicature appear to testify to the existence of more than one method of association between the Commons and Lords, but there is no evidence that he ever stated which method was used to deal with the cases in which he played such an important part. The very full records of this Parliament contain no indication that any member ever said that Mompesson was being impeached; Coke and Hakewill both refer to the Commons' complaints against him, but whether they were using the word in its general or technical sense seems impossible to say.¹ For the moment, therefore, it will probably be as well to resist the temptation to classify this case, especially as it is at least possible that members, concerned with results rather than careful

¹ C.J. i, p.576; C.D. ii, p.188. Hakewill began his speech to the Lords at the conference on 8 March with the words: "There is another complaint against Sir Giles Mompesson ...": C.D. ii, p.188. On 26 March, Coke supported the view that the Commons were entitled to demand judgment from the Lords and said "... where the Commons complain to the Lords, they judge it; and the Commons present": C.J. i, p.576; Nicholas, op. cit., i, p.229.

distinctions, would have been unable or unwilling to do so themselves.¹ Nevertheless, we can at least think twice before assuming that this case marked the revival of impeachment.

By the time that Mompesson's punishment was pronounced the Commons had become deeply involved in the pursuit of a very important victim. Francis Bacon was not only Lord Chancellor and, as such, identified with the enemies of the common law; he was also one of the King's close advisers, a friend of Buckingham, and the owner of an intellect which repelled as many as it attracted. When the Parliament of 1621 opened he seemed completely out of the reach of his enemies and the sniping at the referees had brought him little nearer their grasp. The means which led to Bacon's ruin was the Commons' committee appointed to investigate abuses in courts of justice. On 8 February Cranfield had proposed the creation of such a committee but although this was done it speedily lapsed until he proposed its revival on 12 March.² On this occasion his brainchild proved to be

¹ A statement of Cotton's provides another type of warning: "To infer, that because the Lords pronounced the sentence, the point of Judgment should be only theirs, were as absurd, as to conclude that no authority was left in any other Commissioner of Oyer and Terminer, than in the person of that man solely that speaketh the Sentence": R. Cotton, Cottoni Posthuma: Divers Choice Pieces of that Renowned Antiquary Sir Robert Cotton (London, 1651), p.352.

² C.D. ii, pp.22, 44; vi, p.55. He had suggested investigations into the administering of justice on 5 February.

tougher and the world into which it was born better equipped to sustain it. Animosity towards Bacon had been growing and on 14 March the answer to the prayers of those who wanted to destroy the referee appeared in the form of evidence of corruption in the judge.¹ This very soon showed itself to be a more hopeful line of attack. The first evidence came from Christopher Aubrey and Edward Egerton who claimed that, in the hope of speeding up Chancery suits in which they were involved, they had given Sir George Hastings and Sir Robert Yonge, two of Bacon's servants and both members of the Commons, sums of money intended for Bacon.² Egerton had also entered into an arrangement with Dr Theophilus Field, once Bacon's chaplain, now Bishop of Llandaff and a friend of Buckingham, and with Randolph Davenport, one of Bacon's Chancery officials. The plan was that Field was to persuade Buckingham to write a letter to Bacon to ask

¹ On 25 February Mead had written "It is said, that there are many bills ready to be put up against my lord chancellor", and there is a hint that the real reason for Sackville's removal from reporting the proceedings in the committee for courts of justice was his refusal to report complaints received against Bacon: Williams, *op. cit.*, ii, p.232; *C.D.* v, p.258. But for Sackville see Prestwich, *op. cit.*, pp.292-4. Mrs. Prestwich states that Bacon and Sackville were relentless enemies throughout 1621 but she also points out Sackville's ability to change sides rapidly.

If Cranfield did not foresee what the committee might uncover his motions were remarkably well favoured.

² *C.D.* ii, pp.224-5; iv, p.155. Edward Egerton's dispute was with a distant relative, Roland Egerton, over land left by the will of Sir John Egerton, Roland's father. Roland had obtained letters of administration from Sir John Bennet, another of the men presented by the Commons to the Lords in 1621: *L.J.* iii, pp.56-7.

him to hurry along Egerton's suit. Field was to receive £6000 when Egerton received his decree. This sum was to be divided but Egerton did not know the names of the other participants. As a guarantee of his good faith Egerton immediately entered into a recognisance for £10,000 with Field. Both of Egerton's schemes failed because Bacon gave an adverse decision and because Davenport, acting for Field, was unable to persuade either Buckingham or the King to intervene with Bacon. The committee arranged to collect further evidence and refused the request of Meautys, Bacon's secretary, for copies of the petitions against his master and of the letter, written by Field, which had been read to the committee.¹ When Phelps reported to the House on 15 March he suggested that the evidence should eventually be sent to the Lords.

On the 16th the committee gathered further information from Hastings and Yonge. They described how they had told Bacon that they had admitted to handing him presents, and how he had replied that he would have to deny this. Hastings also maintained that Bacon had tried to divert Aubrey from handing in his petition by promising him a favourable decision which he had subsequently not delivered. When this evidence was reported some members found it too good to be true

¹ C.D. ii, pp.225-6; iv, pp.156, 161; vii, pp.578-9; L.J. iii, pp.53-7. Field's letter was described as most "dishonest in corruption": C.D. v, p.298.

and questioned the reliability of the witnesses.¹ In attempting to restore their confidence Coke argued that "you will make bribery to be unpunished, if he that carrieth the bribe shall not be a witness". The use - for the first time in this case - of the word bribery perhaps had its influence in persuading the Commons to accept their committee's recommendation that all the evidence be sent to the Lords.²

The committee gave three reasons for its suggestion: there were precedents to support it, from the time of their ancestors; as a peer Bacon could not be dealt with by the Commons; and the lower House, lacking the power to administer an oath, had no way of discovering the truth. In the ensuing debate the Secretary suggested that the evidence should be shown to the King as well as to the peers, but most members were more concerned to discuss the manner of the reference to the Lords. Should the Commons simply refer petitioners to the upper House, or should they present the evidence themselves? How far should they repeat their actions in Mompesson's case? Mr Recorder Finch objected to the presentation of evidence on the ground that this would resemble an accusation, while Noy believed that the

¹ C.D. ii, pp.237ff; v, pp.40, 44. Hastings had at first stated that he had hidden the purpose of the gift from Bacon. His subsequent evidence suggested the reverse.

² C.D. ii, p.242. For a discussion of Coke's apparently unwarranted use of this word see Spielman, *op. cit.*, pp.39-40. Was its use quite unwarranted in view of Hastings' testimony about Bacon's reaction to Aubrey's petition?

Commons were obliged to take the matter to the Lords but advised his fellow members "not to deliver it as a thing certayne, as wee did in Sir Gyles Mompessons case But as an Informacion..."¹ Eventually, as so often, it was Coke's proposal which was adopted. He urged the House to lay the evidence before the Lords and to search for the precedents which he believed to exist. He received the support of the Secretary on the grounds that this would be the fairest course for Bacon's sake and the House resolved to present the evidence orally but without attaching to it any accusation. The temperature of the debate had been a good deal lower than when the House had dealt with Mompesson, and the decision on procedure significantly different.² Bacon's peerage as well as the Commons' lack of jurisdiction had persuaded them to go to the Lords.

On the 19th the Commons requested a conference with the Lords and replied to a message from the King about procedure. James

¹ C.D. iv, p.167. It may be recalled that Selden lists three ways in which the Commons might be associated in a case: by impeachment, by complaint, or by information. In the last two, according to Selden, proceedings were conducted ex parte regis: see pp.60-62 above. According to Nicholas' account, Noy said that the Commons could not claim to have "found this (the evidence against Bacon) as a Truth, but that there is such a Clamour amongst us; and that we should desire their Lordships so to take this unto them, as that they will not exclude us": Nicholas, op. cit., i, p.185.

² C.D. ii, pp.237ff; iv, pp.166ff; C.J. i, pp.560-1. The Commons ignored the embittered speech of Neville who suggested that Bacon should have to give evidence on oath because he had denied to the Lords their privilege of answering in the Chancery on their honour: C.D. ii, p.240.

suggested that a commission of six lords and twelve members of the Commons, chosen by the Houses, should examine the evidence against Bacon and then hand it to him for judgment. The Commons, disliking the proposed interference and its inherent dangers to Parliamentary jurisdiction, returned a cautious answer that they could make no reply until the Lords had received the proposal, and resolved to continue as already planned.¹ The King never sent his message to the Lords:² another attempt at royal adjudication had failed. The conference took place and Phelips spoke on behalf of the Commons.³ The Lords agreed to examine witnesses and during the next few days, while the Commons' committees continued to collect evidence against Bacon to present to the Lords, the peers obtained the lower House's consent to the appearance before them and examination on oath of Yonge and Hastings. The Commons handed over the Bishop of Llandaff's correspondence, and the Lords, to cope with the volume of evidence, appointed three small committees for which they drew up a list of questions to

¹ C.D. ii, pp.244-5.

² But the feeling of the Lords seems to have been against the proposal: ibid., vi, p.385.

³ He "made a Declaration of the Complaints against my Lord Chancellor and the Bishop of Llandaff". He had earlier been sent to ask for the conference "towching the Informations against" Bacon and the Bishop: C.D. iv, p.171.

be asked of the witnesses.¹

As the evidence against him accumulated, Bacon himself attempted to ward off at least the worst of the blow. He wrote submissively to the Lords, and though this had no effect the House did consent to give him notes of the general objections against him. However, he suffered from the absence of genuine support in the Lords and even the illness - real enough - to which he succumbed at this time caused suspicion.² He also made attempts to find out where the Court stood, using Buckingham as his intermediary, but the only favour the King was prepared at this moment to show his Lord Chancellor was to ask the Lords to ensure that "the witnesses against him were sufficient". Perhaps by now the King considered the issue lost in the face of the Lords' determination: they had recently arranged for the protection of their witnesses and for the continuation of the examination during the Easter recess; and as Parliament adjourned on 27 March political

¹ Ibid., ii, p.246; iv, p.174; L.J. iii, p.60; de Villiers, op. cit., pp.31-2. The committees were headed by Arundel, Huntingdon and Southampton. A similar number of committees had been used in Mompesson's case.

² Relf, op. cit., p.52. But Chamberlain, on 24 March, reported that many lords visited him each day, Buckingham being the most frequent visitor. However, he also said that his letter was meant only to gain time until the heat of the prosecution had passed: McClure, op. cit., ii, p.356; C.S.P. Dom. 1619-23, p.240.

observers reported little of comfort to James or Bacon.¹

When the Houses reassembled on 17 April the question was not so much whether the Lords would pass judgment upon Bacon as how the last stages were to be dealt with. A mass of evidence had been heard by the Lords' committees during the recess: this was now reported by the three chairmen and on 19 April they were asked to draw up a charge - work which in the previous case had been undertaken by the Commons. To accomplish it the committees amalgamated. These developments caused a breakdown in the defence which Bacon seems to have been preparing. He had drawn up a list of precedents which might have helped him and he could almost certainly have used at least one of these - that of Chief Justice Thorpe in 1351 - with effect.² He had also seen the King and worked out a plan which would have involved an admission of guilt where this was unavoidable but a

¹ Cabala, Mysteries of State, in Letters of the great Ministers of K. James and K. Charles (London, 1654), pp.10-11; J.O. Halliwell, ed., The Autobiography and Correspondence of Sir Simonds D'Ewes, Bart., during the reigns of James I. and Charles I (London, 1845), i, p.179; Williams, op. cit., ii, p.243; L.J. iii, pp.67, 74. Lando reported that many of those nearest to the King wished that Parliament had never been summoned. The only sign - and this proved abortive - of any change in Parliamentary sympathies is Chamberlain's remark that Coke's popularity had declined and that his choice of precedents had become careless: C.S.P. Ven. 1619-21, p.618; McClure, op. cit., ii, p.358. In fact, James seems to have encouraged the Lords in their proceedings against Bacon: Williams, op. cit., ii, p.243; C.D. vii, pp.590-1.

² Thorpe had been found guilty of taking bribes and the prosecution had been based partly on his oath of office which placed heavy restrictions on receiving presents. Bacon's oath of office was less rigid in this respect: Spedding, op. cit., vii, pp.232-4.

protestation of innocence whenever he could make a clear answer. He had asked the King for help in obtaining a copy of the charges, which though not yet drawn up were clearly about to be made. The King, however, had merely referred his request to the Lords. Now, faced by a growing volume of evidence and burdened with continuing ill-health, he submitted to the Lords and threw himself on their mercy.¹ He admitted the correctness of the accusations - which he had not seen - and hoped that loss of office would be sufficient punishment.

Doubtless astonished at the totality of Bacon's submission, the Lords sat in silence for some time after the reading of his letter. They then debated two issues. They first decided that the submission was not a sufficient basis for a censure and that an examination of Bacon himself was required. This gave rise to a debate upon the conduct of the examination. The Lord Chamberlain suggested that the charges be sent to Bacon as a mark of his importance; Lord Saye argued that both de la Pole and Yelverton had attended the Lords to answer in person and that Bacon should do so. But eventually the House decided that the charges, though not the proofs, should be sent. This was done and the following day the Lords asked Bacon whether he

¹ L.J. iii, pp.75, 80; Spedding, op. cit., vii, pp.232-4, 240, 242-5; de Villiers, op. cit., p.32; Gardiner, History, iv, pp.87-8; J. Rushworth, Historical Collections (London, 1659-1701), i, pp.29-30. In his plan he had intended to do this only where he was forced to admit guilt: de Villiers, op. cit., p.32.

would be making a confession or a defence. He replied that he would be confessing and was given five days in which to do so.¹ He made his confession in writing on 30 April, by which time he had recovered his previous poise. He admitted most of the charges but denied a few and explained his actions in some cases.² The House next required the document to be acknowledged as his own by Bacon and sent a delegation to him for this purpose. They also asked the King to sequester the Great Seal, which was done, and on 3 May sentenced Bacon in his absence. The sentence was debated in committee, precedents were quoted but little used, and the only real disagreement was over the question of degrading him from his peerage. When the House resumed and the questions were put by the Lord Chief Justice this proposal was defeated, but Bacon was sentenced to fine and imprisonment, exclusion from Parliament, Court and office. Only Buckingham voted against the punishments. The peers then sent a message to the Commons inviting them to come to demand judgment. That afternoon, "at the prayer and demand of the Commons by their Speaker", this was pronounced by the Lord Chief Justice. He said that "the Lords had duly considered of

¹ Gardiner, Debates 1621, pp.13, 20-21; Spedding, op. cit., vii, pp. 248, 250.

² The Lords did not examine Bacon's replies in detail and, in pronouncing him guilty, made no distinction between the charges to which he had confessed and those which he had denied. Mompesson's offences received rather more detailed examination before the Lords decided on his punishment: Relf, op. cit., pp.40ff; Spedding, op. cit., vii, pp.263ff.

the complaints presented by the Commons against the ... late Lord Chancellor, and have found him guilty ..." He then read out the Lords' sentence.¹

Bacon was convicted as a taker of bribes, whatever the force of the deeper political reasons which spurred on the attack. Of corruption he was, in Parliament's view, just as guilty as was Mompesson of creating grievances. But, unlike Mompesson, he had broken the law: the Commons had to vote Mompesson's activities grievous, thus in effect creating an offence; but Bacon confessed to an offence. The two trials also differed in that in the case of Mompesson the Commons, by framing an accusation, brought it closer to completion than in that of Bacon where the drawing up of the accusation and the collection of much of the evidence was the work of the Lords. If the Commons' approach to Bacon's case was more diffident than its bitter attack on Mompesson this can be explained by the difference in status of the two men and the early difficulty over the matter of the referees. But once the means for an attack on Bacon had been discovered this was pressed forward with determination equal to that shown in the earlier trial.

For Coke, the condemnation of Bacon must have represented a considerable personal triumph, yet the case receives no more than a

¹ L.J. iii, pp.101, 102, 106; Gardiner, Debates 1621, pp.61-4; C.D. ii, pp.341-2; v, p.138; C.J. i, p.606. The proposal, by Saye, to degrade Bacon was lost by only two votes, according to Chamberlain. The margin seems surprisingly small: McClure, op. cit., ii, p.371. The fine of £40,000 was remitted; the imprisonment very short.

passing mention in his writings. To which of his categories of judicature he would have assigned it is unknown. The Commons had accepted that Bacon's peerage compelled them to approach the Lords; and, although the position changes after 1621, the Commons' part in proceedings at this time against members of the Lords was not very substantial. Noy's speech in March, when he recommended that the Commons should merely lay information before the Lords, epitomised the tentative approach of the lower House. Furthermore, Noy was evidently anxious to avoid any danger that such a course might terminate the Commons' connection with the case, because he adds that, notwithstanding his proposal, "we will not desert (the case), but desire that we may repaire to their Lordshipps againe for Judgment".¹ If a choice must be made between the various categories of judicature described by Coke in 1621 and, probably rather later, by Selden and Elsynge, it can hardly be suggested that Bacon's case fits into one which lays much emphasis on the Commons' share in the procedure.²

The condemnation of Sir Henry Yelverton which followed shortly after Bacon's fall bears more similarity to the fate of Cranfield in 1624 than to the trial of the Lord Chancellor. Yelverton was the victim of his own stupidity and of the hatred of the King and Buckingham.

¹ C.D. iv, p.167.

² Selden merely describes Bacon as having been "accused" by the Commons: Of Judicature, p.31.

James openly told the Lords that he expected a judgment against Yelverton, and his part in obtaining this was plain. If further evidence is needed of the lack of a court plot against Bacon it is provided by the sight of the royal activity against Yelverton. Unlike the attitudes of Bacon, those of Yelverton elicited sympathy from the more independent members of the Lords and yet the King did not hesitate to enter the lists against him. If James had been anxious to destroy Bacon an open attack would have been quite in order.¹

Yelverton had already fallen foul of the court before the Parliament of 1621 opened. Early in the reign he had opposed the King's Scottish policies, but in January 1610 he had expiated this offence and in 1616 had been made Attorney General. Causing further offence he had been accused in the Star Chamber by Buckingham of illegal practices. He lost his job and was imprisoned in the Tower where in 1621 he was awaiting his opportunity for revenge against the favourite.² This came early in March, during the Commons' investigation

¹ It is possible that, unknown to James, Buckingham was intriguing against Bacon and Mrs Bowen leans towards the view that the Duke "had consented to this impeachment from the first". Her source is a hint by Clarendon. Against this opinion must be set Buckingham's solitary vote against Bacon's punishment. He may have been protecting himself but, as James had hardly rushed to Bacon's defence, there seems little reason for Buckingham to have gone to such lengths to disguise his hostility to the Chancellor, if such existed: Bowen, *op. cit.*, p.152. See also Spielman, *op. cit.*, pp.55-6 and n.60; C. Roberts, *op. cit.*, pp.23-4. A line in a probably contemporary poem on Bacon's fall should, however, be noted: "Perhaps the game of Buck, (no name), hath vilified the Bore": Rawlinson MS B. 151, f.102v.

² McClure, *op. cit.*, ii, p.335; Nichols, *op. cit.*, ii, p.703.

of patents, when the committee sent to the Tower heard from Yelverton that his consent to what he maintained were bad patents had been extracted from him by threats.¹ On 9 March members were told that Yelverton, among others, had signed a warrant dormant to permit search, arrest and seizure of goods in connection with the thread patent. The House agreed, without giving a reason, to send this piece of evidence to the Lords, telling them that, in the Commons' opinion, it was against the law. There does not seem to have been any vote to send Yelverton himself to the Lords, but on 18 April he was summoned before the peers to answer the Commons' charge that he was responsible for imprisoning merchants who had offended against the patent. The Lords appear to have been responsible for adding another charge - that Yelverton had perpetrated abuses in issuing writs of quo warranto in connection with the inns' patent. Well before this the King had weakened his position in the case by formally handing Yelverton over to the Lords to deal with,² but now, angered by Yelverton's defence that he had actually tried to safeguard the King's

¹ See p.152 above. Yelverton was being questioned about the patent for gold and silver thread for which he had been one of the referees: C.D. ii, pp.164-6.

² As Yelverton had been sentenced to imprisonment by the Star Chamber, the King's action was presumably necessary if the Lords were to avoid the difficulties which had faced the Commons over Proctor. It will be remembered that James protested when Proctor, who was his prisoner, was committed to the custody of the Commons' serjeant for an offence against their privileges: see p.103 above.

profit - and suffered imprisonment for doing so - by attempting to control the number and the evils of patents, he announced to the Lords that he regarded such a defence as a personal insult. Furthermore, he strongly objected to Yelverton's being put to answer the second charge which he regarded as outside the scope of the investigations which he had authorised the Lords to conduct. For the moment, however, he made no attempt to take control of the prosecution and simply asked the Lords to punish Yelverton.¹

The storm broke in earnest on 30 April. Yelverton was required to explain his defence. He described the threats he had received of loss of office if he did not support the patents and, in a dramatic outburst identifying the author of the menaces as Buckingham, warned him: "If my Lord of Buckingham had but read the Articles exhibited in this place against Hugh Spencer and had known the danger of placing and displacing officers about a King he would not have pursued me with such bitterness". After considerable interruption Yelverton was permitted to continue and finished by asserting that he was ready to prove all that he had said.²

¹ C.D. iv, pp.139-40; v, p.71; L.J. iii, pp. 77, 82; Rushworth, op. cit., i, pp.31ff. James was shown evidence that few of the writs of quo warranto issued by Yelverton had been completed according to due process of law: L.J. iii, p.96. It seems to have been the inclusion of this second charge and the nature of Yelverton's defence, rather than, as Gardiner suggested, the Lords' readiness to allow his remarks to pass unchecked, which annoyed the King: L.J. iii, pp.81-2; Gardiner, History, iv, p.111.

² L.J. iii, p.121; Gardiner, Debates 1621, pp.43-9.

A critical moment had arrived in the development of Parliamentary judicature. Yelverton was making a much wider defence than the charge brought by the Commons required, yet he was before the House of Lords as a result of that charge. What happened next might well be vital to the continuance of this judicature. For the first time in the investigation of monopolies Buckingham's name, so long hinted at, had been explicitly mentioned. Hints could be ignored by the Court; this could not. Furthermore, if Buckingham could be likened to Despenser James could be compared with Edward II, so that by extension Yelverton's attack on the favourite cast a shadow across the monarch.¹ The government was faced with tragedy: it could not win. If the King took the examination into his own hands he would raise a storm of protest and would be confronted with his own abandonment of jurisdiction on 27 March; if he allowed the Lords to proceed with the full investigation which was essential to disprove Yelverton's charges, this would involve the questioning of Buckingham and an uncomfortably close and perhaps unprecedented examination of the government's activities.²

In the event, the King's only success was against Yelverton himself, but this was sufficiently conspicuous to hide, to some extent, the gain to the Lords. Moreover, the Lords had to proceed cautiously

¹ de Villiers, op. cit., p.x.

² D'Ewes, op. cit., i, p.186.

for fear of losing their advantage in an outburst of royal anger. When, therefore, on 2 May the King told the Lords that, while they might deal with Yelverton's onslaught on Buckingham, he alone must judge the attack on his honour, the House debated how far the royal honour had been impugned but decided on a tactful procedure. On 6 May, with the Archbishop of Canterbury as spokesman, the whole House presented itself before the King at Whitehall. Begging to be allowed to continue with the case the Lords assured him that he would thereby show his trust in their readiness to do him justice. Their remarks upon the infringement their liberties were suffering as a result of the King's intentions caused James to comment upon the consequences of an acquittal of Yelverton and on the stand they were taking upon reason and precedent, a stand which he disliked.¹ However he promised them an answer the following afternoon and when this came it returned the case entirely to the Lords.

Despite their procedural victory the Lords were virtually obliged, because of the King's attitude to the case, to find Yelverton guilty. Even so, some days elapsed before the matter was finally settled. Yelverton's account was shown to be partly false, yet on the 12th, although the peers were prepared to vote that he had offended against the King's honour, they declared that they might reverse their

¹ Gardiner, Debates 1621, pp.54-60; de Villiers, op. cit., pp. 32-3. James said that they would be judging the King, adding that those who did this might depose him. He would never give them this right: de Villiers, p.33.

decision if he were able to defend himself successfully. In fact, Yelverton's defence two days later was very disappointing. He retracted his charges against Buckingham and was censured unanimously. A sentence of fine, imprisonment and public submission was fixed and, on the 16th, formally pronounced. The Commons were not called to hear it, although their complaint was one of the reasons given for the punishment.¹ Perhaps earlier procedure was not followed because the Commons had apparently never formally transmitted Yelverton to the Lords.

Yelverton was sentenced by the Lords partly to preserve the privileges which had so nearly been snatched from them. There is considerable evidence to show that they acted reluctantly; they do not appear to have been unanimous over the size of the fine, and the Lord Treasurer proposed that the share of it due to Buckingham be remitted; throughout there seems to have been general sympathy for Yelverton and probably a belief that, although he had failed to prove it, there was something in what he had originally said against Buckingham.² The case had tested to a greater extent than previously the relative strengths of Court and Lords, and although the King had,

¹ L.J. iii, pp.114-5, 119, 121-5. The Commons heard of the sentence the same day: C.D. ii, p.373.

² Gardiner, Debates 1621, pp.85-90; C.S.P. Ven. 1621-3, p.55. The case did not ruin Yelverton. He was reconciled to Buckingham who forgave him his share of the fine, and he was later made a judge: Rushworth, op. cit., i, p.34; L.J. iii, p.125.

on this occasion, successfully averted an attack on Buckingham this had been achieved more by luck than judgment.¹ Parliamentary judicature had been strengthened and Parliament's control over it confirmed. When, in 1626, a serious attempt was made to use it against Buckingham the monarch would have to resort to rather more desperate evasive action. On the other hand, the Commons' part in the case, especially in its later stages, was fairly small, despite the fact that Yelverton did not enjoy the protection provided by membership of the Lords; and neither Coke nor Selden thought the case worth mentioning in their discussions of judicature.

While the Lords had been debating with the King over Yelverton's case the Commons had become involved in a similar and equally significant controversy arising out of their sentencing of Edward Floyd. This produced disagreement within the House and argument with both James and the Lords, leading to a definition of the Commons' part in judicature which was of great importance. Floyd in many ways provided the Commons with their Rubicon, as Yelverton had the Lords, but the lower House proved less successful in crossing it than were the peers. They failed to extend their own judicature, as they had similarly failed in 1610; and the case reminded them of the very limitations on their power which had compelled them to turn to the

¹ Nevertheless Buckingham was probably strengthened by his escape. He had been found "Parliament prooffe" which, reported Chamberlain, was "no small comfort to him": McClure, op. cit., ii, p.374.

Lords earlier in 1621.

Edward Floyd was a Catholic lawyer who, by order of the Council, was a prisoner in the Fleet. Early in January 1621 he had slanderously insulted the King and Queen of Bohemia and although this was reported to the Warden of the Fleet it was not until the examination of the latter, late in April, that Floyd's words became public.¹

The Commons reacted violently: on the 28th Floyd was ordered to appear before them on the following Monday. He denied having made the remarks and the Commons ordered the examination of witnesses and a search of his possessions in the Temple and at the Fleet. In a poorly attended afternoon session, from which both Coke and Noy were absent, argument started over the best course of procedure: some members wanted to refer the case to the King; others suggested collaboration with the Lords; but finally the House decided to proceed to punishment itself.² If there were no precedent the

¹ The Warden was accused of maltreating his prisoners and charging them high fees. Although he evidently did not receive a full hearing by the Commons, they resolved to send him to the Lords; but they do not appear to have done so. Shortly before the prorogation in June, some of the Warden's prisoners, who had also petitioned the Commons, addressed a complaint against him to the Lords. He must have been bailed during the summer, because he answered to his bail at the start of the second session in November, but nothing further seems to have happened: C.D. iii, pp.273-5; iv, p.405; L.J. iii, pp.157-8, 163, 174.

² Those such as Digges who advocated co-operation with the Lords were chiefly, of course, the moderates, but it was also suggested that the Commons alone were not able to inflict a sufficiently harsh punishment. On the other hand, some members evidently resented the handing over of offenders to the Lords, and in deciding as it did the

Commons would make one, rather than let the case slip out of their hands. With great zeal the House fixed on a punishment and arranged for it to be carried out on the following morning, 2 May.¹

Before this could be done, however, the King intervened, ordering a stay of execution. He asked the House a number of questions: whether it was a court of record with judicature on matters unconcerned with its privileges, its members or the public grievances of the kingdom; whether - if this right existed - it should inflict punishment on a person who protested his innocence without first taking evidence on oath; whether it could punish a non-member for an offence not committed during a Parliamentary session; and whether the House would not have been better advised to ask his pleasure before dealing with his prisoner - a question reminiscent of a criticism James had made of the Commons' proceedings against Proctor. The King also laid before the Commons an ordinance made during the first year of the reign of Henry IV: in this the House had abandoned all power of

House followed the advice of Sir George Moore, Strangways and Seymour. During the debate of 27 February on Mompesson's case, Moore had supported action independent of the Lords, if such were within the power of the Commons: Nicholas, op. cit., i, pp.370-4; C.D. ii, p.146; iv, p.278; Relf, op. cit., pp.xv-xvi. It may have been the rather different issues at stake in the case, which was somewhat more general and political in nature than others in 1621, that persuaded the Commons that they had the right to act alone.

¹ Williams, op. cit., ii, p.252; C.D. iv, pp.278, 281-2; v, pp. 126ff; Nicholas, op. cit., i, pp.371, 373, 374.

judicature and judgment, both then and in the future. James concluded his onslaught by thanking the House for its tenderness towards his family, promising to confirm what had been done if it were shown to be legal.¹

The King's position was an effective one and the ensuing debate showed the extent to which his challenge had thrown the House into confusion. There was an uneasy feeling that their privileges were under attack; disquiet was increased by the realisation of the difficulty of defending them in this instance. Noy questioned the Commons' claim to the power they had assumed, and supported the King's right to suspend judgments, quoting precedents for this.² In his view the Lords should have dealt with the case. Alford wanted a royal pardon for Floyd "since our Ship hath touched on a Rock". Digges and others wanted the King petitioned to confirm the sentence; Montagu and Moore suggested that a bill be passed to do this, but Crew objected on the ground that to strengthen ~~their~~ sentence in this way detracted from it. Poole proposed a search of the precedents

¹ Nicholas, *op. cit.*, ii, p.2; *C.D.* iii, pp.134ff; iv, pp.290-1; v, pp.131-2. James did not normally have precedents readily available. Perhaps he obtained unaccustomed help at this moment.

² *C.D.* ii, pp.337-40; iv, pp.291ff. Particularly the precedent of Latimer.

but Hakewill retorted that this would do no good as none appeared to exist.¹

However, the House did its best to pull itself together. The validity of the King's medieval precedent was questioned on the grounds that it was merely an ordinance, not a statute, and that it was the product of special circumstances - the trial of Richard II, with which the Commons did not want to be associated. Members wondered whether it mattered that no oath had been administered during the examination of Floyd. Coke asserted that the House was a court of record, and that it was entitled to deal with an offence committed outside Parliamentary sessions but denied in Parliament, because the denial constituted a renewal of the offence. He was, of course, going back completely on what he had said barely two months earlier - when different circumstances prevailed. On 9 March he had declared that the Commons alone had no power to punish any but members and their dependants, itself almost certainly in contradiction to the position the House had adopted in punishing Michell. From this shaky position, unsupported by precedent, the Commons sought and were granted a royal audience.²

¹ Nicholas, *op. cit.*, ii, pp.5-8. The proposal of Montagu and Moore, like the bill against Proctor in 1610, is an interesting foreshadowing of the revival of attainder in 1641.

² *C.D.* iii, p.144; iv, pp.292-3; v, pp.133-5; *C.J.* i, p.546. Coke claimed that precedents existed for the Commons' action but he did not substantiate his contention with effective examples: *C.D.* iii, pp.138-9. Hakewill was no more successful a few days later: *ibid.*, iii, pp.177-8.

Before they went to the King they held another debate in which they did their best to convince themselves of the legality of their actions. They found fault with James' precedent, asserting that the very existence of the Commons' power of judicature over their own members and those who offended them showed that the precedent had not been followed. Cranfield injected a gloomy note into the debate by saying that the Lords would probably claim that their power had been usurped: this would compel the King to judge impartially between the Houses instead of showing the leniency towards the Commons that might otherwise have been expected. In the afternoon the King made a predictable reply to the Commons' appeal to the law of reason and to their assertion that the House was a court of record. He disputed their claims but reserved a full answer until their precedents had been written down, and he warned against "challenging an omnipotency or ... erecting a judicature which is not known how far it may reach".¹ It was a reasoned challenge which the Commons would never have been able to meet satisfactorily.

Perhaps James realised that it would be unwise to alienate the Commons by making his victory clearer; perhaps he altered his plans in order to end the whole issue as quickly as possible. The outcome of the examination of Floyd ordered by the King supports the latter surmise. Floyd so annoyed the King by his confession that James

¹ Nicholas, op. cit., ii, pp.13-14; C.D. ii, p.343; iv, p.296.

determined to punish him at least as heavily as had the Commons. He therefore told the Commons that he was proposing to send Floyd to the Lords.¹ This announcement precipitated another round of excited discussions in the Commons as the House saw its unique right to present cases to the Lords under attack. Roe argued that the Lords had no authority to take cognisance of a public grievance unless the Commons presented the matter to them, and warned the House that the King's proposal might endanger this privilege and lead to their exclusion from such business. Other members bemoaned the lack of precedents and resolved that arrangements should be made for the preservation of records. More immediately, they appointed a committee of eight to set down their proceedings against Floyd. In consequence, the entry for 4 May in the Commons Journal states that Floyd was "impeached before the Commons assembled in this Parliament".²

As far as we know this is the first and only occasion on which the word "impeached" is used in 1621 of the Parliamentary trials of that year. Yet the case of Floyd is less like an impeachment, if this term is used to describe a trial by the Lords of charges or evidence transmitted to them by the Commons, than virtually every

¹ The diarists vary in the tone they attribute to the King's message. The majority report it as a proposal, indicating the course of action he will adopt unless the Commons have any other suggestions. According to Smith the Commons were left far less room for making proposals: C.D. iii, p.164; iv, p.303; v, p.366; vi, p.400.

² Nicholas, op. cit., ii, pp.19-23; C.J. i, p.608.

other case in this Parliament. The Lords had taken no part in the proceedings which the Commons were describing in their entry. On the other hand, the committee responsible for advising the House on this consisted of men such as Coke, Phelps, Noy, Alford and Samuel Sandys, who are likely to have weighed their words carefully. What did members mean and why did they choose to express themselves in this way, using phraseology which was not taken from the medieval records so assiduously studied, and which was not to be repeated in 1626 when the formula for impeaching Buckingham was to be drawn exactly from the fourteenth century? It hardly seems possible to provide a wholly convincing explanation. Perhaps the verb "impeached" bore no particular or technical significance in 1621, and there is no doubt that it was in general use at this time to mean "accused". Only five years later, however, it had acquired technical significance, at least in the mind of Selden, untypical though he may have been of the average member; and those who determined to "accuse and impeach" Buckingham probably had some reason for using language which was apparently absent in 1624 or 1621. Perhaps "impeached" had a different meaning in 1621 from that which it later assumed. If so, we are unlikely ever to know what this was, and it seems likely to have had only a short period of currency, for the familiar meaning was emerging by 1626. Perhaps the word was used of Floyd's case deliberately to obscure matters. Some members had been trying hard to prove that the Commons had power to act as they had done, and even those who

had cast doubts on such claims were unlikely to be eager to advertise the predicament in which the House had placed itself. Perhaps the entry in the Journal deliberately used the word "impeached", knowing that it referred to a judicial process, in an attempt to maintain a belief in the existence of a unicameral judicature by the Commons in such cases. Again, it may be that "impeached" had a respectably antique ring to it, which, coupled with a vagueness about its technical meaning deriving from its apparently infrequent use in this sense, stood the House in good stead. Certainly, one of the diarists consciously or unconsciously lends assistance in this respect by omitting all mention of the Commons from his account of the proceedings and simply says that Floyd was "impeached in Parliament", adding that "the Parliament adjudged" him.¹ Furthermore, even members who found the Commons' behaviour difficult to justify recognised that the House had brought the case to some sort of conclusion. Shortly before the judgment was entered in the Journal Noy recommended that it should be "putt in the forme of a Judicature and to be drawne presently; and not in the words of Question in it, but positively as Judgments are".² It may be that by describing Floyd as "impeached" the House was merely recording what it believed it had done. If this is true, it is hardly surprising that this word was not used of other cases

¹ C.D., iii, p.170.

² Ibid., iii, p.168.

where a very different procedure was followed. Yet despite such explanations, it must be acknowledged that the entry made in the Journal on 4 May still remains something of a puzzle.

The next development in the case was that the Lords, with a timing which cannot have been accidental, asked for a conference with the Commons. The request arrived on 5 May, and at the conference the Lords insisted that the Commons' claims for their rights of judicature should be examined by judges and king's counsel.¹ Some members of the lower House had been worried that the conference would damage the Commons' liberties and jurisdiction and Coke did his best to convince the Lords of the validity of the Commons' position. Edwin Sandys' attempt to appeal to reason led Pym to write in his diary that "he quickly betooke himselfe to an easier taske...", turning to the zeal the House had shown in dealing with this attack on the King's family. One of the Lords' most effective retorts was to enquire what the Commons' reaction would be if the Lords infringed

¹ C.D. iii, p.173; L.J. iii, p.110. One of the questions arising from this case is why had the Lords not intervened earlier. Doubtless there had been a great deal of discussion behind the scenes and Relf suggests that Coke and Noy, together with Pembroke, one of the Commons' chief allies in the Lords, used the issue as a means of strengthening the jurisdiction of the upper House. As the peers were embroiled with the King over Yelverton this was probably welcome. Spedding felt that the Lords were frightened to protest, particularly as (until the Journal entry of 4 May) they had no official notice of the sentencing of Floyd, and waited for the King's encouragement before doing so. It is important also to remember that the Lords were themselves well occupied at this time, dealing with the Yelverton issue and sentencing Bacon and Michell. Relf, op. cit., pp.xvii-xviii; Spedding, op. cit., vii, p.274.

their power to propose subsidies, contrary to the ordinance of 9 Henry IV, as the Commons had infringed the jurisdiction given to the Lords by the ordinance of 1 Henry IV.¹

The Lords remained unconvinced and when, two days later, they debated what the Commons had said in their defence they agreed that none of the precedents given by the Commons was relevant to this case. The Commons had not shown that they had a right to sentence a man who was not a member of their House for a matter that did not concern them. Consequently, they asked for a new conference. The request produced some grumbling when it reached the lower House. Montagu had been engaged in a search for information about a pursuivant who, though not a member of the Commons, had been punished by them, but the case was more firmly established in his memory than in the records.² However, some members at least could see the writing on the wall clearly enough: Edwin Sandys made a conciliatory speech in which he showed that the Lords were not challenging the justice of the Commons' judgment but their power to give it, and that the House had been trying to prove the wrong things at the last conference. This type of approach to the anxious members had its effect: at the conference the Commons quietly accepted criticism of their evidence as well as

¹ C.D. ii, pp.349-50; iv, pp.313-4.

² L.J. iii, p.113; C.D. iii, p.191. Montagu soon gave up: on the 11th, he told the House that he had been in touch with Cotton who told him that the precedents would be best ignored: C.D. iii, p.229; C.J. i, p.619.

the statement that the Lords believed their privileges had been infringed. Both Houses politely declared that they wanted agreement. To obtain this they met separately to discuss the appointment of a sub-committee and later arranged that this should meet on 10 May to arrange an accommodation. This sub-committee rapidly produced a settlement: it recognised the Lords' power to deal with Floyd and promised that the action of the Commons would not establish a precedent. It was agreed that the Commons would confirm their promise by drawing up a protestation which would be entered in the Lords' Journal. Coke even retreated from asking the Lords to punish Floyd, merely leaving him to their wisdom, a withdrawal for which he was subsequently criticised in the Commons.¹

Both Houses accepted the settlement and the Lords made arrangements to examine Floyd. Half the members of the committee they appointed had been similarly involved in Bacon's case. Their work proceeded smoothly except for one minor fracas with the Commons which nevertheless reveals the insecurity some members of the lower House still felt about the settlement.² On the 26th the peers heard

¹ C.J. i, p.613; Nicholas, op. cit., ii, pp.43-5; C.D. iii, pp.229-32, 237-8. There was, however, some doubt as to exactly what the Commons had asked the Lords to do. Edwin Sandys argued that the "request (was) limited to the Execution not to the Sentence and examinacion": C.D. iii, pp.230-1; iv, p.334.

² L.J. iii, p.125. The dispute was over the Lords' request to the Commons for a trunk containing Floyd's papers. There was a fear that its contents might be used to damage them by altering their judgment: C.D. iv, p.360-1.

Floyd's poor and rather insolent reply to the committee's charge and on the same day sentenced him. The Commons took no part in the last stage, neither being sent for nor demanding judgment. It seems that this was because they had already given judgment upon him. There was certainly a belief that a judgment pronounced by one of the Houses could be reversed only by that House. Perhaps it was feared that this right might be damaged if the Commons assisted at the Lords' sentence.¹

Undoubtedly the Commons had been divided over the case of Floyd. Some members felt that their privileges would be endangered by any surrender; others, chiefly the more experienced, felt that their privileges would be endangered by further persistence. Coke saw the merit in both positions and, for a time, tried to ride both horses. The dispute caused some bitterness between the Houses which found an echo outside Parliament.² Yet it led to an important compromise:

¹ L.J. iii, pp.104, 133-4; v, p.156; Nicholas, op. cit., ii, p.107; C.S.P. Dom. 1619-23, p.253; C.S.P. Ven. 1621-3, p.53; Williams, op. cit., ii, p.256; Spedding, op. cit., vii, pp.275-6; C.D. v, p. 386. It has been pointed out that if the Lords had no independent power of original jurisdiction and if the case of Floyd was not an impeachment, the Lords' punishment was no more justifiable than the Commons' action: Hargrave's preface to Hale, op. cit., p.xix; D.S. Berkowitz, 'Young Mr. Selden. Essays in Seventeenth-Century Learning and Politics', chapter V, p.36.

² See Sir Robert Cotton's pamphlet A Briefe Discourse concerning the Power of the Peeres, and Commons of Parliament, in point of Judicature (n.p., 1640), which appeared at this time. It claims that the Commons' right to participate in judicature would have been apparent from many precedents had not the keeping of records been left to the Clerk of the Lords who, either deliberately or through negligence, had failed to incorporate them in his Journal: pp.5-6. The title of this pamphlet has been subject at times to slight variation.

although their judgment of Floyd was left standing, the Commons' claim to sentence any except members or those accused of breach of their privileges was swept aside. They remained strictly dependent upon the Lords for success in dealing with other defendants, and they failed to extend their own judicature. However, disappointing though this was to the more militant members, they could take comfort from the fact that they had successfully excluded the King from interfering in what was now becoming an established process. Although James had not formally agreed that the Houses might work out a conclusion between them, his failure to carry out his proposal to present Floyd to the Lords himself, and his inactivity during the final stages of the case, show that he tacitly consented to the arrangement. In doing so, he abandoned not only his implied right to accuse before the Lords, but also a very strong position against the Commons of 1621. The frequency with which, in this Parliament, the King was prepared to let his case go by default is strong evidence that he, at least, had little grasp of the potentialities of Parliament's revived judicature.

Meanwhile, the Lords had dealt with Michell, whom the Commons, late in February, had sentenced, apparently using a jurisdiction which was even at that time doubtful and which had by now been abandoned. Since then Michell had languished in the Tower. He had been discussed in conference with the Lords, examined by the lower House, and mentioned in written evidence, sent by the Commons to the Lords, about

the thread patent, in which he had been associated with Mompesson. Just before the Easter recess the peers were told that he would be sent to them if they so desired, but the Commons do not seem to have taken any initiative in this respect, either then or later. Indeed, it seems that, at this stage, the Lords were more determined than were the Commons to punish Michell, for at the same time they recorded that he had been "found guilty of many great Misdemeanors ...", and they discussed what should be done. The Commons, however, had not lost all interest in the matter. On 21 April, they resolved to question the alehouse patentees, Dixon and Almond, and the referees, chief of whom was Mandeville, the Lord Treasurer. This drew from the King the protest that no man should "be questioned for mistakynge the lawe upon a Reference" and although, after a full debate on 11 May, the matter was quietly dropped, the momentum generated during the previous three weeks perhaps helped to ensure Michell's punishment. No formal charge against him seems to have been sent to the Lords but on 26 April the peers had examined him and the following day went into committee to consider their sentence.¹ No sense of urgency seems to have possessed them and they soon became distracted by the Yelverton issue, with the result that not until 4 May did the final

¹ C.D. ii, p.258; iv, pp.252-3; v, pp.28, 30, 343, 347; L.J. iii, pp.63, 65; Relf, op. cit., pp.35-6; C.J. i, p.586. The charges against him were read out by Mr Serjeant Crew who later performed the same function in Bennet's case. He shared his responsibility in the cases of Mompesson and Yelverton.

debate on Michell's punishment take place. Charles, Buckingham and Arundel argued against degradation from knighthood, but this, as well as exclusion from public office, a fine, and imprisonment during the King's pleasure, all formed part of the punishment fixed. The Commons were summoned to the Bar of the Lords to demand judgment on what the peers described as their "Complaint" against Michell. The Speaker used the form now becoming increasingly familiar:¹

the Knights, Citizens, and Burgesses of the house of Commons, haveing presented to yowr Lordships one Sir Francis Michell and Sir Giles Mompesson for inormus and gross offenders, heearing that yowr Lordships, after a iudgment before passed on the then Sir Giles, that yow are ready to pronounce sentence on Sir Francis Michell, they are now comm to demaund it. (2)

Despite these statements by the Lords and the Speaker, there seems to be no evidence in the records that the Commons had ever formally resolved to send Michell to the peers. Still less can Selden's assertion that Michell was "accused and impeached" by the Commons be justified from contemporary evidence.³ Nevertheless,

¹ L.J. iii, pp.89-90, 95, 108-9; C.D. v, p.353; Nicholas, op. cit., i, p.341; Gardiner, Debates 1621, pp.64-5. The wording was similar to that used when the Commons demanded judgment against Bacon (L.J. iii, p.106). For Mompesson the formula had been rather different (ibid., iii, p.72). For the ceremony before the Earl Marshall's commissioners at which Michell was degraded from his knighthood, see Camden, op. cit., ii, p.657.

² C.D. iii, p.170.

³ Selden, Of Judicature, p.30.

whatever the part played by the Commons in securing Michell's condemnation by the Lords, it is interesting to note the Speaker's claim that the Commons had presented Michell to the peers as an offender. Now Maude Clarke argued, quite convincingly, that in 1621 "the Commons had done little more than to demand inquiry; though summoned to hear judgement, the whole conduct of the trial was outside their control". This seems to be valid, but it is partly based on another opinion which may be debatable. She goes on to state that not until 1626 was the idea of indicting a man of an offence plainly understood, and she accurately points out that in Middlesex's case in 1624 "not the man but the articles of accusation were presented".¹ Perhaps the Speaker in 1621 was merely telling the Lords that the Commons had handed Michell over to them: as the Commons appear not to have drawn up a charge his words may have had no particular significance, but it is just possible that they did and that the Commons of 1621 understood well enough the process of indicting a man of an offence.

The Commons were fortunate, especially in view of the confusion over Floyd, that the Lords, before sentencing Michell, did not choose to question their early activities in the case.² The case of Michell might have become more important than it did. The slow pace both

¹ M.V. Clarke, 'The Origin of Impeachment', Fourteenth Century Studies, p.268.

² But as early as 22 March the idea was current in the Lords that Michell was committed by the Commons for contempt: Harleian MS 158, f.239; L.J. iii, p.63.

Houses adopted shows not only how insignificant Michell was compared with Parliament's previous victims but also how certain the Houses now were of success whenever they acted jointly.

Michell's case was the last one to be brought to a successful conclusion in the Parliament of 1621, but right up to the end of the first session on 4 June both Houses were continuing to investigate abuses and complaints. Many of these had come to light during the course of the earlier trials and might themselves have ended in judgments but for the interruption in June. Of these, two cases reached the point at which the Commons laid evidence before the Lords: that against Bennet took the form of an accusation which the Lords started investigating and which would undoubtedly have led to Bennet's punishment; the evidence concerning Theophilus Field, bishop of Llandaff, was not formed into an accusation, partly because Field, like Bacon, was a member of the House of Lords, but the Lords did investigate it. No great harm came to Field but the Commons did secure one minor scalp.

Bennet's case was straightforward and raised no new issues, though it gave rise to some discussion of the Commons' authority. Judge of the prerogative court of Canterbury, Bennet was accused of corruption, and evidence was accumulated by the Commons' committee during the Easter recess. By the moment when this was handed over to the committee for abuses in courts of justice an ominously large

amount had been collected.¹ The Commons had declared that members of the House of Lords could appear before their committees as witnesses in the case after Coke had assured them that this was in accordance with the precedents.² During the third week in April the Commons debated the procedure to be followed with a care and caution which makes all the more surprising their precipitate action against Floyd ten days later.³ Speakers discussed the extent of the Commons' power: "There is iudgment of fact which is ours, Judgment of paine which is the Lords",⁴ a statement by Samuel Sandys which was forgotten or ignored during the opening of the attack on Floyd. Pym declared that when Parliament was divided into two Houses its power was also divided: inquisition to the Commons, judgment to the Lords. But he added that the Commons still had some share in the judgment and should beware of handing over to the Lords too much of their power of inquisition. Shrewdly, he advised the House to present to the Lords only the evidence that was fully approved. The debate shows

¹ C.D. iv, pp. 214, 218-23, 236. But Chamberlain still believed that Bennet's friends would carry him through: C.S.P. Dom. 1619-23, p.248.

² C.D. iii, p.13. He does not appear to have named his precedents. Attempts in subsequent Parliaments to secure the attendance of the peers, Middlesex and Buckingham, led to difficulties.

³ Especially as, unlike Floyd, Bennet was a member of the Commons. A possible explanation is given below: see p.210 n.2.

⁴ C.D. iii, p.53.

that there was still much room for argument about the best procedure, but the House agreed that Bennet should answer on the following Monday, either in person or by counsel. A select committee was appointed to prepare matters, and the heads of charges, though not the names of witnesses, were given to Bennet.¹ On 23 April, having heard from Coke of the fate of judges who, in the past, had taken bribes, the Commons expelled Bennet and placed him under house arrest.² They approved the accusation drawn up by their committee and arranged to ask the Lords for a conference at which it might be handed over. It was while these decisions were being reached that Hakewill commented "I have observed when we have gone to the Lords it hath been by impeachment, clamor or accusation", a remark which presumably indicates that he believed that more than one method of approach to the Lords was possible.³

Unfortunately, we do not know whether members agreed with Hakewill who, in any case, probably thought that the Commons were acting

¹ C.D. ii, p.303; iii, pp.42, 53; iv, p.238.

² This caused controversy, as it was claimed to be without precedent, but it was defended on the increasingly familiar ground that in cases of necessity there was a great right to make a precedent. The necessity arose from the fear that Bennet would flee abroad through "his match with the Dutch", i.e. his third wife: C.D. ii, p.314; iv, pp.245-9.

Coke mentioned Chief Justice Thorpe (24 Edward III) who was found guilty of corruption. He was not hanged, contrary to what Coke stated: ibid., ii, p.313.

³ C.D. ii, p.314. For a discussion of this remark, see p. 75 above.

precipitately: "He is but barely accused yet".¹ Still less do we know which method the House adopted. At the conference with the Lords which took place on the 24th, Sackville declared himself "Commanded by the Lower house to complain of Sir John Bennet ..."; while Coke wound up: "We have given nothing but an opinion, your lordships must give the judgment".² The judgment was never given. During the remaining weeks of the session the Lords granted Bennet bail and examined the witnesses but displayed no appearance of haste. Nor is there any evidence to show that the Commons became impatient. The Lords eventually gave Bennet until the next access of Parliament to reply to the charges against him but by then both Houses had lost interest in him.³ However, this conclusion emphasises the difference in the treatment Bennet had received compared with some of his predecessors. The headlong rush to conviction was absent, while the

¹ C.D. iii, p.55.

² Ibid., iii, pp.74-7. Sackville seems to have presented at least some of the objections in writing: ibid., vi, p.394. Selden says that the Commons "accused" Bennet: Of Judicature, p.31.

³ L.J. iii, pp.87-8, 130-1, 146-8. Though on 15 December Perrot did complain in the Commons that he had been neither cleared nor sentenced. The Lords told the petitioners against Bennet that they still intended to deal with him but at the next access of Parliament: at that moment they were too busy: C.J. i, p.664; L.J. iii, pp. 197-8. He was eventually sentenced in the Star Chamber: G.A. Harrison, ed., 'The Diary of Sir Simonds D'Ewes, deciphered for the period January 1622 to April 1624' (Unpublished M.A. thesis of the University of Minnesota, 1915. A microfilm of this thesis is deposited in the Library of the University of London), pp.97-100.

decision to send him the heads of the charges is indicative of an approach which was willing to give him a reasonable chance to defend himself. The case shows that procedure was still flexible and capable of modification.

The Commons showed rather more eagerness to see an end to the case against Field, largely because their own prestige and standing were involved. In March they had been told by Davenport that Field had received a recognisance from Edward Egerton. This promised Field payment if he succeeded in persuading Bacon to grant Egerton a favourable decree. Field had failed to obtain this and, according to Davenport had refused to surrender the recognisance. The Commons had suggested to the Lords that they should investigate the matter and punish Field if he were found to be guilty. They made no formal charge against him¹ but the Lords did investigate Davenport's accusations. They were found to be groundless and the Lords, apart from hearing a proposal that a reproof be administered to Field, let the matter drop.²

There the case rested until 14 May when the Commons, still smarting in the aftermath of their defeat over Floyd, debated it. Davenport had denied, on oath, before the Lords what, unsworn, he had declared to the Commons. The Commons felt that they had been made to look

¹ But they did talk about their "Complaint" against him: C.D. ii, p.149; iii, pp.271, 356; iv, p.352; v, p.164; Nicholas, op. cit., ii, p.83. Selden does not mention the case.

² L.J. iii, pp.53-5; Relf, op. cit., p.52.

foolish and were worried that Davenport's example would find its imitators whenever the Commons examined without first administering an oath. Furthermore, the Lords had neither asked the Commons to demand judgment on Field nor told them the grounds for the judgment. Hakewill then proposed that the Commons should abandon the practice followed during the session by which they waited for an invitation from the Lords before demanding judgment. He urged the House to assert its right to demand it uninvited, and Alford complained that because they were not told the basis of a sentence given by the Lords they did not know which charges had been proved nor whether a punishment was fair. He advocated an examination of the ancient manner of demanding judgment, and claimed that the precedents gave the Commons the right to demand another judgment if they found the first unsatisfactory. Brushing aside Hakewill's objections that Davenport was the Lords' prisoner and that all their information was based on unofficial reports, the House committed Davenport to the custody of the serjeant to be released on bail and set up a committee to conduct the enquiry proposed by Alford. The following day the House received, presumably from this body, the reassuring if slightly irrelevant information that in the cases of Neville and Latimer they had not only demanded judgment but had even selected some of the punishments.¹ On the 16th the

¹ C.D. ii, p.368; iii, pp.249-50; v, p.165; vi, p.156; Nicholas, op. cit., ii, p.69. The information was accurate.

Commons agreed to send a message to the Lords asking whether they were ready to give judgment because the Commons intended shortly to demand it, in accordance with their ancient rights and customs. Sackville was chosen to deliver the message; he reported the Lords' answer that they would deal with the case as soon as they had time.¹

In fact, the Lords ignored the Commons' hint that they wished to be called upon to demand judgment and the Commons did not assert what they had implied was their right to demand it without invitation: the proposed change in procedure had failed to materialise. On the 30th the Lords simply informed the Commons that they had asked the Archbishop of Canterbury to admonish Field: although not faultless he had not been found guilty of any bribery. At the same time they handed their examination of Davenport to the Commons, thereby inviting the lower House to deal with a matter which was no concern of the peers. The Commons heard Davenport's apology and excuse that, when faced with the oath, he realised that he had no proof of what he had claimed against Field. They listened to precedents for punishment and on the

¹ C.D. ii, pp.372, 373; v, p.377. In his definition of impeachment, as opposed to complaint, Elsynge said that judgment was not to be given until the Commons demanded it: H. Elsynge, 'The moderne forme of the Parliaments of England'. American Historical Review (1948), vol. liii, no. 2, p.302. In applauding the Commons' decision of the 16th, Roe and Sackville said that it would "refresh our old custom of demanding iudgment, that so things commended to the Lords may not lye ther unjudged": C.D. iii, p.271.

last day of the session sentenced him to a month's imprisonment in the Tower.¹

One of the impressions that the cases of Bennet and Field leave behind them is that both Houses were somehow less determined in pursuit of their victims now than earlier. Perhaps, as Spedding suggested, they were satiated.² But if the Commons had really lost some of their initial enthusiasm two difficulties arise which make it seem likely that Spedding's explanation is too simple.

The first difficulty is that during the last three weeks of the session the Commons began to investigate allegations of extortion brought against two men. These were John Lambe, Chancellor of Northampton, destined to be knighted a few weeks after the close of the session, and Richard Craddock, justice of the peace and Chancellor of the Bishopric of Durham. The House agreed that the evidence should be handed to the Lords after the usual investigations and, with an optimism not shared by all members, arranged that these should continue after the end of the session. One might reasonably have expected that the interruption in sittings would cause the House to lose interest

¹ Ibid., ii, pp.410-11; iii, p.356; iv, pp.416-7.

² Spedding, op. cit., vii, p.248. Chamberlain, writing to Carleton, on 2 June, felt that Parliament was becoming more lenient. He pondered on the reason, suggesting that its first fury was over and that it was loath to impose further fines until those already inflicted were better employed: McClure, op. cit., ii, p.377. The lack of urgency in dealing with Bennet may be explained by the popularity he enjoyed in the Commons: Roberts, op. cit., p.32.

in Lambe and Craddock, but this was not so. Unlike Bennett, the two Chancellors were still subject to the investigations of the Commons when the autumn session opened, and the House showed itself still anxious to proceed with the case. Shortly before that session ended they were invited to be present at the next access of Parliament and there was a clear intention to continue the attack unless they gave a satisfactory answer.¹

The second difficulty arises from the extent to which members realised the significance of what had taken place during the first session. Doubtless many of them thought that they had merely been investigating isolated but important grievances. These are the members whose enthusiasm would have declined. But at least one member, an influential one, saw things in rather deeper terms. Speaking in the long debate of 30 May on the threatened adjournment Pym commented on the achievements of this Parliament. "Judgment, the which hath slept theis 300 yeears and is the greatest benifit that may be, is now revived."² Having struggled to revive this judgment he, and those members who thought like him, were unlikely to lose their enthusiasm for it.

Satiety seems therefore unlikely to be more than a partial

¹ Nicholas, *op. cit.*, ii, pp.59-61, 362-3; *C.D.* iii, pp.260ff, 384; *C.J.* i, p.668. They were still in the Commons' mind in 1624: Rawlinson MS B. 151, f. 103v; Diary of Sir Walter Erle: B.M. Additional MS 18597, ff. 166v., 190-1.

² *C.D.* iii, p.353.

explanation for the decline in the tempo of judicature. An additional explanation may well lie in the fact that, by the late spring of 1621, the process was no longer struggling for survival. Indeed, the main answer seems to be revealed by comparing the importance of these cases with each other; there can be little doubt that the earlier cases were more important than the later ones. Miss Relf has argued that Parliamentary judicature was "an effort to restore to Parliament its place in the system of courts which it had occupied in the fourteenth century, or even more to put it above the courts of equity which had superseded it".¹ This view harmonises well with the belief that there was a gradual extension of several types of judicature within Parliament in the early seventeenth century, and Miss Relf has, of course, set her interpretation alongside the study she has made of the growth in the unicameral judicature of the Lords. If the reason she gives for the revival of Parliamentary judicature is correct, it is reasonable to expect that more work was required to achieve success in the earlier cases than in the later ones, and that the first victories were more important than the subsequent ones.

It is also possible to examine the comparative importance of the cases of 1621 from a political standpoint, and perhaps to explain the

¹ Relf, *op. cit.*, p.xiii. Cf. Mrs. Foster's view that the Commons of 1621 and 1624 undertook the investigation of patents and monopolies because there was no adequate remedy in the courts or Privy Council: 'Patents and Monopolies', *loc. cit.*, p.77. In the context of Miss Relf's opinion, a Lord Chancellor was a superb victim.

decline in judicial vigour in terms of the political insignificance of the later victims as opposed to their earlier counterparts. For there can be little doubt that men like Floyd and Bennet were of less consequence than Mompesson or Bacon. But too much can be made of the political overtones of these cases.¹ One may suspect that a few of the more sophisticated members, and perhaps those who, in February and March, had pursued the referees most hotly, were aware of the political significance of what they had done;² but the charges which were brought were concerned primarily with grievances and offences against the law, rather than with political attacks or suggestions of governmental mismanagement. Members were more preoccupied with administering justice than with political opposition. Moreover, James' own attitude helps to confirm this. He would hardly have permitted the session to continue if he had suspected that the trials were politically motivated, and he would surely have regarded the earlier trials with more hostility than the later ones if he had worried about their political implications. In fact, as the weeks passed he increasingly felt that the Commons were not keeping strictly to their brief of investigating grievances. For him Easter was a

¹ Relf, op. cit., p.xiii.

² Lambe, who is of course likely to have made the most of this, wrote to the King about his antagonists: "The Complainers are underhand sett on and countenaunced by greater persons in this Countye that thorough me, ayme att your Majesty's Ecclesiasticall Jurisdiction": C.D. vii, p.608.

watershed: until then, he told them on 4 June, all had been well, but since Easter the Commons had taken up "extravagant matters and out of Parliamentary causes". He was probably thinking mainly of the Floyd case, though his leniency to Bacon and the arrests made after the session ended are an indication of what he thought of the fairness of some of Parliament's decisions.¹ But although his speech of 4 June shows that James had no inkling of the real danger and significance of the manner of Bacon's fall, it does exhibit his growing appreciation and understanding of one aspect of the situation. James regarded the proceedings before Easter as bearable because he still believed, then, that he could control the House, but as time went on and he lost one skirmish after another, his optimism - and with it his contentment and self-confidence - slipped away. For throughout the session, the Crown suffered from the lack of effective support in either House. It was a black day for the apostle of free monarchy when the only vote against the sentence on the man he had appointed as his Lord Chancellor was given by a person of the calibre and reputation of Buckingham.

Some of the conclusions of this chapter may now be summarised.

¹ C.D. vi, p.409; Gardiner, Debates 1621, p.79; Cabala, pp.307-8; Nicholas, op. cit., ii, appendix. Lionel Cranfield told James that in his view the Earl of Southampton's circle was almost wholly responsible for the raising of grievances in this Parliament: C.D. vii, p.616.

Although the procedure adopted by Commons and Lords in the trials of 1621 is, in broad outline, similar in each case, there are clearly substantial and important variations in detail. There is, for example, no fixed ~~moment~~ at which the Commons agree to present evidence to the Lords. Sometimes they prepare a detailed charge, passed by a vote of the whole House, and begin to impose penalties upon the offender; when they go to the Lords they are merely looking for confirmation of what they have already decided and, possibly, for a harsher punishment. Sometimes the Commons draw up no formal charge and make no pronouncement upon the correctness of the accusations: they lay the evidence before the Lords, with or without comment: they are relying heavily upon the Lords who, fortunately for the Commons, usually reward their confidence. This difference in procedure can be largely explained in terms of the importance of the victim - though this hardly accounts for the Commons' circumspection in dealing with Bennet - and of the changing claims made by the Commons between February and June 1621.

On a less important level, another example of the diversity of procedure is to be found in the ceremony in which the Lords announced their punishment. Normally the Commons were asked to be present to demand judgment, but in the cases of Yelverton and Field they merely heard or were told what had happened.

Procedure was influenced by the Commons' attitude to the man they were attacking. Michell and Floyd were dealt with much more

summarily than the remainder, though the system adopted in 1621 - collection of evidence by committees before which the defendant did not appear - allowed little opportunity for a reasoned defence because committee reports tended to be adopted unquestioningly by each House.¹

Another influence upon procedure in 1621 was that of precedent. Something has already been said of the extent to which records of medieval Parliamentary judicature were available to members, and there is no doubt of the respect with which precedents drawn from these were regarded, despite the meaningless and irrelevant way in which they were sometimes dragged into debates. But the absence of precedents did not seriously impede the Commons. Members might bemoan the lack of precedents but they were prepared to supply the deficiency with grandiloquent appeals to the law of reason: necessity was the mother of invention; they might make, as well as follow, precedents.² On the other hand, they liked to have at least the apparent support of precedent. The storm over Floyd showed what could happen when the Commons became too adventurous, and the day after the House had agreed to that settlement it received a warning from Noy when it was considering procedure in the cases of Lambe and Craddock: "When wee goe in new wayes wee are like to goe astray. Lett us keepe the

¹ Spedding, *op. cit.*, vii, p.246.

² *C.D.* ii, p.68; vi, p.347.

ould waye."¹ Precedents were used whenever they might be useful - in determining the powers of the Commons, in attempting to decide procedure, in fixing punishments. But while they provided guidance they also provided justification, a fact which points to greater maturity in the exercise of its judicature than this Parliament has normally been credited with.² Misuse of precedents normally passed unchallenged because of the impotence of the defence, but the fact that they were misused and, in Floyd's case, shown to be worthless in supporting the Commons' claims, makes it necessary to ask whether they were used merely cynically in 1621, in an attempt to blind the uninitiated with legalistic science. The chief exponent was Coke - though he had his imitators - and he was perfectly capable of turning round in his tracks. Nevertheless, for him as well as for other members the traditional path was a serious matter and to accuse them of cynicism would be to miss the point. For conditions in 1621 were conspicuously different from those in the late fourteenth century.

The medieval impeachments were an open attempt to control the King's government by attacking his ministers; the Parliament of 1621 was certainly not thinking in these terms, even if there may be occasional hints of it. This Parliament acted as it did in response to the conditions of 1621, not in an attempt to revive, for their own

¹ Ibid., v, p.169.

² Cf. Clarke, 'The Origin of Impeachment', loc. cit., p.268.

sake, the glories of its ancient judicature. Yet in the records of that judicature was displayed a procedure which well suited the requirements of 1621 and which was therefore worth following. Naturally, the precedents would not fit exactly, and naturally the men of 1621 regarded these through the distorting mists of their own unhistorical approach to the ancient powers of Parliament. But the accusation of cynicism can be dismissed because while many of them were lawyers, for whom the means is at least as important as the end, they were also politicians, for whom the end must have prime appeal.

Two final points remain to be made about the use of precedents by this Parliament. The first is that the King himself confirmed the importance of these searches among the records: following Selden's work for the Lords during the first session, he was examined and his papers were seized at James' command.¹ The second point is that the Commons needed to turn frequently to the precedents and to defend their right to search the records.² This need arose from the fact that Parliamentary judicature was still a tender growth in 1621. Among the records, the Commons could find examples of successful judicature and it was, above all, success that was required in the early weeks of this session.

¹ Nicholas, *op. cit.*, ii, appendix; Gardiner, *Debates 1621*, pp. 99-101; *L.J.* iii, p.176. Edwin Sandys and the Earl of Southampton were examined on their Parliamentary activities at the same time as Selden. Questions put to all of them, together with the answers made by Southampton, are given in Petyt MS 538/19, ff. 1-3v.

² *C.D.* ii, p.208.

Although in 1621 there was a variation both in procedure and in the extent to which precedents were followed, there is little evidence to suggest that members, or at any rate their leaders, were noticeably inconsistent. The question whether or not to send a defendant to the Lords provides quite a good test. Of course, in some cases this question never seems to have been put and we lack alternative information on this issue, but in four cases - those of Mompesson, Bacon, Bennet and Floyd - evidence of attitudes does survive.¹ Both Coke and Digges advocated co-operation with the Lords against Mompesson, Bacon and Bennet. Coke advised the same course against Floyd after the rash decisions in which he took no part; while Digges adopted this position from the start. But after the Commons had passed judgment on Floyd, Digges responded to the new situation by suggesting that the case should be quietly buried. Phelps is less predictable: he proposed an approach to the Lords in the cases of Bacon and Bennet, but he strongly advocated the punishment of Floyd by the Commons. When their right to do so was challenged, he suggested that the King should be asked to confirm the sentence and a few days later he was responsible for advancing the view which Digges eventually adopted. Noy seems to have believed in the efficacy of an approach to the King: he placed faith in this solution to the confusion over Floyd and he

¹ In the case of Marshall (see p.128 n.2, above), which was of a rather different type from these four, Samuel Sandys advocated an approach to the Lords while Noy opposed this: C.D. vi, pp.116-7; Nicholas, op. cit., i, p.366.

proposed that the Commons should take this step after transmitting Bacon to the Lords. But he made no such suggestion when he spoke in favour of sending Bennet to the peers. The attitudes of Edwin and Samuel Sandys are interesting but distinct. Edwin supported the Commons' judgment upon Floyd on the grounds that the Lords were too busy to be troubled with him, but after the King's challenge he became an advocate of an approach to the peers. Samuel remained an unrepentant supporter of what the Commons had done, and was even prepared to contemplate an appeal by Floyd from the decision. But neither man opposed the presentation of Bennet to the Lords, which Samuel eventually advocated, though they did raise some objection to the timing of this. Whether or not men like Roe and Hakewill were consistent is difficult to say because they appear to have stated their attitude in only one of the four cases. Roe supported Floyd's punishment by the Commons, but also thought that they should complain to the lords of the Council, whose prisoner he was. A few days later, when the House was wondering what to do next, he said that, as the Commons had by-passed the Lords, they could not now approach them. Finally, Hakewill's view emerges in the case of Bennet when he supported the approach to the Lords.¹

This information can be put in another way. None of these men seems to have spoken against sending Mompesson, Bacon or Bennet to the

¹ *C.D.* ii, pp.148, 314; iii, pp.53-5, 123, 138, 166; iv, pp.116, 166-7; v, pp.359, 363; *C.J.* i, pp.532, 560, 561, 587, 604, 605, 608; Nicholas, *op. cit.*, i, pp.283, 284, 298, 370-1, 373; ii, pp.21-2.

Lords. The passions aroused by Floyd's behaviour led to a few inconsistencies, but some of the proposals offered were forced upon their authors because of the peculiarities of a case in which matters had progressed beyond the point at which reference to the Lords normally took place.

The cases which have been considered in this chapter have long been called impeachments. As we have seen, except for the proceedings against Floyd, they are not given this name in the contemporary records, while there is evidence that some members believed that there were various procedures which the Commons could adopt to approach the Lords. At some stage, probably later, Selden and Elsynge analysed these procedures, seeing them in terms of two main types and using the words 'complaint' and 'impeachment' to distinguish between these. In 1621 the Commons use the first of these terms on some of the occasions when they present charges or evidence to the Lords. But it would be wrong to conclude that a case so described is a 'complaint' in the rigid sense intended by Selden or Elsynge. These cases cannot easily be fitted into the Procrustean beds set up by those two writers, and the fact that Coke apparently made no classification of the Parliamentary trials in which he took part must act as a warning to any attempt to do so now. Moreover, 'complaint' like 'impeachment' was in common enough use in a general sense at the time.

Nor can we be sure that contemporaries did not think of these cases as impeachments without actually ever saying so. Although the

term must have presented itself to any member who looked at the medieval records, its use may have been deliberately avoided for fear of alarming the King. Yet this theory has its difficulties. It argues a degree of management by the leaders of the Commons which was hardly attained until the trial of Strafford, and secondly it overlooks the fact that members were perfectly prepared to refer, by name, to medieval cases which were bound up with the fates of the "sillie weake" Kings of whom James so hated to be reminded.¹ But this second objection may not destroy the theory: perhaps to James it mattered more how a thing was said than what was said. It may be that members did deliberately avoid using the term to spare the consequences, but if so it seems an inescapable deduction from this theory that 'impeachment' had some special and probably political significance to both the King and leading members of Parliament. There is no evidence to suggest this in the records of 1621, where the charges and evidence are indeed of a largely non-political character; but if 'impeachment' did then carry the political overtones which have subsequently been associated with it, the character of the cases of 1621 would explain why the term is used in connection with only one of them.²

All, therefore, that can safely be said is that there is little

¹ See p. 157, above.

² It might, very tentatively, be suggested that, despite Floyd's insignificance, his offence was more political in character than many in 1621.

justification for describing the trials of 1621 - with the possible but curious exception of Floyd's - as impeachments, particularly because most writers on the subject have, as Miss Relf has pointed out, "considered impeachment only as a political measure".¹ Yet fundamentally disputes about terminology have a restricted importance. What is much more important to notice about the cases of 1621 is that various procedures were tried and that the Commons learnt from their mistakes. In 1624 and 1626 procedure was further developed and modified. These changes tend to be obscured when all the cases are described as impeachments.

In other words, Parliamentary judicature was developing in the 1620s, just as unicameral judicature was evolving in much the same period and earlier. The cases of 1621 may look forward to the impeachment of Buckingham in 1626 and even of Strafford in 1641, but they are not necessarily identical in type to these. They may resist classification because they ante-date the age of the classifiers and the theorists: they may simply be examples of the "due proceeding of Judicature".² Perhaps they bear the same relationship to their successors as Lee's trial in 1368 bears, in Maude Clarke's view, to

¹ Relf, op. cit., p.xiii. M.A. Gibb regards with scepticism the claims of the cases of 1621 to be regarded as impeachments, but she allows this fate to Middlesex: Buckingham, 1592-1628 (London, 1935), p.158 and n.

² E. Coke, The Fourth Part of the Institutes of the Laws of England, p.23.

the impeachments of 1376. Although, as we have seen, her interpretation has been challenged, she believes that procedure by petition against Lee gave way to procedure by indictment in 1376, and she makes two points which are relevant to the present discussion. She draws a comparison between Lee's trial and the cases of 1621, stating that in the latter proceedings took place

at the prayer of the Commons or on their complaint; the charges against them were forwarded by the Commons and supported by particular accusers In fact, as in Lee's case (1368), the Commons had done little more than to demand inquiry; though summoned to hear judgement, the whole conduct of the trial was outside their control. (1)

Though she says that the Commons "impeached" their victims in 1621 it is an implication of her argument that she should not have done so, because her second point is that the idea of indictment, with which she believes impeachment to be closely connected, was only "becoming clear" in 1624 and not "at last plainly understood" until 1626.² Perhaps her arguments may not be wholly convincing, but taken in conjunction with the evidence from 1621 they must give food for thought.

Yet whatever the precise character of the cases of 1621, Parliamentary judicature had been revived. The work of James' first two Parliaments may have helped, and the powers granted to their committees provided those bodies with much of the authority which, in 1621, enabled them to undertake detailed work ranging from the

¹ Clarke, 'The Origin of Impeachment', loc. cit., pp.267-8.

² Ibid., p.268.

examination of witnesses and condemnation of patents to advice on procedure and the framing of charges. But the judgment "which hath slept theis 300 yeears" and of whose revival Pym spoke in June 1621, was on a different scale from the judicature exercised between 1604 and 1614. By a judicious mixture of precedent, common sense and the luck that frequently attends the bold, the two Houses ended the first session of 1621 with a weapon of remarkable value and potential.

Chapter IV

The Fall of Middlesex

When Clarendon wrote his History of the Rebellion he said that Buckingham entered upon the Parliament of 1624 with the destruction of Middlesex¹ as one of his objectives, confident that in this he would have Prince Charles' support.² There is no reason to quarrel with this view, but it leads to the observation that, as a victim of the growth of Parliamentary judicature in the reign of James I, Middlesex shares with Yelverton in 1621 the dubious distinction of being odd man out. Both incurred the disfavour of the dominant interest at Court and, unlike all the other men who suffered from this judicature, both

¹ Lionel Cranfield was created Baron Cranfield in 1621 and Earl of Middlesex in 1622. I shall refer to him henceforth by his territorial title rather than by his family name.

Details of his financial deals, including those which figured in his trial, have been most carefully and thoroughly worked out by M. Prestwich, Cranfield. Politics and Profits under the Early Stuarts.

² Edward, Earl of Clarendon, The History of the Rebellion and Civil Wars in England begun in the year 1641, ed. W.D. Macray (Oxford, 1888), i, pp.27-8. John Hacket said that contemporaries referred to it as "the Prince's Undertaking": Scrinia Reserata: A Memorial Offer'd to the Great Deservings of John Williams (London, 1693), p. 190. Clarendon's view is confirmed by R.C. Johnson, 'The Public Career of Lionel Cranfield, Earl of Middlesex (1575-1645)' (Unpublished Ph.D. thesis of the University of Minnesota, 1956. A microfilm copy of this thesis is deposited in the British Museum), p.290.

were brought down partly or substantially because of the power of this interest. At first sight this consideration might seem to detract from the significance of both cases in the development of Parliamentary judicature, and particularly from the significance of that of Middlesex which, unlike Yelverton's, was the leading case of its session. But in fact that development was to be strengthened in 1624 by the proceedings against Middlesex as it had been in 1621 by those against Yelverton. Various procedural advances were made, and methods became rather more complex and sophisticated in 1624, but the Commons were to end the session rather dissatisfied with their achievement. Despite the favourable political circumstances, they would find that they were unable to secure the result they desired. Possibly it was to remedy this situation that further procedural changes were made in 1626, perhaps to give the Commons greater control over the process of Parliamentary judicature. But be that as it may, the lower House was to gain useful experience from the trials of 1624.

Although the omens did not favour Middlesex when the Parliament of 1624 opened, the hostility of the Prince and the Duke was by itself insufficient to secure his overthrow, particularly as in the early stages of the Parliament James showed no sign of abandoning his Lord Treasurer. Specific accusations had to be made and these were not forthcoming until after the Easter recess. But in the early days of April an almost simultaneous attack was launched in both Houses. On

the 2nd the Lords heard a report that at a meeting of the committee for munitions, which was investigating the defences of the kingdom, evidence damaging to the reputation of a member of their House had been produced. It soon became clear that this member was Middlesex, so that, from the start, this case differed from its predecessors in 1621, because the attack originated as much in the Lords as in the Commons. On the same day Sir Edwin Sandys presented to the lower House a long report from the committee of trade. This dealt with reasons for the decline of trade and indicated three types of imposition, with which Middlesex was soon to be associated.¹ The Lords arranged for a sub-committee of the committee for munitions to take examinations, but the Commons merely resolved to continue to debate the report on the following day. However, three days later the lower House was offered information of a more explosive character. On the 5th Sir Miles Fleetwood, Receiver-General of the Court of Wards and one of Middlesex's subordinates as Master, accused him of manipulating the King's revenues, altering the orders of the Court of Wards, and

¹ L.J. iii, p.286; S.R. Gardiner, ed., Notes of the Debates in the House of Lords, officially taken by Henry Elsing, Clerk of the Parliaments, A.D. 1624 and 1626 (London, 1879: Camden Society, New Series, vol. xxiv), p.50; Diary of Sir Walter Erle: B.M. Additional MS 18597, ff. 112-112v. (Erle's Diary gives Sandys' report under 26 March, but the diarist misplaces his account by a week at this point and did not correct his error until 12 April). Buckingham was a member of the committee for munitions: Johnson, op. cit., p.298. Sandys not Phelips, as Zebel states, was chairman of the committee of trade: S.H. Zebel, 'The Committee of the Whole in the Reign of James I'. American Political Science Review (1941), vol. xxxv, no. 5, p.951.

of taking bribes. A debate followed in which Sir Edward Coke referred to the allegations as "a Grievance of Grievances", but Sandys counselled caution and Noy said that if the accusations were not proved Middlesex's accusers should be punished. However, Poole reminded the House that to examine the greatest offenders was its ancient right, and the Commons resolved to refer the whole charge to its committee of grievances, of which Coke was chairman, for examination that afternoon.¹ This committee at once realised that as Middlesex was a member of the Lords it could not require his presence unless he chose voluntarily to answer before it; but the fact that it was prepared to contemplate this procedure against a peer suggests an assertiveness lacking in 1621, when committees of the Commons had normally not heard defendants in cases of Parliamentary judicature. The committee also seems to have determined to conduct its proceedings as fairly as possible, because it resolved that if copies of the charges against Middlesex were to be freely available to members of

¹ Diary of John Holles: Harleian MS 6383, ff. 118v.-119v; Diary of Sir William Spring, p.192; *C.J.* i, p.755; Johnson, *op. cit.*, p.301. Spring's Diary has hitherto been known as the Gurney Diary as it at one time formed part of the manuscript collection of J.H. Gurney of Keswick Hall, Norwich. The manuscript is now the property of the College Library of Harvard University and its author has recently been identified by members of the Yale Parliamentary Diaries Project. Spring was M.P. for the County of Suffolk. I owe this information about the identification and present ownership of the diary to the kindness of Miss Dorothy Bridgwater of Yale University Library. That Library provided me with a microfilm transcript of the diary, and I use it by kind permission of the Harvard College Library, where the diary is catalogued as MS Eng. 980.

the Commons the accused should also receive these.¹ During the next few days it conducted a detailed investigation of Fleetwood's charges, paying particular attention to the allegation that Middlesex had accepted two bribes of £500 each from the farmers of the great and petty customs. The witnesses presented to it were not uniformly satisfactory, as their evidence was inclined to improve on reflection and after contact with other witnesses; but by 9 April the House and its committee were ready to debate the next step.² On that day the Chancellor of the Exchequer proposed that as the House had heard accusations against Middlesex it should now hear his answer and any witnesses he might produce to clear himself. This suggestion produced some division of opinion: Sir Thomas Jermyn maintained that the House was not the proper place in which to hear Middlesex's answer. The Commons were "the grand Jury to finde the busynes", but having investigated it they should transmit it to the Lords, where Middlesex should answer. Brooke disagreed: "The Tresorer desyrd as muche an acquytall in this hows, as y^e upper". Sir Humphrey May, Chancellor of the Duchy of Lancaster, supported Brooke in a speech which suggests a link in his mind between 'clamour' and 'complaint' but tantalisingly leaves it unexplained:

¹ Diary of Edward Nicholas: S.P. Dom. 14/166, f.112.

² C.J. i, p.758; Holles, ff.122-124v., 127v.-128; Nicholas, ff. 118v.-123v., 130v.-133; Diary of Sir Thomas Holland; Tanner MS 392, f. 89; Erle, ff. 128v.-129.

Y^e auntient style of y^e complaints of this hows, was called y^e clamor of y^e Commons (y^e word then beeing taken in better sence then now) but now it would iustly be calld a clamor, if we should only hear his accusation, & not his defense.

The House eventually resolved to hear Middlesex's answer the following afternoon,¹ but there was clearly still doubt about the procedure to be followed and the function of each House in cases likely to involve co-operation between both of them.

On the same day as this debate took place the Commons heard another report from Sandys' committee of trade. This involved Middlesex in responsibility for two types of burdens: he had benefited personally from the duties on sugar; and he had inflicted an unwarranted composition on groceries in the outports. The report led Spencer to propose the appointment of a select committee to collect information for presentation to the Lords, that "according to the example of our ancestors" the offenders might be punished. He also reviewed what had been done in the past with authors of impositions, mentioning Latimer "impeached of the same Offence" as Lyons, to whom he also referred. His speech, which is recorded in the Commons Journal, shows that Spencer, at any rate, was prepared to refer to impeachment by name, although the word itself appears no more frequently in the records of 1624 than in those of 1621. If fears of provoking the King explain the abstinence of 1621, they did not inhibit Spencer in 1624. His speech also raises the question whether or not he was

¹ C.J. i, p.761; Nicholas, ff. 130v.-131; Holles, f. 127v.

thinking of the case, which was building up against Middlesex, as an impeachment. His reference to Latimer does not necessarily suggest this, and he does not say that Lyons was impeached. He may have quoted these cases merely to provide examples of men whose situations paralleled Middlesex's, rather than of procedures which were similar. However, his remark may perhaps be seen in the light of Selden's discussion of Middlesex's case in his treatise, Of the Judicature in Parliaments. Selden says that Middlesex was "accused and impeached", though as will be seen he subsequently described procedural developments which, taking place in the course of the trial, prevented the case from fitting into his own definition of impeachment. Now, in stating that Middlesex was "accused and impeached" Selden used language which nowhere appears in the records of the case but which is, of course, the medieval formula. It may be that Selden, probably writing after the trial of Buckingham when this formula was used, remembered more clearly the details of the medieval cases he so assiduously studied than the exact procedure employed against Middlesex; but it is also possible that members like Spencer did believe, at least in the early stages of Middlesex's trial, that they were impeaching him.¹

¹ C.J. i, p.759; J. Selden, Of the Judicature in Parliaments, p.31. The first mention that I have found of Middlesex as having been impeached occurs in a despatch of the Venetian ambassador of 8/18 September, 1626: "The late Treasurer Cranfield ... was impeached by the king when Prince of Wales and by Buckingham ...": C.S.P. Ven. 1625-26, p.539. It is, of course, normal for modern accounts to

After Spencer's speech it was Coke's turn to remind the House of what its ancestors had done. He listed the cases of Latimer, Lyons, and the Duke of Suffolk, maintaining that Latimer had been punished although "hee had excused himselfe by authority from the king", a defence which the Commons were soon to encounter. Previously, Sir Arthur Ingram, Middlesex's partner in many business deals, had tried to defend his friend, but the House adopted Spencer's original proposal and appointed a select committee. This committee was charged with finding out the projectors and advisers of the impositions on sugar and groceries, as well as on wines, a duty with which Middlesex's name had not originally been connected but which had been laid at his door by the Secretary, Sir George Calvert, during the debate.¹ When this committee reported to the House on the 12th it confirmed Calvert's information, and the Commons adopted its proposal that all three impositions should be referred to the committee of grievances.² By this date, therefore, the committee of grievances was responsible for all the Commons' investigations into the accusations against Middlesex, and it was also ready to hear his answer. But whereas

refer to Middlesex as having been impeached: for example, Prestwich, *op. cit.*, p.423 etc.; R.H. Tawney, Business and Politics under James I. Lionel Cranfield as Merchant and Minister (Cambridge, 1958), p.231; but on p.238 Tawney says "We do not know by whom the word impeachment was first pronounced".

¹ Spring, pp.219-21; Holles, ff. 125v.-127; Erle, ff. 125v.-128v; C.J. i, p. 760.

² C.J. i, p. 763; Nicholas, ff. 140v.-142.

in 1621 it had been almost wholly responsible for many investigations from the beginning, in 1624 a good deal of preliminary work had been done in other committees: the procedure was becoming more complex.

While these developments had been occurring in the Commons, the Lords' committee for munitions had been investigating charges that Middlesex was responsible for the neglect of the ordnance, to which was later added an accusation of fraudulent dealing in the lands of Sir Roger Dallison, a former Master of the Ordnance Office.¹ On 5 April Middlesex exhibited some of the arrogance which earned him so many enemies by claiming that he was the victim of a plot, an allegation which he subsequently failed to substantiate. By the 12th the Archbishop of Canterbury was ready to report from his committee and the House gave Middlesex an opportunity to reply to the report. It then asked the sub-committee of the committee for munitions to draw up heads of charges against the Lord Treasurer.²

The parallel progress of developments in both Houses up to this point suggests a carefully co-ordinated campaign. But now a hitch occurred. Middlesex was soon to answer the Commons' charges against him, but he had not obtained the permission of the Lords to do so. This led to a debate in the upper House on the 12th, but the matter

¹ L.J. iii, pp.299-300.

² L.J. iii, pp.290, 296, 301; Gardiner, Debates, 1624 and 1626, pp. 60-2; H.M.C. Report on the Manuscripts of the Duke of Buccleugh and Queensberry (London, 1899-1926), vol. iii. VI: The Montagu Papers; Second Series, pp.235-6.

was quickly resolved in favour of permitting Middlesex to answer. Significantly, Buckingham intervened to state that no one should be blamed for the failure to seek the peers' approval, but the Lords ended the debate by reaffirming that members of their House should not answer complaints in the Commons without licence.¹

The realisation of this procedural error may have been one of the reasons why Middlesex did not answer in the Commons' committee on the 10th as originally arranged, but obviously it was not a reason he could make public without creating further difficulties for himself. Before the committee met, therefore, Brooke delivered to the House a message from Middlesex asking for a postponement of his reply on the grounds that he had received the charges only the previous evening and that he had been occupied in preparing an answer to the Lords' enquiries. This message provoked some criticism: the committee had sent to Middlesex only those charges concerning bribes, and Lord Cavendish complained that, as these were matters of fact, the Lord Treasurer should not require much time to consider whether he should admit or deny having received such gifts. As a consequence, the House refused to alter the arrangements and ordered that Middlesex's answer should be given to its committee that afternoon. Naturally enough, when the committee assembled it received no word from Middlesex, and Fleetwood at once tried to capitalise on this by proposing that

¹ L.J. iii, p.299; Gardiner, Debates, 1624 and 1626, pp.65-6.

the House should forthwith discuss his charges and arrange for their transmission to the Lords. But this suggestion seems to have received no support and shortly afterwards the Chancellor of the Exchequer brought another message from Middlesex asking that he should be permitted to answer on the following Monday afternoon, 12 April. Several members, including Fleetwood, at once supported this request and despite some further debate it was later agreed to by the House.¹

Because of this postponement, Middlesex had obtained the consent of the Lords to answer before the Commons' committee of grievances before he actually did so. His secretary brought the reply, which was not admitted until he had certified that Middlesex had dictated it to him. Not unreasonably, the Lord Treasurer confined himself to explaining his dealings with the farmers of the customs and denying that he had received bribes from them. But in the ensuing debate many of the other matters cited against Middlesex were considered and Sir John Eliot contributed to the drama of the occasion by declaring him "unworthy the favour of his country unworthy the countenance of

¹ C.J. i, p.762; Nicholas, ff. 136v.-138v; Erle, f. 130; Diary of Sir Thomas Holland: Rawlinson MS D. 1100, ff. 3, 5-5v. Holland's Diary is in two parts: the section in the Rawlinson MSS covers the period 10 April - 15 May, 1624; that already cited in Tanner MS 392 stops at 9 April. All future references are to the Rawlinson MS.

Fleetwood's abrupt change of mind, in which Cavendish joined, may be a further indication that the real reason for the agreement to Middlesex's request was that he and others now realised that the Lords had yet to give permission for Middlesex to answer.

his prince and ripe to be commended up to the Lords".¹ When Coke reported to the House it resolved that five separate types of charge should be presented to the Lords: the two bribes from the customs farmers; malpractices in the Court of Wards, which included altering its orders, extorting higher fees, and permitting the use of a stamp of Middlesex's signature; the misuse of the sugar duties; the collection of duties on groceries from the outports; and the imposition on wines. The House then referred the whole matter to a select committee of twenty-six members for preparation.²

There seems to have been no opposition to the proposal to go to the Lords, so it is difficult to know exactly why this course was chosen. That it was not absolutely obligatory, the case of Anyan, later in the session, seems to show. Part of the answer no doubt lies in the fact that Middlesex was a peer, but a remark of Digges' during the debate on the 12th suggests that there may have been another reason. He drew a distinction between the offence concerning the bribes, which he thought too unimportant to be sent to the Lords, and matters harmful to the Commonwealth, which should be transmitted to the peers. A day or two later the House adopted the same position when it refused to transmit to the Lords someone who was thought to have forged evidence against Middlesex, because it was considered that

¹ Erle, f.133; Holles, f. 129v.; Holland, ff. 12-12v.

² Nicholas, ff. 144v.-145; Holles, f. 129v.; Holland, f. 12v.; Tawney, op. cit., p.241; C.J. i, p.764.

the offence was too petty.¹ These two pieces of evidence indicate that some members were coming to regard transmission to the Lords as a procedure to be reserved for the more important offences. Perhaps they had felt this previously, but there is no evidence that in 1621 they had been unwilling to present to the Lords any of the information that Bacon had taken bribes.²

To return to Middlesex's case: during the debate on the 12th Phelps had argued that the chairman of the committee of grievances should deliver the Commons' accusation to the Lords, thus following the precedent set in Bacon's case. Digges had disagreed, proposing that as in Mompesson's case the matter should be distributed among several members. When the select committee reported on the 15th the House modified Phelps' suggestion and arranged that Coke and Sandys, chairmen respectively of the committees of grievances and trade, should deliver its charge to the Lords. However, before sending a message to the upper House asking for a conference the Commons listened to speeches from the two men. Coke surveyed the matters for which he was to be responsible - the accusations concerning the bribes and the Court of Wards; while Sandys dealt with the more hazardous business of the duties and impositions. Here the problem was to avoid any

¹ Nicholas, f. 143v.; Holland, f. 12; Diary of John Pym: B.M. Additional MS 26639, f. 4v.

² But a remark by Moore in the case of the commoner, Bennet, should be noted. He said that, if the accusation was not weighty, it was not worth sending to the Lords: C.J. i, p.583.

questioning of the right to impose, with its implications of challenge to the royal prerogative, and the House rapidly adopted Sandys' proposal that the word oppression should be substituted for imposition. It also resolved that it did not intend to cast aspersions on any member of the Privy Council apart from Middlesex; and Seymour played a valuable part in clearing away the rather wild allegations that the Lord Treasurer was responsible for suggesting the collection of benevolences and the dissolution of the last Parliament.¹

With these preparations completed the whole House assembled that afternoon at Whitehall for the conference with the Lords. In his introductory remarks Coke declared that the Commons

appear for Multitudes, and bind Multitudes....
They are the Representative Body of the Realm; for all
the People are present in Parliament by Person Representative;
and therefore, by the Wisdom of the State, and by Parliament
Orders, the Commons are appointed the Inquisitors General
of the Grievances of the Kingdom....

¹ Spring, p.233; Erle, ff. 140-2; Holland, f. 27v.; Pym, f. 6v.; C.J. i, p.767. The King took upon himself sole responsibility for the exaction of benevolences and on 16 April the Speaker received a letter from him stating that Middlesex had begged him to continue the last Parliament: G.A. Harrison, ed., 'The Diary of Sir Simonds D'Ewes, deciphered for the period January 1622 to April 1624', p.271; C.J. i, p.768. C. Roberts, The Growth of Responsible Government in Stuart England, p.38, says that Sandys disobeyed the Commons and referred to the dissolution and the collection of benevolences when he made his speech to the Lords. His source is Harleian MS 4289, ff. 191-5, but this record of Sandys' speech is a copy and in the margin of the section dealing with these two charges is a note that they had been deleted in the original: f. 192. Neither charge appeared in the final accusation and there therefore seems to be no reason to suppose that Sandys exceeded his instructions.

In referring to the Commons' function as representatives of the realm to enquire into the grievances of the kingdom, Coke was justifying their action in the same way as their proceedings against patents and monopolies had been justified in 1621. Grievances were particularly the province of the Commons: the Lords were too exalted to be much troubled by them. It was an idea which was not new even in 1621: in 1610 an unidentified member had made much the same point.¹

After this introduction, Coke stated that in their inquisition they had uncovered "many great, exorbitant, and heinous Offences" committed by the Lord Treasurer, and that no member of the Commons had been prepared to declare him not guilty. He followed this with details of the charges and ended by reciting Middlesex's oaths of office. Sandys followed Coke, displaying all the caution he had shown earlier in the Commons, and the case concluded with "the Knights, Cittizens, and Burgesses, humbly pray and demand iustice of your Lo^{pps}". The peers then referred the case for examination to their sub-committee for munitions, which they increased in size from ten to fifteen members.²

¹ E.R. Foster, 'The procedure of the House of Commons against Patents and Monopolies'. Conflict in Stuart England, pp.62, 75; E.R. Foster, ed., Proceedings in Parliament, 1610, ii, p.146. See also p.134, above. This concept assumes greater significance when set in the context of the growth in size of the electorate in the early seventeenth century. The evidence for this expansion and the part played by the House of Commons in achieving it have been discussed by J.H. Plumb in 'The Growth of the Electorate in England from 1600 to 1715'. Past and Present (1969), no. 45, pp.90-116.

² L.J. iii, pp.307-11; Erle, ff. 142v.-143v.

This sub-committee worked hard during the next week but not until the 24th was it ready to make a first report. On that day the Archbishop of Canterbury reported that, having examined many witnesses, the sub-committee had drawn up part of the charge. This was an amalgam of the accusations collected by both Houses, and it consisted of six parts. The first three were concerned with the taking of bribes from customs farmers and seem to have included a bribe which did not figure in the Commons' accusation. The fourth part referred to the abuse in the sugar farm and the fifth to the levying of the composition on the outports. The sixth part combined the malpractices in the Court of Wards with the neglect of the ordnance and the fraudulent dealings in the lands of the Dallison family.¹ The Lords ordered that a copy of the charge should be sent to Middlesex, but they were careful to note in their Journal that this should not be used as a precedent to break the normal practice by which parties accused received their charge at the Bar. Middlesex was told to present to the House the names of any witnesses he wished to have examined, and to attend himself at the Bar on 29 April to answer the charge. He was also warned that his charge might be added to later from among other matters still under examination.²

¹ H.M.C. Montagu Papers, p.237; L.J. iii, pp.318-9; Johnson, op. cit., p.315. Since this sub-committee began its work the Lords had received two further petitions about Dallison's lands. One was read after Abbot's report: H.M.C. Montagu Papers, p.237; L.J. iii, p.320.

² L.J. iii, pp.319, 320. The charge was sent to Middlesex because the absence of many lords at Windsor for the celebration of the Feast

Middlesex now embarked on a period of intense activity, designed to win for himself every possible advantage in the crisis that was fast approaching. On the 26th he wrote to the King imploring him to persuade the Lords to grant him longer time for the preparation of his answer. Three days later he followed this with a petition in which he said that the King could save him by being present to hear his cause, adding that "There must be somewhat in it more than ordinarye that there is so great paynes taken to ruyne mee".¹ On the 27th and on each of the next two days he also sent petitions to the Lords. He first asked for counsel to be assigned to him to assist him in making his answer, and he suggested that the examination of witnesses should be deferred until he had done this. The Lords had apparently anticipated the first request because on the previous day they had asked their sub-committee for privileges to search the precedents and report how those accused before them in the past had answered. They now told him that he could use what counsel he pleased but that they would not be permitted to attend at the Bar; they also refused to postpone

of St. George meant that the House would be poorly attended for the next few days. This gave Middlesex a respite which otherwise he might well not have had: C.S.P. Dom. 1623-5, p.223. The Lords' order about the charge begins "Whereas, by the ancient Customs of this House, the Parties accused and complained of are to receive their Charge at the Bar ..."

¹ Cabala, Mysteries of State, in Letters of the great Ministers of K. James and K. Charles, pp.267-8; Sackville (Knole) MSS Series 1. Cranfield Addenda, Bundle IV. The bundle is labelled: Cranfield MSS Impeachment, and is at Kent Record Office, Maidstone. I am indebted to Lord Sackville for permission to make reference to his manuscripts.

the examination of witnesses, a list of whom Middlesex had attached to his petition. In his second petition he pleaded with the Lords for more time in which to prepare the interrogatories on which these witnesses were to be examined, and he also asked to be sent copies of the depositions made on both sides without which he maintained that his defence would be severely handicapped. The Lords' reaction was hostile: Middlesex was told that to send witnesses for examination without accompanying interrogatories showed disrespect, and his second request was dismissed as wholly unsuitable. He was reminded that they expected him to answer before them on the following morning. However, instead of doing so, the Lord Treasurer sent yet another petition: asserting that he was ill, he asked for a postponement of the hearing and he repeated his request for copies of the depositions. The answer was a good deal milder than might have been expected: having heard the previous two petitions and their answers to them re-read, the Lords adopted the Prince's motion that the request for delay be granted. Middlesex was told that if his health permitted he was to appear on 1 May, bringing his answer with him; if not, he was to send his answer in writing, submit his interrogatories within the next two days, and appear in person on 7 May for the final determining of his cause.¹ Unless the Lords took Middlesex's illness at its face value, which seems unlikely, there are two reasons which may account

¹ L.J. iii, pp. 321, 323, 325-7; H.M.C. Montagu Papers, p. 239.

for their readiness to accede to his request: it is possible that the King may have brought pressure to bear on their leaders as a consequence of Middlesex's letter to him of the 26th, but if so it is likely that the petition of the 28th would have received a different reply. It therefore seems more probable that shortly before the 29th they became aware of deficiencies in one, or possibly two, of the charges already sent to Middlesex and seized upon the opportunity of a deferment with alacrity. At any rate, as soon as the reply granting Middlesex's request had been despatched, the Attorney General read an addition to the charge concerning the sugar duties, and a new accusation relating to profiteering as Master of the Great Wardrobe; and when Middlesex received these he commented that it was as well that the first charge had been altered because it had previously been utterly mistaken.¹

With the help of this revised schedule the case now proceeded rather more smoothly. On 1 May Middlesex sent to the Lords his answer to the charges. In this long and elaborate document, undoubtedly prepared with the assistance of his two counsel, Nicholas Hyde and William Hakewill, he denied many of the accusations and explained away others, declaring himself ready to justify all that he had written.

¹ L.J. iii, pp.327, 328; Johnson, op. cit., p.323. Johnson regards the King's letter as the cause of the granting of Middlesex's request. It is also, of course, possible, as Tawney suggests, that the Lords realised that their original schedule was too tight, though what he regards as stages unavoidable before the trial could open would readily have been avoided if Middlesex had confessed as Bacon did in 1621: Tawney, op. cit., pp.246-7.

He also sent interrogatories on four parts of the charge, petitioning to submit the remainder on the following Monday, the 3rd. He renewed his request for copies of the depositions, claiming that he had never expected to receive them before he had made his own answer; and at last, on the 3rd, believing that they were ignoring all the precedents, the Lords granted Middlesex's wish.¹

Meanwhile the Commons had settled a small but important piece of procedure. On 23 April they had received a petition complaining that Middlesex had placed an extra imposition upon hops. In due course the committee of trade recommended that the matter should be sent to the Lords, but two members, Poole and More, wanted it examined by the House first. However, the Commons decided to be guided by their memory that in Bacon's case all petitions presented against him "after the transfer^t" had been immediately sent up to the Lords without further examination. Accordingly, this new matter was transmitted "not as a thinge iudged by them but to be considered by the Lords as theye sawe Cause".²

On 4 May, the Archbishop of Canterbury told the Lords that the

¹ L.J. iii, pp.329-35, 337-8; H.M.C. Montagu Papers, p.239; N.E. McClure, ed., The Letters of John Chamberlain, ii, p.555.

² Nicholas, ff. 170-170v.; Erle, ff. 165v.-166; Pym, f. 28; Sir Simonds D'Ewes Journal of the Parliament of 1624: Harleian MS 159, f. 116; C.J. i, p.696.

examination of Middlesex's witnesses had been completed.¹ Nothing now remained but for the House to await the Lord Treasurer's appearance at the Bar on the 7th. At this point the King intervened. Summoning the Lords to him he delivered a speech which excelled in the art of sitting on the fence. He began by telling them that as "I am the Judge, in whose Room you are to exercise Judgement" he thought it necessary to advise them lest their judgment conflicted with his views in the matter. Although he acknowledged that they were "the most Honourable Jury of England"² yet it was necessary to point out that because Middlesex, unlike Bacon, had justified himself in answering the charges, they must take great pains to uncover the truth. James then commended to them Middlesex's application and good service, maintaining that all good treasurers must, of necessity, be hated; but he also reminded them that Middlesex was appointed "upon a Reformation" so that if he had himself transgressed he was doubly to blame. James took upon himself responsibility for some of the items in the charge - though he did not specify these - because he said that

¹ L.J. iii, p.341. Dudley Carleton told his father that Middlesex had produced forty witnesses, twelve of whom had deposed directly against him: C.S.P. Dom. 1623-5, p.232. The number of witnesses gives some idea of the scale of the task that faced the Lords.

² L.J. iii, p.343. Later in the Journal account of the speech James said "The Informers are the Lower House, and the Upper House are the Judges": p.344. Rawlinson MS B. 151, f. 67v. has "Jurie" in place of "Judges" here, but this is of small consequence: the Lords, of course, fulfilled the function of both judge and jury which is one of the characteristics which gives this type of judicature its unique quality.

they were done with his knowledge and consent, but he ended by declaring that he would never maintain a man in a bad cause. At no point in his speech did the King do more than hint at the political pressures which were so largely responsible for Middlesex's ruin, and it is hardly surprising that Chamberlain reported to Carleton that opinion was divided as to whether James had spoken in favour of, or against, his Lord Treasurer.¹

When the hearing opened on 7 May the Lord Keeper, Bishop Williams, presided and the case against Middlesex was presented by Sir Randolph Crew, Chief Justice of the King's Bench, and Sir Thomas Coventry, Attorney General, two of the lawyers attendant upon the Lords. Middlesex was brought to the Bar without his Staff and knelt until told to stand. Crew opened the charge:

The Commons, being the general Inquisitors of the Sores and Grievances of the Kingdom, have presented to the Lords their Complaint against this great Lord and Officer; whereof, and of other Misdemeanors, their Lordships have taken Cognizance. (2)

This introduction requires some discussion. It indicates, first, that, while the Commons' peculiar right to investigate grievances was acknowledged, the evidence thus discovered was not to be the only basis

¹ L.J. iii, pp.343-4; McClure, op. cit., p.559; Erle, f. 174. James came closest to referring to the pressures exerted by Charles and Buckingham when he warned the Lords not to permit any man's particular aims to establish a precedent which might prove prejudicial to them and their heirs: L.J. iii, p.344.

² L.J. iii, p.344.

for the trial. Middlesex was also being charged with "other Misdemeanors", those which the Lords' own enquiries had revealed. The case against him had, from the very beginning, been the result of the work of both Houses, a factor which makes this trial exceptional among the cases of Parliamentary judicature being studied. Yet in spite of this, the charge itself had been drawn up by the Lords. In Selden's view this duty was forced upon the peers, because the Commons had presented their accusation orally at a committee of the two Houses. In explanation, he says that they had departed

from the Ancient Course in this, they delivered not their Accusation in writing (he being absent;) Had it been in the open House, an Impeachment by word of mouth had been sufficient, and the Suit had been theirs: but it being at a Committee, how could the Lord Treasurer take notice of their Impeachment? wherefore the Lords of necessity did draw up a Charge against him out of their Accusation, and then it became the Kings Suit, and they were abridged of their power to reply, or demand Judgment. (1)

Now it will be remembered that Selden, who had earlier stated that Middlesex was "accused and impeached", defined impeachment as a procedure in which the suit belonged to the Commons, while one characteristic of a complaint was that the proceedings were ex parte regis. Elsynge's treatise also makes this point and adds that in an impeachment the Commons have the right to reply to the accused's defence, while

¹ Selden, Of Judicature, pp.64-5. The Commons did demand judgment, but only when the Lords invited them to do so; they did not employ their "power to reply" to Middlesex's defence.

"Judgment is not to be given till they demand it".¹ It therefore seems as though Selden believed that by a certain stage Middlesex's case had ceased to be an impeachment. This is not, of course, to say that the Commons or the Lords shared his view, even though he was now a member of the former. But there may be some significance in Crew's reference to the Commons' accusation against Middlesex as "their Complaint".

A final point may be made about Crew's introduction. He states that the Commons' complaint was presented to the Lords, and Maude Clarke considered this important: "... not the man but the articles of accusation were presented". But she contrasted this with the concept of the Commons as general inquisitors of the grievances of the kingdom, pointing out that Coke had concluded the long speech, which he had introduced with this concept, by declaring that the Commons' "complaint is of a high lord, the lord treasurer ..." She therefore concluded that, despite the fact that Middlesex himself was not presented to the Lords, "the idea of indictment was becoming clear".²

¹ Ibid., p.14; H. Elsynge, 'The moderne forme of the Parliaments of England'. American Historical Review (1948), vol. liii, no. 2, p.302.

² M.V. Clarke, 'The Origin of Impeachment'. Fourteenth Century Studies, p.268 and n.2. Many years ago, C.H. McIlwain pointed to the connection between the concept of the Commons as the grand inquest of the nation and their function of presentment: The High Court of Parliament and its Supremacy, p.189.

However, it may perhaps be questioned how far this distinction between presenting the man and presenting his accusation was clearly drawn. There is an account, possibly not contemporary, in the diary of Simonds D'Ewes, of the Commons' decision to go to the Lords. According to this, Sir Thomas Holland, a member of the Commons, had told D'Ewes that the House had "resolved to transmitt himm (i.e. Middlesex) upp wth his charge to the Lords as a guilty person to bee censured by them".¹ This remark suggests that the presentation of the offender was as important to the Commons as the presentation of their accusation; but on the other hand it may be doubted whether Holland knew enough law to appreciate the distinction.²

After Crew's introductory speech he developed a procedure which was to be followed throughout the investigations of the next few days: either he or his colleague, the Attorney General, would introduce a particular part of the charge which would then be supported by depositions of witnesses read out by the Clerk. Middlesex would then answer, often calling witnesses in his defence. Following this, the prosecution might reply, sometimes challenging what the defence witnesses had said, and Middlesex might make a rejoinder.³

¹ Harrison, op. cit., p.271.

² C.D. i, pp.90-4.

³ Tawney, op. cit., p.249. Tawney points out that unlike Bacon, Middlesex was required to attend at the Bar; but of course Bacon entered no defence.

Although an amateur confronted by legal experts, Middlesex fought the case against him every inch of the way. He also stretched the Lords' patience to breaking point: after two full days' hearing, between which he had won a Saturday's respite, he retired to his bed and announced to a delegation sent to visit him that he was receiving un-Christian treatment. This delegation reported that he was perfectly well, and he narrowly escaped being sent to the Tower for his impudence. When he reappeared in the House on the afternoon of the 11th he complained about the manner in which the Attorney General had conducted the case, and the Lords had to interrupt proceedings to clear their officer.¹

Between 7 and 11 May the Lords examined all the charges that had been brought against Middlesex with the exception of that referring to an imposition on wines and the belated accusation of an imposition on hops. In one instance the King had intervened effectively to assert that he had approved the alterations in procedure in the Court of Wards, and that part of the charge had been dropped. But, predictably, much of the case had gone badly for Middlesex and he doubtless

¹ L.J. iii, pp.360, 371, 373-4; McClure, op. cit., ii, p.559. Middlesex's answer to the charges is given in L.J. iii, p.349, 358-61, 365-7, 369-70, 374, 376-8. Like Bacon, Middlesex also had a collection of precedents made, undoubtedly to assist his defence: Sackville (Knole) MSS Series I. Cranfield Addenda, Bundle IV (At Kent Record Office, Maidstone); Sackville (Knole) MSS Series I. Cranfield Papers. Unnumbered MSS, Bundle IV (at the Historical Manuscripts Commission, London).

recognised this when he made his concluding speech on the morning of the 12th. He very briefly recapitulated some of his earlier remarks and then reminded the Lords of his service to the King and its value. He finished by craving pardon if he had omitted anything or annoyed the House in any way.¹

The Lords occupied the remainder of the day in debating and voting on each part of the charge. Here again they adopted a set procedure: each part was taken in committee and the Lord Keeper frequently set the tone in his introductory speech. Five or six speakers followed, and the House then resumed to vote whether Middlesex was censurable on that part of the charge. The Lords dealt first with the accusation of mismanagement in the Great Wardrobe. Here they at once had to face the difficulty that Middlesex had received a pardon for pocketing the difference between the running costs of this department and the annual allowance, an action in any case permitted to him by his patent. He had, however, failed to keep accounts, though he was under no legal obligation to do so. While the Lords were making up their minds about the pardon and deciding that none the less Middlesex was still guilty of mismanagement, they censured him for taking bribes from the customs farmers. They also had no hesitation in imposing a censure for the accusations concerning the Ordnance Office and Dallison's lands. On the charge referring to the Court

¹ L.J. iii, pp.375, 378.

of Wards they were more cautious: the King had already intervened here and the Lords felt able to censure Middlesex only for those sections dealing with the doubling of fees for liveries and the use of the signature stamp; they declared that it was not proved that he had appointed his Secretary to take fees for petitions or that he had benefited from concealed wards. However, when they stepped back to view the complete charge at the end of their debate they decided that he deserved a censure for the whole thing. Rather uneasily, they let him off the charge concerning the sugar duties because the King had acknowledged that he knew the extent of Middlesex's gains from the lease, but Charles warned the House not to forget that the King had suffered financially because of the Lord Treasurer's behaviour. Finally the charge about compositions on groceries in the outports failed because Middlesex was able to justify himself from precedent.¹

When the Lords met on 13 May they first sent a message to the Commons warning them to expect a further message of importance shortly. They then had read out the charges and the votes passed on the previous day. Next, they went into committee to obtain guidance on punishment from a whole galaxy of medieval precedents. Before fixing on this they debated Middlesex's claims to good service, belittling some and rejecting others. Then by means of seven

¹ L.J. iii, pp.379-81; Gardiner, Debates, 1624 and 1626, pp.74-84; H.M.C. Montagu Papers, pp.241-2.

questions they resolved on the Lord Treasurer's punishment. They declared that he should lose all his offices and be excluded from holding any in future. He was never to sit in Parliament again and was to be prohibited from attendance at Court. He should be imprisoned in the Tower during His Majesty's pleasure and pay to the King a fine of £50,000. There was some feeling that the financial penalty was too low and Saye proposed linking a higher fine with confiscation of Middlesex's lands. Other members, including the Prince, thought that the Lord Treasurer should be compelled to make restitution to those he had wronged; but the Lords merely accepted an offer by the Lord Chamberlain to introduce a bill making his lands liable for his fine.¹

The final scene in the destruction of Middlesex was closely similar to that in which Bacon had been the central figure three years earlier. The Lords despatched Crew and Coventry to the Commons to tell them that they were ready to deliver judgment on Middlesex if the lower House would come to demand it. With the peers and the Speaker in their robes, the Lord Treasurer, dressed in black, was brought to the Bar. The Speaker declared that the Commons had "transmitted unto your Lordships several Offences against the ... Lord High Treasurer

¹ L.J.iii, pp.382-3; Gardiner, Debates, 1624 and 1626, pp.84-91. Saye suggested a figure of £80,000; the Commons had apparently thought in terms of £200,000: C.S.P. Dom. 1623-5, p.244. Chamberlain, who was invariably hostile to Middlesex, thought it remarkable that the Lords did not degrade him. He also noted the similarity between the sentences of Middlesex and Bacon; McClure, op. cit., ii, p.560; Johnson, op. cit., p.165.

of England" and duly demanded judgment.¹ The Lord Keeper then pronounced the censure, after which the Lords appointed a committee to acquaint the King with the sentence and to ask him to take away the Staff from Middlesex.²

The Commons were not pleased with the sentence or with the final stages of the attack on Middlesex: they had expected a harsher penalty and a censure more specific to the charges. They may first have been provoked by the omission from the list of charges of the imposition on wines, an accusation which the Lords perhaps ignored in order to avoid any conflict with the royal prerogative.³ But whether or not because of this omission, the Commons, prompted by Robert Phelips, realised on 11 May that they possessed no independent record of the charges transmitted to the Lords. They therefore resolved that Coke and Sandys should set down the charges as presented lest there should be "as in the case of the Lo: Chancelor Bacon, no memorialls remaying". On the 13th, before the Commons went to the Lords, Phelips reminded them of his motion but although Coke went over the charges for which he had been responsible Phelips hardly seems to have got his way if the skeletal record in the Journal is any guide. Moreover, although

¹ Two accounts substitute "Complaints" for "Offences" in the Speaker's statement: Holland, f. 87v.; Nicholas, f. 199v.

² L.J. iii, p.383; Gardiner, Debates, 1624 and 1626, p.92.

³ D.C. Spielman, 'Impeachments and the Parliamentary Opposition in England, 1621-1641', pp.95-6; H.M.C. Montagu Papers, p.243; D'Ewes Journal 1624, f. 121v.

the Speaker was apparently instructed to repeat to the Lords every head of the charge presented and to demand judgment on all of them, he did not do so.¹

When the Commons returned from the Lords, angered by the sentence, Phelps again tried to prod them into action. He complained that the Lords

did decline from the auncient mann (i.e. manner) of iudging in plmt, for it was a use that evy iudgment given here and transmitted ov by us to the lo^{ds} did receive its weight and pticler iudgment above with their lo^{pps}. (2)

If the sentence fell short of what the Commons expected, they had in the past demanded an additional censure - and he cited the case of Michael de la Pole as an example. He proposed that Noy and Selden be asked to search the precedents. Noy tried to bring the discussion back to the immediate issue by moving that committees of both Houses should meet to record the judgment against Middlesex; but the only resolution adopted was that a search of the precedents be undertaken to determine how such judgments had been made in the past "by the Lords upon Complaint made by the Commons". A committee of antiquaries - Coke, Cotton, Noy, Phelps and Selden - was appointed and, apart from

¹ C.J. i, pp.787-9; Erle, f. 179; Nicholas, f. 197; Nicholas gives this instruction to the Speaker; it does not appear in the Commons Journal. Sandys does not seem to have delivered to the Commons his part of the charge until 28 May: C.J. i, p.797; Nicholas, f. 233.

² Nicholas, f. 200.

the addition of a further member a few days later, that is the last we hear of it or of the Commons' grievance - both doubtless overtaken, the one by the end of the session and the other by the enfeebling influence of the passage of time.¹

As the session drew to a close the Houses cleared up the remnants of their case against Middlesex. The Lords laid down procedure for the future in consequence of proposals made by their sub-committee of privileges on 28 May. Proceedings before them were to be "clear and equal"; a defendant was to receive copies of all depositions sufficiently in advance of the hearing to give time for preparation, and, if he asked for it at the appropriate moment, he was to receive the assistance of learned counsel.² If there is little in this order from which Middlesex had not benefited, it is nevertheless significant that the Lords were attempting to guarantee and institutionalise their reviving power of judicature. As for Middlesex himself, the Lords embarked on an investigation of demands for restitution, and both Houses passed the bill to make his lands liable for the payment of his debts, though in the Commons Phelips protested about the precedent

¹ C.J. i, pp.789, 791; Erle, ff. 183-183v; Nicholas, f. 200; D'Ewes Journal 1624, ff. 121-121v.

² L.J. iii, p.418. From the Lords' order it is not clear whether they were now prepared to allow counsel to plead for a defendant, or merely, as they had permitted to Middlesex, to advise him. Selden indicates that they had intended the former and believes that, in denying Middlesex the full benefit of counsel, they had shown a misunderstanding of the precedent in Michael de la Pole's case: Of Judicature, p.103.

that was being created. When James gave his assent to this bill at the prorogation, he tried to make use of the opportunity to reassert his own authority. He told the Commons that though they might present general grievances they should not be too eager to hunt them out, nor should they determine on a remedy until he had had "the hearing and allowing of it". He declared that he would not in future permit "any officer of his to be complained of in Parliament without leave", and he reminded them, quite correctly, that the sentence, some parts of which he rejected, was subject to his confirmation. But his speech might have carried greater conviction had he been prepared to give more assistance to his Lord Treasurer both during and after the trial. In fact, the severity of the sentence was reduced more slowly than many people expected, and a great deal more slowly than Middlesex found comprehensible; there was probably some truth in the Venetian Ambassador's nasty report to his superiors that the advantages to be derived from the sentence, such as the redistribution of Middlesex's offices, would "console him (the King) for the treasurer's fall".¹

If the attack on Middlesex originated in the personal hostility towards him of Charles and Buckingham, the Commons and Lords did not develop it merely as disciples of this leadership. They accused

¹ L.J. iii, pp.396, 420; C.S.P. Dom. 1623-5, p.259; C.S.P. Ven. 1623-5, pp.325, 343; McClure, op. cit., ii, pp.561-2; Nicholas, f. 232v; Erle, ff. 205-205v. On 13 May Dudley Carleton had written to his father that everyone expected the King to remit Middlesex's fine: C.S.P. Dom. 1623-5, p.245. For Middlesex's attitude, see, for example, C.S.P. Dom. 1623-5, pp.318, 481.

him of crimes and of other activities with an enthusiasm which was clearly not second-hand.¹ Moreover, while it is possible to question the fairness of some of the case against Middlesex,² a detailed and specific charge had been brought against him. As in Bacon's case, the accusation was not, in itself, political - whatever the pressures that inspired it - and it reflected only indirectly on Middlesex's competence as a minister. While it is true that, for the second time in three years, Parliamentary action had ruined an important minister of the Crown, and while some of the implications of this may well have lain behind James' speech at the prorogation, the accusation was of a different character from that levelled against Buckingham in 1626.³

Apart from these general considerations, the process of judicature

¹ However, it is perhaps going too far to agree with Eusden that for the first time the Commons were able to carry through an action against a minister of state on their own initiative and authority: J.D. Eusden, Puritans, Lawyers, and Politics in Early Seventeenth-Century England (New Haven, 1958), p.152.

² See Tawney, op. cit., pp.250ff., and Prestwich, op. cit., pp. 455ff. Selden maintained that Middlesex harmed himself by absenting himself from the House, "for he might have stayed there until Judgment, unless when his own Cause came in agitation": op. cit., p.101. Elsynge substantially confirms this: a member of the Lords accused of misdemeanours might remain in his place until his judgment, except during the examination of his cause or while his censure was debated: Elsynge, op. cit., p.302.

³ It is, however, necessary to avoid being influenced by Clarendon's intriguing but unauthenticated story of James' warning to the Prince and the favourite of the consequences of their Parliamentary activities in 1624: Clarendon, op. cit., i, p.28. See also Spielman, op. cit. p.92.

was refined, sharpened, and to some extent modified in the course of this case. The use of committees by the Commons became more complex: the committee of grievances was employed to continue and complete work begun in other committees; while its invitation to Middlesex to answer before it represented an extension of its powers. The Commons presented to the Lords definite charges against Middlesex whereas in 1621 they had merely handed to them without comment information about Bacon. Although they were bolder in dealing with Mompesson they required a whole series of conferences with the Lords for the purpose, whereas in 1624 one conference sufficed. But while they had handed to the Lords the written evidence they had collected against Mompesson, their delivery of the charges and supporting information in the case of Middlesex was purely oral: in this respect they did not advance from their position in Bacon's case.¹ However, the prospect of duelling with a peer and a high officer of state did not inhibit them as it must have done in 1621: they invited Middlesex to appear before their committee of grievances to answer their accusations, though doubtless in doing so they did not overlook the advantages of the acquiescence of Charles and Buckingham. Finally, the Lords in 1624 developed a feature of Parliamentary judicature

¹ Hargrave isolates four examples of procedural immaturity in Middlesex's trial, but only one of these, the oral presentation of the case, can be accepted without qualification: preface to M. Hale, The Jurisdiction of the Lords House, p.xxxv. In pointing to "Irregularities" in Middlesex's case Tawney seems to have accepted too uncritically Hargrave's analysis: Tawney, op. cit., p.248.

which had shown some signs of existence in 1621 - that of investigating and drawing up charges of their own, quite separate from those framed by the Commons against the same man. In 1621 it is arguable that the Commons' initiative was responsible, as for example in the case of Yelverton, for the Lords' action; but in 1624 the timing of the Lords' enquiries precludes this explanation of the investigations of their committee for munitions. Their work through this committee compels us to make some modification of the traditional view that the Lords' part in Parliamentary judicature is exclusively that of judge and jury. Certainly they were dealing with a peer but they were undertaking part of the Commons' function of acting as informers.

The Commons gained in confidence as a result of the accusation against Middlesex, and proceedings advanced in formality. Hesitations and uncertainties remained, forms were not clearly established, but it was soon to prove possible to contemplate what would probably have seemed unattainable in 1621 - an attack through the processes of Parliamentary judicature on a man of the stature of the Duke of Buckingham.¹

¹ A further dimension might have been added to Parliamentary judicature in 1624 if some advice of Cotton's had been implemented. Apparently, the Spanish ambassador had accused Buckingham of planning to use Parliament to place James under restrictions and to transfer the government to Charles. Cotton advised the Duke to complain to the Lords and then withdraw from the House. The Lords would then ask the Commons for a conference and a message would be taken by the Speakers of both Houses to the ambassador, requiring him to produce his charge and proofs: Harleian MS 304, ff. 40-40v. I am grateful to my supervisor, Mr Roger Lockyer, for drawing my attention to this material.

Two other cases in the Parliament of 1624 are of some significance for the development of Parliamentary judicature. They are those of the Bishop of Norwich, Samuel Harsnett, and the Master of Corpus Christi College, Oxford, Dr. Anyan. The Bishop, a man of Arminian views, was first complained of to the Commons before Easter, by the citizens of Norwich.¹ For several weeks little seems to have happened, but after the committee of grievances had freed itself of the charges against Middlesex it began to investigate the matters alleged against the Bishop. There was the usual variety: he had suppressed preaching, extorted higher fees, failed to register institutions to livings, introduced popish practices and punished the disobedient, and set up over the font an image of the Holy Ghost in the shape of a dove which "by certen engines" was designed "to come downe in the time of Baptisme, and hover over the water". From the beginning members were divided about what should be done: Brooke felt that the matter was outside the Commons' jurisdiction and should be referred to the Archbishop of Canterbury; Perrot and others thought that they should direct their main attentions to the King; But Coke claimed that the House might legitimately deal with the matter, and Sherland and Rich proposed that, because it was a grievance, it should be

¹ J. Ballinger, ed., Calendar of Wynn (of Gwydir) Papers, 1515-1690 (Aberystwyth and London, 1926), p.196; L.J. iii, p.388.

presented to the Lords.¹ This final suggestion was adopted and a charge in six parts was drawn up. The business was again delayed by the Lords' preoccupation with Middlesex but the charge was finally presented at a conference on 19 May, when Coke claimed that "it was ordinary for the Commons to complain of the Governors of the Church..." After the Archbishop of Canterbury had reported to the Lords, the Bishop at once denied virtually the whole charge in a long and apparently able speech.²

The Lords then discussed their next step. Saye wanted the appointment of the normal type of examining committee, but Charles proposed that only the charges concerning fees and institutions to livings should be examined by the Lords, suggesting that the remainder - of a more purely religious character - should be referred to the High Commission. Spencer supported Saye; Sheffield countered the Lord Steward's criticism that a reference to the High Commission would endanger the Lords' privileges unless the Court reported to the Lords, by saying that in the past the House had referred matters complained of

¹ C.J. i, p.784; Erle, ff. 167-9; Holland, ff. 71, 72v., 73v; Pym, ff. 31-31v. The varying points of view appear in debates on 16 April and 3 May: Holland, ff. 36, 74v.-75.

² C.J. i, pp.784, 786, 790; L.J. iii, p.384, 388-90; National Library of Wales 9059E Letter No. 1226: Letter of 24 May from Henry Wynn to his father. According to Locke, the Bishop's answer was so satisfactory that the accusation would have been dropped had not he asked for an examination, but this view is not confirmed by other accounts: C.S.P. Dom. 1623-5, p.252.

for final determination in other courts. Finally, Saye produced an acceptable compromise by which all six parts of the charge were to be referred to the High Commission for a report on which the Lords would pass a judgment. Charles then declared that this was what he had intended in his original proposal.¹ One wonders whether this debate made Charles realise that the Lords were not always as biddable as only a few days earlier he might have thought.²

The Commons took exception to the procedure the Lords had adopted. Some disquiet seems to have been expressed on the following day but there is no record of real anger until the 27th. On that day Robert Phelips, who had been concerned about the lack of an adequate record in the lower House of its charge against Middlesex, drew attention to the fact that the Lords had sent the Bishop to the High Commission. He said that this represented an indignity to the Commons, they having voted the matter worthy of the Lords' examination: they should not "be patient att such slightings". Whether the

¹ Gardiner, Debates, 1624 and 1626, pp.96-7. According to L.J. iii, p.390, the Lords took this decision because of the shortage of time but Elsynge's notes show that this is too simple an explanation.

² The attack on the Bishop displeased the King, who regarded the puritans as responsible. Unless Charles' success as the idol of Parliament had gone completely to his head he can hardly have disagreed here with his father. Had the session lasted longer, the refusal of the Lords to abandon the case completely to the High Commission could have proved embarrassing for both James and Charles. For James' opinion, see G. Roberts, ed., Diary of Walter Yonge (London, 1848: Camden Society, vol. xli), p.75; C.S.P. Dom. 1623-5, pp. 265, 267.

Commons agreed with Phelips and whether either House did anything further about the Bishop of Norwich the record does not reveal, but Phelips' comments do seem to have persuaded the Commons to change course in dealing with Anyan.¹

At the end of April Spencer had delivered to the Commons a petition against Anyan from the fellows of his college. It was referred to a select committee from which Selden reported on 20 May. Whether or not Anyan had appeared before the committee we do not know, but it had found him guilty on four counts - misuse of the college endowments, avoidance of the visitor's examinations, negligent administration, and wanton behaviour - and recommended, without apparently giving a reason, that these be transmitted to the Lords. At this point Sir Henry Poole, influenced perhaps by the Lords' decision of the previous day in the case of the Bishop, asked the Commons whether they were not wronging themselves by leaving all judicature to the Lords. He was quickly silenced by Sandys who said that it was inappropriate to raise such questions so near the end of the session; and the committee's recommendation was adopted. But on the 27th, after his criticism of the Lords' behaviour, Phelips reverted to

¹ Erle, ff. 186v.-187; Nicholas, f. 224v; Rawlinson MS B. 151, f. 68v. The Commons did, however, order Pym to write down the heads of the charge against the Bishop and these were delivered to the Clerk on 29 May: *C.J.* i, pp. 714, 715, 798; Erle, f. 196. Why Pym was chosen is not clear: Coke, as the man who had presented the charges to the Lords, was the obvious choice. Perhaps Pym's intervention in the debate about Anyan on the 27th had something to do with it: see p. 266, below.

Poole's speech and said that the Commons should not confirm the Lords' "clayme of Judicature". Pym pointed out that the Commons could not disguise the fact that they lacked this right, but the House reversed its previous decision to go to the Lords. It was, however, Pym, supported by Sandys, who proposed the alternative course which the Commons adopted - that they should petition the King for Anyan's removal.¹ In his speech of prorogation James objected to the Commons' "Complaint" on the grounds that their oath of supremacy forbade them to deal with church matters, and that they had complained against Anyan without hearing him. From Parliament's point of view the complaint ended there.²

The decision to adopt the well-established course of petitioning the King seems to make Anyan's case a commentary upon the disappointments suffered by the Commons in their attacks on Middlesex and the Bishop of Norwich. Apparently lacking effective means of remedying the situation in these two cases, they chose to deliver a snub to the peers by refraining from sending Anyan to them. In so doing, they demonstrated their awareness that alternative means were available to

¹ C.J. i, pp.692, 707, 791, 796; Erle, ff. 164v., 186v.-187; Spring, pp.272-3; Rawlinson B. 151, f. 68v.

² L.J. iii, p.424. Anyan was the subject of further accusations to the Commons in 1626 but these do not seem to have progressed beyond the investigatory stage: R.F. Williams, ed., The Court and Times of Charles the First (London, 1848), i. p.91; Diary of Sir Bulstrode Whitelocke: Cambridge University Library MS Dd. 12.22, f. 29v.

them for dealing with cases important enough to be sent to the Lords. But in addition their attitude in the closing stages of all three cases perhaps provides an explanation of the procedural modifications adopted in 1626. In the proceedings against Buckingham, the Commons were to be more assertive than previously. Perhaps this was because the representatives of the realm were growing in confidence, and appreciated the need for great resolution if they were to achieve any success against a man of Buckingham's eminence; but it is also possible that such changes were made in an attempt to avoid a repetition of the disappointments of 1624.

It may be that it is as dangerous to apply to the cases of 1624 as it was to those of 1621 the rigid distinction between impeachment and complaint drawn by Selden and Elsynge. Although in the accounts of these trials the former term appears hardly at all while the latter figures frequently, we cannot be sure that any such distinction was recognised in 1624.¹ On the other hand, the procedure followed in that year - whatever it may be called - gave the Commons insufficient control of a case after its transmission to the Lords to ensure a result which satisfied them. Furthermore, Selden's analysis of Middlesex's case seems to confirm this by stating that the Commons' power to reply

¹ S.R. Gardiner talked about the revival of impeachment in connection with the case against Middlesex: The History of England from the Accession of James I to the Outbreak of the Civil War, 1603-42, v, p.230. Selden described the Bishop of Norwich as "accused and impeached", but the records do not contain this phrase. He did not mention Anyan: Of Judicature, p.32.

to Middlesex's defence was removed as a result of the form adopted for the accusation against him. In 1626 when circumstances were far less favourable to the Commons than they had been in 1624, the House not only declares that it is impeaching its victim but it also assumes an interest in the case, after the transmission to the Lords, which it has not previously claimed. The cases of 1624 mark a further, but not the final, stage in the development of Parliamentary judicature.

Chapter V

The Impeachment of Buckingham

As the Parliament of 1624 drew to a close the Earl of Kellie wrote to the Earl of Mar that it was apparent from "the course that is now carryed that if the Parliament did leaste onye time that their is verrye few or noe officer that wold scaipe their hands...".¹ While his comment testifies vividly to the increased authority of Parliament it is also true that dissolution and prorogation, or the threat of either, had often effectively deterred members from reviving on a subsequent occasion the grievances of a previous session. After 1624, however, this manifestation of the royal prerogative lost its power to interrupt permanently a case of Parliamentary judicature: investigations begun in one Parliament would be resumed in the next. There are many reasons for this change, several of them obvious enough: more frequent Parliaments meant that the burning issues of one assembly were not extinct before the next met; members were gaining in confidence and experience, and no longer assumed that grievances had only to be

¹H.M.C. Supplementary Report on the Manuscripts of the Earl of Mar and Kellie (London, 1930), p.202.

complained of to be remedied. But the change of monarch also provides part of the explanation. James had been prepared to give some encouragement and assistance to those of his ministers and servants whom Parliament chose to attack, but there was a point beyond which he would not go in their defence. Dissolution did on occasion interrupt investigations, but frequently not before Parliament could feel that it had achieved a good deal. If James responded inadequately to Parliament's complaints he did, at least, respond. Charles, although recognisably the son of his father, rapidly showed himself to possess substantially different attitudes towards Parliament.

In the Parliaments of 1625 and 1626 investigations which ultimately involved, or would have involved, the exercise of Parliamentary judicature were conducted into the actions of the Duke of Buckingham and Dr Richard Montagu. The details of both cases help to illustrate Charles' attitude to Parliament and the extent to which it differed from James', but, more important, it is possible that the attitude of the new monarch helped to determine the form that the proceedings against Buckingham took.

The attack on Buckingham in 1626 can hardly have been unexpected. Already, in the Parliament of 1621 there had been indications that he was too intimately connected with some of the grievances complained about, and there would doubtless have been more distinct mutterings in 1624 had he not put himself at the head of the forces of criticism

in that session. But in the Parliamentary session at Oxford in 1625 his opponents found their voice. On 11 August, in a House worried on account of the plague and increasingly uneasy about the government's foreign policy, Seymour, supported by Phelips, openly accused Buckingham of incompetence. This was no chance occurrence: it seemed to contemporaries like the beginning of an organised attack, the first to be made by the Commons on a minister whom they did not accuse of breaking the law.¹ As a consequence Charles dissolved Parliament.

If the King hoped that his action would produce a quiescent Commons in the next Parliament he was not long to remain undeceived. Salvetti, the Tuscan Resident, predicted in September that a new Parliament would insist on resuming where the last had left off by demanding enquiries into the conduct of those who had spent the war

¹ H. Hulme, The Life of Sir John Eliot, 1592-1632 (London, 1957), p.93; S.R. Gardiner, ed., Debates in the House of Commons in 1625 (London 1873: Camden Society, New Series, vi), p.118; C. Roberts, The Growth of Responsible Government in Stuart England, p.51; J. Rushworth, Historical Collections, i, p.195; H.M.C. Mar and Kellie, p.232. Shortly before Seymour's speech Cotton and Eliot seem to have been collaborating on a speech which was never delivered. Full of precedents of royal favourites whose behaviour had almost ruined the country, it may nevertheless have circulated among members in manuscript form: Hulme, op. cit., p.92; J.N. Ball, 'The Parliamentary Career of Sir John Eliot, 1624-1629' (Unpublished Ph.D. thesis of the University of Cambridge, 1953), pp. 112, 115; J.N. Ball, 'Sir John Eliot at the Oxford Parliament, 1625'. Bull. Inst. Hist. Res. (1955), vol. xxviii, no. 78, pp.113-27, especially pp.121-5; Cottoni Posthuma; Divers Choice Pieces of that Renowned Antiquary Sir Robert Cotton, pp.273-81.

supplies; and the Venetian Ambassador, reporting in mid-January, said that there was talk among Parliamentarians of refusing supplies "unless he (Buckingham) is put down". Some uneasiness may even have clouded the Duke's horizon because in a further despatch a week later the same Ambassador said that his dependants were trying to secure a strong party for the forthcoming Parliament. Moreover, the government disqualified several of the leaders of the previous Parliament from sitting by pricking as sheriffs men like Coke, Seymour, Phelips and Alford.¹ Whether the absence of such members materially affected the course of events in 1626, we cannot say: we do not know what would have happened had they been present. But the lack of Coke's leadership may have permitted some fresh thinking on procedure, and it is reasonable to suppose that other men filled the breach. Members like Pym and Selden appear to achieve greater prominence than before.

When Parliament met on 6 February it did not at once launch an attack on Buckingham, and his name was not mentioned in connection with any complaint until 22 February.² On that day Eliot reported from a select committee which had been set up to consider the seizure and

¹ H.M.C. Eleventh Report (London, 1887-8), Appendix i, p.31; C.S.P. Ven. 1625-26, pp.298, 311; Hulme, op. cit., p.92, n. 4. Hulme suggests that in December 1625 Eliot may already have been planning the charge against Buckingham: p.102.

² Nevertheless Mead regarded Eliot's speech of 10 February as aimed at Buckingham: R.F. Williams, ed., The Court and Times of Charles the First, i, p.82; Hulme, op. cit., pp.105-7.

arrest of English property in France. The committee had discovered that the French action had largely stemmed from the capture of one of their ships, the St Peter of Newhaven, by the English fleet during the previous autumn. Although the ship had been released, it had been rearrested on orders from Buckingham as Lord Admiral, on the ground that it was carrying Spanish goods. During the debate on the report the House had its attention concentrated more closely on the Duke by Lord Cavendish, who read a letter stating that Buckingham had refused to examine proofs of the legitimate character of the St Peter's cargo. As a result of the day's work the Commons and its select committee embarked on an investigation of witnesses.¹

Three days later the Lords produced their first challenge to Buckingham. They adopted a proposal made by their grand committee of privileges that after the end of the session no lord should be permitted to hold more than two proxies. The Duke, with eleven, opposed the suggestion and Chamberlain wrote that he had had "one feather pluckt from his wing ..." According to Pesaro, the Venetian

¹ C.J. i, p.823; Diary of Sir Bulstrode Whitelocke: Cambridge University Library MS Dd. 12.20-21, ff. 70v., 74v. (This diary, which may not be Whitelocke's work, exists in two manuscript volumes, MSS Dd. 12.20-21 and Dd. 12.22, each separately foliated. MS 12.20-21 records events in Parliament up to 10 May; MS 12.22 begins on 11 May. Unless otherwise stated, references are to the first volume.)

Written interrogations were drawn up for the examination of at least one of these witnesses: already the Commons were employing greater formality than previously: C.J. i, p.824.

Ambassador, the Lords' decision greatly encouraged the Commons.¹ Whether or not for this reason, the Commons began to broaden the scope of their investigations: by means of a committee of the whole, under the chairmanship of Christopher Wandesford, they determined to enquire into evils, then to discover their causes, and finally to suggest remedies. On the 27th this committee, which subsequently took its name from its three objectives, resolved that there were two evils - the reduction in the honour and strength of the kingdom and the stopping of trade - and immediately began an investigation of their causes. During the course of its work on the following day Sir Robert Harley proposed that "single or unsound councill" might be a cause. Corriton supported this and Harris suggested blaming "Men unable put in places ..." In pursuance of these ideas the committee resolved to examine the Council of War which had been appointed to supervise the spending of the subsidy granted in 1624.²

Although the Commons had no difficulty in securing the attendance of members of the Council of War they were less successful in

¹ L.J. iii, p.507; S.R. Gardiner, ed., Notes of the Debates in the House of Lords, officially taken by Henry Elsing, Clerk of the Parliaments, A.D. 1624 and 1626, pp. 114-5; N.E. McClure, ed., The Letters of John Chamberlain, ii, p.630; C.S.P. Ven. 1625-26, p. 352.

² C.S.P. Ven. 1625-26, p.352; Harleian MS 6445, ff. 3v., 6v.-7v., 9-10; Whitelocke, ff. 60v., 59v., 58v. (Whitelocke has written part of his account by starting at the back of his notebook and working towards the front. This explains the form taken by some of my references to his folios.)

obtaining clear answers to their questions. These were designed to establish whether the Council's advice had been followed, but after the House had listened to a variety of reasons why its questions could not or should not be answered it abandoned the examination.¹ The Commons fared little better in their enquiries into the history of the St Peter. The committee found evidence to suggest that part of the ship's cargo had been confiscated for the benefit of the Duke, and although the House was not prepared to adopt Eliot's motion that this be declared a grievance it did despatch a messenger to Buckingham demanding to know within three days why the ship had been arrested a second time. Its enthusiasm led it straight into the procedural difficulties from which Buckingham himself had helped to extract the House in 1624. Members had again forgotten to apply to the Lords first before requiring an answer from a member of their House. So when Buckingham asked for leave to make his answer to the Commons, the peers remembered their dignity and asked their committee of privileges for advice on procedure. Naturally, this committee reminded them of the order made in 1624, and the Commons had to retrieve the situation by maintaining that their order had been wrongly entered by the Clerk and that they had intended only giving Buckingham notice that a complaint had been received about the St Peter. Honour having been

¹ C.J. i, pp.829, 832, 833; Harleian MS 6445, f. 17; Whitelocke, f. 29.

satisfied, Buckingham's attorney appeared in the Commons on 6 March with the Duke's answer. In this he denied that the ship's cargo had been touched, and he declared that the second arrest could hardly have been responsible for the seizure of English goods in France as the latter event had preceded the former by a month. He admitted having ordered the rearrest but stated that he had done so at the King's express command. This defence brought the Commons face to face with a familiar difficulty: nothing that they might say or resolve must reflect upon the King because the King could do no wrong. If errors were committed his councillors must be to blame: evil advisers were the obstacle between the undoubted wisdom of the monarch and the unquenchable love of his subjects. As recently as 28 February Digges had proposed to the committee for evils, causes and remedies, that it should clear the King of responsibility for any of the causes; and if the constant reiteration of the righteousness of the monarch was beginning to make the more adventurous minds question its validity there is no doubt that even these continued to render formal loyalty to the doctrine. On this rock, sharpened by the technical difficulties of a complex enquiry, the St Peter, as the repository of the Commons' hopes, began to founder. On both 11 and 16 March Eliot failed to persuade the House to declare the matter a grievance and on the second occasion Digges proposed that it should rest. It was not

to be revived until 1 May.¹

By the middle of March, therefore, the Commons had devoted a good deal of time to the exploration of two lines of attack on Buckingham, neither of which had proved very fruitful. Moreover, the government was trying, with some success, to persuade them to turn to the more general and less dangerous issues of the safety of the kingdom and the international situation.² However, in the committee for evils, causes and remedies, they had continued to investigate the causes of the evils besetting the land. On 6 March they had debated the inadequate state of the naval defences and Spencer had criticised the sending of badly needed ships to La Rochelle. At the end of that debate they had resolved that the coasts had been insufficiently guarded since the termination of the treaties with Spain: at least these general questions were more speedily resolved than intricate matters like that of the St Peter. Then on 10 March, Dr Meddus reported to his correspondent, the Rev. Joseph Mead, that he had heard that a member of the Commons had thirteen articles prepared to present against a very great man, which would lead either to his ruin or to their dissolution. His information was not quite accurate but on the following day Dr Turner, member for Shaftesbury, told the committee

¹ C.J. i, pp.827-8, 830, 831, 835; L.J. iii, pp.513, 514, 515-6; Gardiner, Debates, 1624 and 1626, p.118; Hulme, op. cit., pp.110-11; Whitelocke, ff. 45v., 42v., 52, 53; Harleian MS 6445, f. 8.

² C.J. i, p.832; Whitelocke, ff. 39v., 38v; Lansdowne MS 491, ff. 146v.-148v.

for evils, causes and remedies, that

there should be a *causa generalissima* stated, w^h should be the Mother of y^e rest, y^e Common fame presents one man to be this cause ...

He then put six questions: was not the Duke responsible for the loss of the King's regality in the Narrow Seas; were not the gifts made to him and his relations a reason for the decline in the King's wealth; was not the accumulation of offices in his hands and those of his friends and kin, some of whom were incapable of filling them, a reason for the evil government besetting the commonwealth; had he not secretly favoured recusants; had not the sale of offices which he had arranged led to evils; did not his failure to sail with the last fleet help to lead to its misfortunes?¹

¹ Whitelocke, ff. 18^a, 18^b, 37; Sloane MS 826, f. 24; Williams, *op. cit.*, i, pp.89-90; W.A.J. Archbold, 'A Diary of the Parliament of 1626'. *E.H.R.* (1902), vol. xvii, no. 68, p.732; L. Pearsall Smith, *The Life and Letters of Sir Henry Wotton* (Oxford, 1907), ii, p.294n. In his account of this episode Gardiner described Turner as a man "otherwise of no note". While in a general sense this is no doubt true he had already contributed usefully to this Parliament, once at an earlier meeting of the same committee and once with some apposite remarks during the debates on the *St Peter*: Harleian MS 6445, ff. 4v.-5; Whitelocke, f. 53v; S.R. Gardiner, *The History of England from the Accession of James I to the Outbreak of the Civil War, 1603-42*, vi, p.76. Professor Hulme, *op. cit.*, p.114n., and Dr Ball, 'Parliamentary Career of Eliot', pp.165-6, 169, have disposed of the old theory that Turner was a spokesman for Eliot, and Ball has pointed out that Turner was a dependant of Pembroke whose relations with Buckingham were strained in 1626. This doubtless encouraged him to speak as he did, but there is, of course, no reason to suppose that he was not largely motivated by personal conviction. For other connections perhaps partly responsible for the sources of attack on Buckingham in this Parliament, see M. Prestwich, *Cranfield. Politics and Profits under the Early Stuarts*, pp.483-4.

Turner's speech was the lineal descendant of Seymour's at the end of the 1625 Parliament.¹ Both men helped to alter the whole character and authority of Parliamentary judicature. Hitherto when ministers appointed by the Stuarts had been accused in Parliament, they had been charged with offences perpetrated in the execution of their duties: it had not been suggested, whatever might have been thought, that they were not competent to perform those duties. Behind the illusion of the competent minister, dismissed for peccadilloes, the doctrine that the King could do no wrong could survive; it could not long survive attacks on ministers for incompetence.

Charles reacted to Turner's speech by sending a message to the Commons demanding satisfaction. He said that Turner's attack on Buckingham was unsubstantiated by proofs and was in reality an attack on his and his father's government, and he repeated James' contention that he could not permit enquiries about the meanest of his servants. He also complained about a seditious speech of Clement Coke, son of Sir Edward, and said that this had emboldened Turner. On the following day, 15 March, the House sitting as a grand committee cleared Coke of uttering sedition and appointed a sub-committee to frame a reply to the King; on the 16th they turned to the more important matter of Turner's speech. They first heard Turner again: he began by protesting his loyalty and then discussed the criticism Charles had

¹ See p.271 above; and Roberts, op. cit., p.51.

made of the weakness in his attack on Buckingham - that it was not based on proofs provided by the evidence of witnesses. He said that he believed that common fame was a legitimate and Parliamentary basis for a presentment. The committee held an inconclusive debate, finally agreeing to adjourn for two days to give Turner time to prepare a fuller reply. Little more progress was made on the next occasion but on 22nd, after a debate in which Spencer made the nice point that the complaint about Turner's speech was itself based upon common fame, the committee reached a decision. It resolved that the accusation against Buckingham was indeed grounded upon common fame and it decided that it would next debate whether this was a Parliamentary form of proceeding.¹

This leisurely pace shows the Commons being deliberately obstructive and the King eventually complained bitterly about it. But it doubtless helped to divert attention from the real progress made in the committee for evils, causes and remedies. Here, under the inspiration of Turner's six questions, causes of two evils from which the kingdom was suffering were rapidly identified, and a sub-committee under Eliot's chairmanship was set up to enquire into the cause of these causes. On 25 March Wandesford delivered a detailed report from his committee to the House. He listed ten causes upon which the committee had agreed and stated that so far Buckingham had

¹ C.J. i, pp.835, 837; Whitelocke, ff. 43, 51, 53, 54, 75, 76, 185; B.M. Additional MS 22474, ff. 12-12v.

been found responsible for four of these. The House formally approved the committee's original findings on the two evils and accepted nine of the proposed causes, holding the tenth over for further consideration. It then arranged a day for the consideration of those causes with which the Duke's name had been connected, and sent him word of its intentions.¹

Buckingham's adherents had failed to stop the headlong progress of the committee for evils, causes and remedies, and Charles was still awaiting a reply to his message about Coke and Turner. On the 27th the Commons debated the King's request for a subsidy and Eliot seized the opportunity to compare their predicament with some of the darker episodes of the late middle ages. Largely under his influence the House resolved to pass a subsidy bill as soon as it had heard the King's answer to its grievances.² At this point Charles intervened in a situation that was rapidly getting out of hand.

¹ Whitelocke, ff. 18^bv. ff, 55ff, 84ff; H. Hulme, 'The Leadership of Sir John Eliot in the Parliament of 1626'. Journal of Modern History (1932), vol. iv, no. 3, p.371; Archbold, op. cit., p.736; C.J. i, pp.841-2. The Lords, however, on 28 March, refused Buckingham permission to answer the Commons: L.J. iii, p.543.

² Whitelocke, ff. 5v., 93. Eliot referred to Hugh de Burgh and Michael de la Pole, associating them with the misfortunes of their respective Kings, Henry III and Richard II. Ball says that Eliot was careful to avoid giving the impression that such ministers had been "impeached": 'Parliamentary Career of Eliot', p.181. When, a few days later, Eliot compared the attack on Buckingham with that on de la Pole, he emphasised that his use of this precedent was not intended as a reflection upon Charles or his government: Whitelocke, f.119v.

On the day appointed for a further meeting of the committee dealing with Turner's speech he ordered the Commons to attend him with the Lords at Whitehall on the following morning and in the meantime told them to suspend all further business. Largely through the Lord Keeper, Charles addressed them on that occasion in tones of considerable bitterness. He complained that they had ignored his request for justice against the two members and that their committee had "walked in y^e steps of Turner, and ... (had) proceeded in an unparliamentary inquisition". After lavishing praise on Buckingham he ordered them to cease their examinations and to obey his previous commands. He then turned to the question of supply, pointing out that only two days in twelve had been devoted to its discussion and objecting to the manner in which it had been made dependent upon redress of grievances. He warned them that the sum proposed - three subsidies and three fifteenths - was inadequate and that unless they increased it unconditionally within three days he would not promise to continue their sitting.¹

The Commons took exception to this speech and, after hearing Wentworth say that they would need all their wisdom to protect their liberties, suspended all other business and resolved themselves into a grand committee to consider it. They heard Eliot declare that their investigations had been soundly based and that "this place ever

¹ C.J. i, p.843; Whitelocke, ff. 103v.-106.

had the course of questioning, examining the subject", but before they had reached any conclusions they were interrupted by a message from the Lords asking for a conference. When, as a committee of the whole, they assembled in the Painted Chamber, they found the government intent on conciliation. Through Buckingham, Charles cancelled the threats and limitations surrounding the subsidy and gave them leave to continue their investigation of grievances "in the auncient wayes of yo^r p^{re}decesso^{rs}", and not so much to seeke faults as the meanes to redresse them". The Duke then entered into a long justification of his own actions, ranging widely over the ten causes which the Commons' committee had enumerated. On their return to their own House the Commons seem to have dealt with the Duke's ill-timed answer by ignoring it, but in committee they debated whether a remonstrance was required to protect their liberties. Some members argued that the explanation just given rendered this unnecessary but Digges and Wentworth helped to have a sub-committee appointed to draw one up.¹

The fight between the government's supporters and its critics was continued at this sub-committee, which spent some time reviving the

¹ C.J. i, p.843; B.M. Additional MS 22474, ff. 22ff, 31-31v; Whitelocke, ff, 107-107v., 109v. ff, 117-117v., 118v; Diary of Sir Nathaniel Rich, frame 75 (The original manuscript of this diary has disappeared. However, Cornell University possesses a photostat copy of the manuscript and my references are to the frames of a microfilm made from this copy .)

Herbert was chairman of the grand committee, Glanville of the sub-committee, though on at least one occasion Pym reported from the latter: Whitelocke f. 121; C.J. i, p.843.

issue of the legitimacy of common fame as a basis for an accusation. Members were as usual quick to deny any intention of casting aspersions upon the King, but when the remonstrance was presented to the House it was framed in determined, if loyal, language. It denied that Coke had spoken seditiously and said that he had, in any case, at once explained his few unwise words, adding that the House would have dealt with both speeches had not the King's message to attend him interrupted proceedings. On the more important issue of the Commons' investigations it maintained their claim to examine anyone found responsible for grievances and it asserted that "whatsoever wee shall doe accordingly this parliament, we doubt not but it shall redound to y^e honour of your Crowne, & welfare of your subjects". On the Tuesday before Easter the remonstrance was presented to the King, who replied that he would not at once give an answer but would like the Commons to adjourn for eight days as the Lords had done. The motion to do so was passed by a majority of only thirty in a vote of two hundred and seventy.¹ The Commons were clearly in no mood to be deflected from their objective.

Meanwhile, a situation which was soon to prove embarrassing for the government, while encouraging to its opponents, had been developing in the House of Lords. The Earl of Bristol, ambassador to Spain at the time of the marriage negotiations, had fallen from favour and had been placed under restriction on his return home. No charges had been

¹ C.J. i, p.844; Whitelocke, ff. 119-120, 122v., 124.

brought against him and his attempts to receive a hearing had been refused. When Parliament was called in 1626 the Earl was not sent a summons, and when he petitioned the Lords on 22 March for assistance in his plight it was to this in particular that he drew their attention. His petition led to the issue of a writ but, when he also received a letter ordering him not to attend, he again appealed to the House. In this second petition he placed the blame for the treatment he had received on Buckingham's head, and said that if the Lords would hear him he would explain how the Duke had abused the King and his father, the state and both Houses of Parliament.¹

It was out of this situation that there grew Bristol's charges against Buckingham and the King's counter charges against Bristol. These accusations have little direct part in the history of Parliamentary

¹ J.O. Halliwell, ed., Letters of the Kings of England (London, 1848), ii, p.230; L.J. iii, pp.537, 544, 563. A comparison between Bristol's case and the medieval appeal might be worth making. On 9 May Digges referred to Bristol's accusations as an appeal (Diary of Sir Richard Grosvenor for 1626: Trinity College, Dublin, MS 611 (references are to a typescript of this manuscript), p.70). If it was, why did not Charles intervene with the statute of 1 Henry IV, cap. 14, by which appeals were abolished? Gardiner said that Bristol was impeached. Apart from a solitary remark of Bristol's (for which see p.297 n.1 below), the only evidence to support this is provided by a marginal heading in the Lords Journal. Some of these headings occur in the manuscript Journal and are therefore contemporary; others, including this one, do not, and were presumably provided when the Journals were prepared for printing: S.R. Gardiner, ed., 'The Earl of Bristol's defence of his negotiations in Spain'. Camden Miscellany, vol. vi (London, 1871: Camden Society, vol. civ), p.ii; L.J. iii, p.632. Another marginal heading, similarly absent from the manuscript Journal, states that the "E. of Bristol impeaches the Duke of Buckingham to the Commons ...": L.J. iii, p.580.

judicature, for although the Commons clearly derived encouragement from this additional challenge to Buckingham, the case itself was almost wholly confined to the House of Lords. However, it will require some attention as, to an extent, it affected the development of the trial of Buckingham. Furthermore, it must have worried the Duke: up to Easter his support in the Lords had seemed firm enough, but during the recess he was apparently considering a proposal to strengthen his position there by securing the creation of twenty new peers.¹

When the Commons reassembled on 13 April the King sent them a message renewing his request for rapid supply and stating that he did not intend to reply to the remonstrance because of the shortage of time. There was some protest but, possibly because a number of members had still to return, no action was taken. The absence of members, which it was thought might benefit Buckingham, was certainly the reason why the committee concerned with his affairs did not resume work until the 18th, but when they did so it was with unabated vigour. New allegations, such as Buckingham's extortion of money from the East India Company, were investigated, while further examinations were made of subjects like the misuse of the King's revenues and the sending of ships to La Rochelle, which had been first discussed before Easter. When yet another message about supply arrived from Charles, the Commons'

¹ C.S.P. Ven. 1625-26, p.390. Pesaro also reported that Buckingham had approached many members with inducements to help his cause.

answer was a resolution to set aside all business other than Buckingham's: they argued that the sooner they completed it, the sooner they would be able to satisfy the King's requests for money. By the 21st work was sufficiently advanced for the House to accept Digges' proposal that a select committee be appointed to consider the state of the "great Business now in hand", to reduce it into form and to survey the relevant precedents. Twelve members were appointed, including the chairmen of the various committees and sub-committees which had dealt with the case since the beginning of the Parliament. That same afternoon, Glanville, on behalf of the select committee, asked whether the House would decide if "common Fame a Ground for this House to proceed upon; because it conduceth much to the Business now in hand". No longer could the Commons avoid dealing with this fundamental issue: they resolved to debate it on the following morning and instructed the lawyers to be present with their precedents and their officers with the records.¹

When the debate opened, Mallett, as so often in this Parliament,

¹ Whitelocke, ff. 126v., 139v., 147v. ff, 150; C.S.P. Ven. 1625-26, p. 387; C.J. i, pp. 846, 847; Hulme, Life of Eliot, p. 127. The members of the select committee were Eliot, Herbert, Pym, Hoby, Digges, Selden, Erle, Glanville, Lake, Wandesford, Whitby and Sherland. In the early stages of its work Glanville often reported from it and was chairman on at least one occasion. Later Digges was the usual reporter. It is not entirely true to suggest, as Spielman does, that Glanville reported on procedural matters while Digges dealt with the actual subjects of the impeachment: D.C. Spielman, 'Impeachments and the Parliamentary Opposition in England, 1621-1641', p. 124 n. 52; C.J. i, pp. 847, 849, 850, 853, 856; Whitelocke, f. 159v; Grosvenor, p. 29.

gave the official view. He produced a whole series of reasons why common fame should not be accepted as a basis on which the Commons could proceed: their methods should not resemble those of a grand jury; a party accused on common fame would have to answer both the fame and the accusation; if he was cleared he would have no redress against his accuser; common fame would be more frequently employed by lesser courts if Parliament had been accustomed to accept it; the Lords had rejected the Commons' case against the Bishop of Durham in 1614 because it was grounded upon common fame. His arguments were hardly answered in the speeches which followed, but these did not lack persuasiveness. Wilde claimed the authority of Bracton for saying that all suspicion must be grounded upon common fame, adding that some presumptions did not admit to proof. He pointed out that, to be acceptable, the fame must arise among men of "the better Sort" and Littleton supported him, saying that there was a great difference between common fame and rumour. Littleton also declared that the Commons were "not a House of definitive Judgment, but of Information, Denunciation, or Presentment; for which common Fame sufficient". Sherland adopted the most advanced position, arguing that if fame was a sufficient basis for accusations concerning the life of one man, it should also be permissible in those relating to the life and soul of the commonwealth. But Wentworth and Selden had already put the really influential argument, political rather than legal: only upon common fame might men safely accuse the great; "The Faults of the Gods might

not be told, till the Goddess Fame born". For this reason the Commons resolved that common fame was a proper ground for their own proceedings and for any transmission of the case that might be made, either to the King or to the Lords.¹ Without this decision the case against Buckingham would have failed then and there, because no one had yet come forward prepared to present specific information against the Duke. In this respect it differed significantly from the cases of 1621 and 1624, in which detailed evidence had been secured from particular witnesses.

During the next week, the committee for evils, causes and remedies, and its sub-committee for the cause of causes, wound up their business, and the select committee busied itself examining witnesses and continuing investigations. The House offered Buckingham a further opportunity of a hearing and, when the Lords refused to permit this, proceeded to vote him responsible for eight causes.² It then received from the select committee the astonishing news that, contrary to the advice of the royal doctors, Buckingham had administered medicine to James during

¹ C.J. i, pp.847-8; Whitelocke, ff. 152v., 154v. As Spielman points out, Sherland's speech looks ahead to the trial of Strafford in 1641: op. cit., p.126. No one in the debate seems to have mentioned the concept of notoriety, which common fame closely resembled, but a few days earlier Noy had said "Ther is a proceeding on a notoriety of y^e fact & uppon c. (?) fame": Whitelocke, f.119.

² Whitelocke, f. 155; C.J. i, pp.848-9; L.J. iii, pp.570-1; Hulme, Life of Eliot, p.127. Four of the causes had been successfully laid at Buckingham's door by Eliot's sub-committee in March: C.J. i, p.841. In refusing Buckingham permission to answer the Lords referred back to their order of 28 March: see p.281 n.1 above.

his last illness. This seemed to confirm rumours which had been circulating for some time, that the Duke had poisoned the King, and the Commons at once referred it to a grand committee for consideration. Very rapidly, this committee confirmed the report but avoided suggesting that treason had been committed. Ignoring the vigorous protests of the Chancellors of the Exchequer and the Duchy of Lancaster, the House added the accusation to the Duke's charge as an "act of a transcendent Presumption, of dangerous Consequence".¹ On the following day, the King, probably making a virtue of necessity, asked the Commons to conclude the case in whatever way they chose but to do so as quickly as possible. The House thanked him and promptly arranged to revive the matter of the ship, St Peter.²

¹ C.S.P. Ven. 1625-26, p.13; C.J. i, pp.850-1.

² C.J. i, p.851; H.M.C. Thirteenth Report (London, 1891-3), Appendix, vii, p.10 (Notes in Parliament, 1626 and 1628, compiled by Mr. Lowther); Whitelocke, f. 168. Ball ('Parliamentary Career of Eliot', p.179) suggests that Charles probably withdrew his opposition to the Commons' proceedings to avoid the awkward constitutional implications that could be read into an impeachment made without royal consent. This seems to argue a greater degree of understanding of a constitutional situation than Charles in fact possessed, as well as an equally uncharacteristic anxiety to show respect for the proprieties of the law. That he had not forsaken strong-arm tactics is revealed by the pressure to which Cotton was subjected at this time to cease supplying the Commons with precedents, and by the arrests of Digges and Eliot which were soon to occur: Williams, op. cit., p.98. The Bishop of Mende reported to d'Herbault that the charge concerning the death of James had worsened Buckingham's position because, hitherto, he had always believed that Parliament could be dissolved to save him. If Charles now chose this course before the charge was dealt with, it would be assumed that he was implicated in his father's death: Paris Archives: Baschet's Transcripts: P.R.O. 31/3/63, f.66.

On 1 May the House voted that the Duke's behaviour in the rearrest of the St Peter was a grievance: its adoption of a course vainly urged by Eliot in March shows how far opinion had moved against Buckingham. During this debate Rolle advanced an argument which was to be used more forcibly later when he said that, even though the King commanded the rearrest, Buckingham should not have obeyed to the point of breaking the law: if an officer of the Crown did so, he should be punished.¹

On the following day, Digges, supported by Glanville, reported that the select committee of twelve had approved ten causes of the two evils afflicting the kingdom and had determined that Buckingham was the cause of all these. From its investigations of these the committee had drawn up thirteen articles against the Duke and it now laid them before the Commons. A strenuous attempt was made to persuade the House to present the articles to the King, but it resolved to follow "ye old way" and transmit them to the Lords. It would perhaps have decided thus anyway, but Strangways may have settled the matter by arguing that this was the normal course and by warning the House not to show distrust of the Lords. Accordingly, the select committee

¹ C.J. i, p.852; Grosvenor, p.9. Eliot adopted a similar position on 10 May: T.B. Howell, ed., A Complete Collection of State Trials and Proceedings for High Treason and other Crimes and Misdemeanors from the earliest period to the year 1783 (London, 1816), ii, column 1368.

was given the task of arranging how the decision should be carried out.¹

The committee made two recommendations which represented a departure from recent practice. It proposed that the accusation should be divided among eight members, who would be responsible for its presentation to the Lords. Each of these members would have two assistants who would help with the presentation of his section, but not speak. This proposition was accepted without demur and, when the Commons' case was eventually transmitted to the Lords, Digges and Eliot, respectively, presented the preamble and epilogue, while Herbert, Selden, Glanville, Sherland, Pym and Wandesford divided the articles of the charge among themselves. All these men had been members of the select committee.² However, that committee's second recommendation met opposition. As Digges read the draft of the preamble to the Commons it became clear that, in addition to the customary oral transmission of the case, he was proposing that the charge should also be embodied in a bill. Sandys at once objected that one method was sufficient and that to present the accusation in writing was a new way

¹ C.J. i, p.853; Whitelocke, ff. 173-173v; H.M.C. Lowther's Notes, pp.11-13; Grosvenor, pp.16, 23. Of the ten causes many had already been reported to the Commons and voted on: see, for example, C.J. i, p.849 (account for 24 April).

² C.J. i, p.854; H.M.C. Lowther's Notes, p.13; B.M. Additional MS 22474, f. 104. Sherland replaced Whitby who fell ill before his part was delivered: Sherland had previously been one of Whitby's two assistants: L.J. iii, p.590. It appears that the select committee originally proposed that Erle should deal with the part eventually delivered by Glanville. No reason is given for the change: C.J. i, p.854; B.M. Additional MS 22474, f. 104.

of delivering it. The proposal was referred back to the committee, which, if it bothered to reconsider it, did not change its mind. So when, on the 6th, the committee presented its last major report, detailing the complete charge and showing how it was to be distributed, the Chancellor of the Duchy of Lancaster, Sir Humphrey May, took up the cudgels. He asked the committee to explain why "we goe in a new way: calling this a bill different from the late way". Selden answered him:

we used to make the accusation of those persons accused by word of mouth: and that a good course. But as true that when accusations are of many parts; this course was also used: as 50 Ed. 3: 28 H. 6: there a large accusation is called a bill ...

Another diarist gives part of the same speech more cryptically, and raises again the problem of the meaning of the word clamour: "Some excused (accused) by clamour of y^e commons, some by mouth of y^e commons."¹ The precedent-worshipping Commons accepted Selden's guidance but this leaves unexplained why the committee had recommended adding procedure by bill to the normal method. Certainly the case was complex, but some of its predecessors had not been exactly simple, and in the past the Commons had been anxious to avoid committing themselves in writing.

¹ C.J. i, p.856; H.M.C. Lowther's Notes, pp.13-14, 17; Grosvenor, pp.29, 53; Whitelocke, f. 181. Selden's references are, probably, to the impeachment of Latimer in 1376 and, certainly, to the impeachment of Suffolk in 1450. In both cases bills (or petitions) were employed in the Commons' accusation, and, in the case of Suffolk, over twenty charges were listed by this means. For Latimer see p.25 above; for Suffolk see Rot. Parl. v, pp.176-83.

Clearly the accusation was of great importance, but this had been equally true of that against Middlesex in 1624, and if procedure by bill had then been thought a suitable method the Commons would surely have had no difficulty in using it. One is left wondering whether the bill was in some way a cloak behind which the intention to proceed by impeachment could hide until the last possible moment, or whether it was regarded by the committee as an essential part of this procedure. There is some evidence to support both possibilities, but it is first necessary to consider their implications. They assume, of course, that impeachment had some special significance, at least to the committee, and that it was thought necessary to disguise the intention to impeach Buckingham. Why secrecy might have been regarded as important we can only guess, but it may be that to use the term would have destroyed the contention of men like Eliot that they were not intending to attack the King or his government. As for the assumption that impeachment had some special significance, we know from Selden's treatise, probably written at about this time, that he believed this. Now, it is interesting that it was Selden himself who answered May's criticism of the committee's decision to proceed by bill, as well as orally, against Buckingham. For it will be remembered that it was, in his view, the failure of the Commons to present their accusation against Middlesex in writing that lay at the root of the process by which they lost the power, in that case, to maintain their own suit - a power which was to Selden one of the characteristics distinguishing

a Commons' impeachment from a Commons' complaint. Though Selden might be a theorist, believing in distinctions which, to the average member, may have meant nothing, he was at this moment in a position to influence the development of Parliamentary judicature from the standpoint of a practising politician.¹ Furthermore, the fact that he chose to make a distinction between impeachment and complaint suggests that some, at least, of the Commons' leaders were aware - or were becoming aware - not only that there were various procedures available to them but also that impeachment was a recognisable and, within limits, definite process which offered distinct advantages to those choosing to use it.

As for the wording of the bill itself, it is, of course dangerous to argue from the silence of the records, but when Digges on 3 May read to the Commons the draft of his preamble Buckingham merely stood accused. The select committee did not report its final work on the charge until the afternoon of Saturday, the 6th, and the engrossed articles were not read to the Commons until the morning of Monday, the 8th - the very day of the presentation of the charge to the Lords. Even at the last minute some minor alterations were made to these articles and not until this was done was the message sent to the Lords

¹ In his treatise Selden says that the Commons "accused and impeached ... Buckingham ... and delivered their Declaration in writing, that the said Duke might be put to his Answer": Of the Judicature in Parliaments, p.32.

asking for a conference.¹ This message contains the first open acknowledgement to appear in the record that the Commons were impeaching Buckingham: it is possible that at the last minute the word impeachment was slipped into the bill. Of course, if there were evidence that the intention to impeach Buckingham had become widely known before the introduction of the bill, the suggestion that the bill was a means of keeping this intention secret would at once collapse. But the records give little indication that any such knowledge was widespread. Occasionally, before the transmission of the charge to the Lords, the proceedings are described as a complaint,² but in the records of the case before 8 May, there is only one reference to impeachment. Moreover, this reference is cryptic and negative, suggesting that impeachment was not being contemplated. During the discussion of the accusation that Buckingham had administered medicine to James, Marriott maintained that the committee, which had already recommended adding this to the Duke's charge, did not intend to "impeach him so

¹ C.J. i, pp.856, 857; H.M.C. Lowther's Notes, p.14. The guess that the bill was the means by which impeachment was surreptitiously introduced perhaps receives support from Sandys' apparent failure to renew the strong objection he had first raised, when the debate was resumed on the 6th. He was not a member of the select committee and so might not at first have known what was afoot.

² B.M. Additional MS 22474, f. 22. The term also appears occasionally after the charge was sent to the Lords: L.J. iii, pp. 615, 649; Rushworth, op. cit., i, p.377.

dear to the King ..."¹

If impeachment had some special significance which led to the need for secrecy, why was there no eruption of anger when the intention did become known? Two answers are possible. First, if the plan remained secret until the morning of 8 May, there was no time to whip up opposition before the Commons met the Lords that afternoon. Secondly, after the Commons had impeached Buckingham there was little point in conducting a post mortem: it would simply underline the extent to which the government's supporters had lost control of the situation. Moreover, Charles doubtless felt that his attack on Eliot and Digges, soon to take place, was a fairly satisfactory revenge.

In any case, it was doubtless of limited interest to Charles whether or not his favourite was impeached, even if he attached any special significance to the term. To him what mattered was that Buckingham was under attack, and during the first week in May little happened in either House from which he could draw comfort. He had tried to prevent Bristol's charge against Buckingham from getting under

¹ H.M.C. Lowther's Notes, p.9. On 1 May the word was used in the Lords, probably imprecisely, in Bristol's case. There is nothing in the charges either by or against him to suggest an impeachment, and yet he desired not "to be impeached until his Charge of so high a Nature be first heard": L.J. iii, p.576. The charge against him was brought by the King, and the Commons were in no way responsible for it.

According to the calendared version of Salvetti's despatches to the Florentine court, he had reported in March that the Commons wished to proceed against Buckingham "by impeachment". But the use of this term cannot be justified from the Italian transcript of his despatch. This merely states that the Commons wanted to bring a process (un processo) against the Duke: H.M.C. Eleventh Report, Appendix i, p.51; B.M. Additional MS 27962, vol. iv, f. 142v.

way in the Lords by accusing the Earl of high treason, but the Lords had decided to hear the charges from both sides and Bristol had retaliated with a charge of high treason against the Duke. When the news that Buckingham had been accused of treason reached the Commons, Eliot moved that they should ask the Lords to commit him to prison. At that moment the House refused to listen, but a few days later it reconsidered the proposal and eventually adopted it. Moreover, through his son, Bristol delivered to the Commons a copy of his charge against Buckingham. This contained allegations that the Duke had shown strong inclinations towards Catholicism and had plotted the conversion of Charles. Hearing this, the Commons promptly revived their unfinished investigation into the Duke's part in encouraging papists, ignoring a demand from the King that they should end their inquisition and present the charge, and even examining a witness who more properly belonged to the Lords.¹

On the afternoon of 8 May the two Houses met in committee in the Painted Chamber and Digges introduced the Commons' impeachment of

¹ L.J., iii, p.578; C.J. i, pp.853, 855, 857; Williams, op. cit., i, p.99; M.M.C. Lowther's Notes, pp. 11, 15; Hulme, Life of Eliot, p.132; Whitelocke, ff. 178-9. The committee for evils, causes and remedies, was reconvened to conduct the revived investigation.

Buckingham.¹ The lower House had clearly aimed at making the occasion as impressive as possible: it had ordered that places should be reserved for the eight speakers and their assistants, and that those not appointed to deliver the charge should remain silent. In addition, the phrasing of the bill shows how much bolder the Commons had become since 1621 and 1624; while the concept of an indictment which Maude Clarke believed essential to any impeachment, is apparent:

For the speedy Redress of great Evils and Mischiefs, and of the chief Cause of these Evils and Mischiefs, which this Kingdom of England now grievously suffereth, and of late Years hath suffered ... the Commons ... do, by this their Bill, shew and declare against George, Duke, Marquis ... (a long list of his titles and offices is given) ... the Misdemeanors, Misprisions, Offences, Crimes, and other Matters comprized in the Articles hereafter following; and him the said Duke do accuse and impeach of the said Misdemeanors, Misprisions, Offences, and Crimes. (2)

Each article was read out and the member responsible then spoke to it. Eight articles had been dealt with when the Lords announced themselves "wearied with the heat" and asked for an adjournment. In consequence,

¹ C.J. i, p.857. The Lords gave the Commons a meeting, not a conference, "because they will only lend us their eares", but Whitelocke persists in calling it a conference: ff. 96, 182. Presumably because of the length of the charge, it was more convenient for the Commons to meet the Lords in committee than to present their case at the Bar of the upper House. If Selden is to be believed (see p.248 above), to meet in committee in no way impaired the Commons' claim to a continuing interest in the case, provided that the charge was presented in writing - and on this the House had already resolved.

² L.J. iii, p.619; C.J. i, p.857; M.V. Clarke, 'The Origin of Impeachment'. Fourteenth Century Studies, p.268.

the remainder of the charge was delivered on the 10th, and Eliot concluded the Commons' case by reserving their right to add subsequently any further accusation or impeachment, to reply to the Duke's defence, and to offer any necessary further proof. His final request was that Buckingham should be put to answer all the articles, and that every one of them should be considered in the course of the proceedings and judgment.¹

On the following morning a delegation from the Commons, headed by Rich, appeared before the Lords to ask for Buckingham's commitment to safe custody.² Two reasons were given: he had been impeached by

¹ B.M. Additional MS 22474, ff. 101v, 142; L.J. iii, p.590; H.M.C. Report on the Manuscripts of the Duke of Buccleugh and Queensberry, vol. iii. VI: The Montagu Papers: Second Series, p.288; Whitelocke, ff. 96ff. The thirteen articles were: 1. holding an excessive number of offices; 2. buying the position of Lord Admiral; 3. purchasing the Wardenship of the Cinque Ports (these three articles were delivered by Herbert); 4. failure to guard the Channel adequately; 5. the affair of the St Peter (Selden); 6. extortion of money from the East India Company; 7. handing over ships to the French; 8. their use against La Rochelle (Glanville); 9. compelling Lord Roberts to buy his honour; 10. sale of the offices of Lord Treasurer and Master of the Wards (Sherland who replaced Whitby when the latter became ill); 11. procuring honours for the Duke's relations; 12. misusing and profiting from the King's revenue (Pym); 13. administering medicine to James in his final illness (Wandesford): L.J. iii, pp.619-24; B.M. Additional MS 22474, f. 104; Grosvenor, p.53, gives article 6 to Selden but is the only account to do so.

² A good deal of argument had previously taken place in the Commons as to the exact procedure to be adopted in delivering this message. Rich had argued that it should be presented by the Speaker at the Bar of the Lords. He evidently felt strongly about this as he made the same point about the presentation of Montagu's charges to the Lords: Grosvenor, pp.71-2.

the Commons and, as they understood, accused of high treason before the Lords by another peer. This was the outcome of the proposal first made by Eliot on the 4th. Although his suggestion had then been ignored, Kerton had made a somewhat similar proposal, just before the conference on the 8th, when he moved for Buckingham's sequestration on the basis of the Commons' charges.¹ Sandys objected that the House had not asked for the sequestration of either Bacon or Middlesex, and Noy, evidently thinking of Bristol's charges against the Duke, declared that it was not for the Commons to direct the Lords what to do in a case before them. But although opposing Kerton's motion, or at least its wording, Selden said that many precedents justified the commitment of a man accused of high treason. Presumably because of shortage of time the House arranged to continue the debate on the next day. By then the proposal to sequester had given way to the bolder notion of commitment, and the House needed little time to decide that high treason was a sufficient basis for this. However, opinions differed as to whether the Commons might properly ask for a commitment on a charge made only in the Lords, and, if not, whether their own accusation provided a sufficient basis for such a request. Buckingham's supporters put up a strong fight, but opinion had hardened against him as a consequence of his insolent behaviour during the presentation of

¹ C.J. i, pp.857, 858; Whitelocke, f. 182v. Kerton had first proposed sequestration from the Lords and the Court when on the 4th the Commons renewed their investigation of the Duke's encouragement of papists; Whitelocke, f. 178.

the charges on the previous day, and the motion to pray for commitment was passed by a majority of 119 votes. But the Commons' efforts were of no avail: the Lords never replied to their message and Buckingham remained in the House.¹

At the same time, the Commons ability to protect their own members came under test. Shortly before Rich's delegation had gone to the Lords to ask for the Duke's commitment, the King had told the peers that he intended to punish certain of those who had delivered the articles of impeachment. Soon afterwards the Commons discovered that Digges and Eliot had been spirited away to the Tower. Digges, who had introduced the accusation, had offended the King with his comments upon the charge concerning James' last illness; while Eliot, in pronouncing the epilogue, had allowed his imagination full rein, blackening Buckingham's character and comparing him with Sejanus, the unscrupulous minister of Tiberius. As soon as they had heard the Vice-Chamberlain criticise these speeches, the Commons suspended all other business and went into committee of the whole to consider what to do. Having been told that the papers of the two members had been ransacked they appointed a sub-committee to draw up a remonstrance. On the next day they resolved that each member should take a protestation that cleared Digges of having spoken as the King had alleged, and

¹ C.J. i, pp.857, 858, 859; Whitelocke, ff. 182v.-184, 186; Grosvenor, pp.60-70; Hulme, Life of Eliot, p.134. For Buckingham's behaviour see Williams, op. cit., i, p.103. He did subsequently withdraw during part of the proceedings on his case: Gardiner, Debates, 1624 and 1626, pp.201-2.

shortly afterwards thirty-six members of the House of Lords voluntarily made a similar declaration. Thereupon the King released Digges, but Eliot remained in prison where he was subjected to a searching examination.¹

To begin with, the Commons showed less concern for Eliot's misfortunes than for Digges', perhaps because they felt that he had spoken with excessive violence. But when they were told that the King had arrested him for matters over which the Commons had no jurisdiction, they demanded an explanation, and they began to contemplate asking the Lords for a conference to discuss the whole affair. Eventually, Charles announced that he had accepted Eliot's denial, though of what was never specified, and he was restored to the House which at once gave him an opportunity to clear himself. Though the proposed conference never seems to have taken place, work on a remonstrance, later replaced by a bill, for the protection of the Commons' liberties, continued until the end of the Parliament.²

After the presentation of the Commons' charges to the Lords, the case against Buckingham made poor progress. Although the Lords seem to have done their best to withstand the pressures upon them, as their kindness to Bristol indicates, Buckingham's continued presence in the House undoubtedly had an intimidating effect. He took part in the

¹ Hulme, Life of Eliot, pp.137n, 141-2; M.A. Gibb, Buckingham, 1592-1628, p.238; Rushworth, op. cit., i, pp.362-5; L.J. iii, pp. 592, 627; C.J. i, pp.859, 860; H.M.C. Lowther's Notes, pp.22, 24, 25; Harleian MS 383, f. 32; Whitelocke, (MS 12.22), ff. 11, 14v.

² C.J. i, pp.860, 861; H.M.C. Lowther's Notes, pp.28-9; Hulme 'Leadership of Eliot', loc. cit., pp.377-8; Whitelocke (MS 12.22), ff. 19. 22, 24-24v., 56v.

debates on his case, persuading the Lords to allow him king's counsel, and winning the concession that he should answer only the written charges and not the additions, known as aggravations, made to these by the Commons' speakers. Moreover, Charles never wavered in his support for the Duke: when the Chancellor of the University of Cambridge died, the King secured his favourite's election and withstood the very considerable anger of the Commons that a man whom they had impeached should be so advanced.¹ On 8 June Buckingham handed to the Lords his written answer, a carefully prepared rebuttal of the Commons' charges. The Commons rapidly asked for a copy, which the Lords sent after being told by the Lord Treasurer that the precedents supported the Commons' right "to reply unto their Accusation". The lower House referred the answer to the select committee of twelve which at once set to work on it.²

By asking the Lords for a copy of the answer the Commons were making an important innovation. No such request had been presented in 1624 when Middlesex had made his answer, and yet the Commons of 1626 seem to have had no hesitation in asking. It seems certain that they knew in advance that the procedure followed against Buckingham entitled

¹ L.J. iii, pp.627, 629-30, 631, 650; C.J. i, p.866; H.M.C. Lowther's Notes, p.31; Gardiner, Debates, 1624 and 1626, pp.193ff; Rushworth, op. cit., i, pp.375, 378.

² L.J. iii, pp.655-67 (Buckingham's answer), 672; C.J. i, pp. 869, 870; Whitelocke (MS 12.22), ff. 150ff.

them to make such a request.¹ Moreover, as soon as the answer was received, Eliot, who had been responsible for the request, indicated the next stage by declaring that the Commons would have to reply. It is possible that these developments are a further sign of the influence of Selden who regarded them as essential to an impeachment, but what is particularly important is that they show the Commons taking a much greater interest than previously in the detailed development of a case after its transmission to the Lords.² Perhaps they feared that, without their intervention, the Lords might prove unequal to dealing with Buckingham; perhaps they acted in this way as a consequence of the disappointments of 1624.

There is no doubt that the Commons intended to continue with the impeachment³ but they were also at work on another form of attack on Buckingham. True to their belief that only evil advisers kept them from their loving monarch, they resolved on an approach to the King himself. A grand committee was set up to prepare a declaration, listing all the hindrances and abuse they had suffered at the Duke's hands, and asking for his removal. They dealt with a letter from the

¹ Because Eliot, in his speech to the Lords on 10 May, had reserved the Commons' right to reply to the Duke's defence (see p. 300 above).

² C.J. i, p.869; Whitelocke (MS 12.22), f. 46; Grosvenor, p.176; Selden, Of Judicature, p.109.

³ As Ball has shown: 'Parliamentary Career of Eliot', pp.208-10. It is also clear from the declaration itself: Rushworth, op. cit., i, p.407.

King demanding the passing of a subsidy bill within eight days, by tacking to the declaration a promise that they would give supply as soon as they received redress. On the 14th the Commons asked Charles to receive them with the declaration; on the 15th he replied with a dissolution.¹

In 1626, for the first time, a Stuart had dissolved a Parliament to save a minister. It is quite possible that, if Charles had allowed the impeachment of Buckingham to run its full course, the Duke would have been acquitted by the Lords. By dissolving Parliament when he did, Charles appeared to be suggesting that in no other way could he control it. He thus magnified its authority and ultimately harmed his own. But, in fact, an act of Parliamentary judicature was not to compel him to choose between surrender and dissolution until 1641. In the Parliamentary session of 1628, Charles warned members that a revival of the trial of 1626 would lead to an immediate dissolution, and ten weeks passed without a renewal of the attack on Buckingham.² When Coke eventually exploded: "I think the Duke of Buckingham is the

¹ C.J. i, pp.870, 871; H.M.C. Lowther's Notes, pp.32-3; Rushworth, op. cit., i, pp.404-10 is the declaration. Roberts has pointed out the "revolutionary" nature of the declaration: it "announced the new principle that there were faults that were not criminal and yet justified the removal from office of those who were guilty of them": op. cit., p.63.

² Gibb, op. cit., p.295. Four days before the opening of the session, some of the Commons' leaders met at Cotton's house. They seem to have been Coke, Eliot, Holles, Kerton, Pym, Selden and Wentworth. They decided for the present not to renew the attack on Buckingham: ibid., p.300.

cause of all our miseries", his clarion call that "that man is the Grievance of Grievances" was followed, not by a revival of the proceedings of 1626, as Selden proposed, but by a remonstrance to the King asking for the Duke's removal. Charles virtually ignored it and Buckingham remained, as others in recent years had wrongly thought themselves, "Parliament prooffe".¹

However, if the Commons had not yet learned how to coerce a reluctant monarch into dismissing his minister, Charles had had to pay quite a high price for his refusal to accede to their clearly expressed wish. He had lost the subsidy and, in the eyes of the Venetian Ambassador, he had lost much popularity.² His reaction to the attack on Buckingham had been exposed to scrutiny, and if Eliot genuinely believed that Charles would have behaved differently if only the Commons had been able to remove the influence of the Duke, John Pym,

¹ Gibb, *op. cit.*, pp.307, 310; Gardiner, *History*, vi, pp.305-6; McClure, *op. cit.*, ii, p.374; Rushworth, *op. cit.*, i, p.615 (Rushworth prints this remonstrance: pp.631-8); Hulme, *Life of Eliot*, p.262. Clarendon makes the point about the benefit to Parliamentary authority which flowed from saving a man by dissolution: W.D. Macray, ed., *The History of the Rebellion and Civil Wars in England*, i, pp. 9-10. Ball has questioned whether Parliament was dissolved to save Buckingham: J.N. Ball, 'The Impeachment of the Duke of Buckingham in the Parliament of 1626'. *Melanges Antonio Marongiu. Studies presented to the International Commission for the History of Representative and Parliamentary Institutions*, vol. xxxiv (Palermo, 1968), p.46.

² *C.S.P. Ven. 1625-26*, p.512. The Venetian ambassador, Angelo Contarini, had a poor opinion of Charles. When the King declared that he would rather lose his crown than abandon Buckingham, Contarini commented that "he judges badly in this as in everything else": *ibid.*, p.604.

a man of vastly greater insight, was likely to have made more significant deductions. In particular, if Pym's handling of the impeachment of Strafford in 1641 is any guide, he must have thought deeply about the reasons for the Commons' failure in 1626. The Commons' had proceeded too slowly and too publicly; they had missed the opportunity which, in charging Bristol, the King had seized, to frame an accusation of high treason against Buckingham, based on the suspicion surrounding James' death. This might have secured his committal to prison. Instead, Buckingham had remained in the Lords, impeding proceedings against him and receiving the advice of some of the best available counsel. Strafford was to suffer from very different treatment fifteen years later, although the process used against him was similar to that employed in 1626.¹

Although the Commons failed to secure the downfall of Buckingham, 1626 marked a further refinement in the technique of Parliamentary judicature. The Commons successfully based their charge upon common fame rather than upon specific information arising from petitions presented by named people - the more normal and surer method. In doing so, they acquired the resemblance to a grand jury of the kingdom,

¹ Spielman, *op. cit.*, pp.141-2. For accounts of Strafford's impeachment, see C.V. Wedgwood, Thomas Wentworth, First Earl of Strafford, 1593-1641. A Revaluation (London, 1964), pp.312ff; Spielman, pp. 147ff.

to which Mallett had so strongly objected in April. They then indicted Buckingham of offences, whereas in 1624 they had merely presented articles of accusation against Middlesex to the Lords.¹ Whether this distinction, so important to Maude Clarke, was more apparent than real must remain an open question; but there is little doubt that the decision to draw up the charge in writing in 1626 represents the sort of advance in the Commons' procedure and determination which lends support to Miss Clarke's view. In addition, in 1626 the Commons took sole responsibility for the compilation of the charge which, two years earlier, had been partly provided by the Lords. The Lords were about to occupy the position of judge and jury which subsequently has been regarded as their traditional function in an impeachment; when, in 1641, the Commons' managers of the impeachment conference became the prosecutors at the impeachment trial, the lower House, too, assumed what has long since been recognised as its proper share in an impeachment. Again, by demanding a copy of Buckingham's answer, the Commons made an important innovation. Yet this change was so readily accepted in both Houses as to suggest that it was known that the procedure adopted in 1626 entitled the Commons to make such a request. It cannot, of course, be proved that they did not possess this right in 1624, but if they did it is curious that they made no use of it: circumstances were favourable and a copy of Middlesex's answer might

¹ Prestwich, *op. cit.*, p.485; Clarke, 'The Origin of Impeachment', *loc. cit.*, p.268.

have made up for their lack of a record of their charges. Perhaps the Commons of 1624 simply did not know that they had power to make such a request, but it is at least possible that the changes of procedure in 1626 gave them an authority which the apparently rather different procedure of 1624 denied them. However, be that as it may, the Commons' request in 1626 shows that what happened to a case after its transmission to the Lords was a matter of increasing concern to them. Ultimately, it was their determination at that stage as much as their vigour while a case was still in the lower House which ensured the success of Parliamentary judicature.

As the records describe Buckingham as having been impeached while they do not use this word of his predecessors in misfortune, and as John Selden sat in Parliament in both 1624 and 1626, it seems legitimate to consider whether Buckingham's case was really the first impeachment in England in the seventeenth century. But such speculations are not capable of definite proof. What is more important is to recognise the clear practical differences between this case and its predecessors, rather than the possible but unproveable theoretical distinctions.

The procedural changes made in 1626 may have arisen directly from the need for the Commons to have greater control over a case involving a man of Buckingham's stature. Moreover, it is possible that, quite apart from this consideration, the issues at stake in the case were recognised as differing from those in the trials of 1621 and 1624.

In those years men had been accused of crimes and grievances committed in office: in 1626 Buckingham was really being attacked because he was thought incompetent to fill the offices he occupied. Hitherto, the attack had been largely legal in nature; now it had become mainly political. There is some evidence that this distinction was recognised. Warnings without precedent in the seventeenth century were issued to the King - from sources which are, to us, unknown - about the consequences of a successful attack on Buckingham: if he was "but decourted, it will be the Corner stone on which the demolishing of his Monarchie will be builded". Charles was warned that if Buckingham suffered for obeying him "the next attempt will be to call the King to accompt ...". The Bishop of Mende reported that Parliament was deliberately encroaching on the royal authority, and Charles was even told that those attacking the Duke wished to destroy the monarchy.¹ However exaggerated some of these utterances may be, the point is that apart from Lambe's comment in 1621 there is no evidence that such warnings were ever directed at James. He had washed his hands of Bacon and Middlesex in a manner which his son steadfastly refused to imitate. Of course, having acknowledged Buckingham's responsibility as his own, Charles could not then dismiss the Duke without admitting his own fault. But however earnestly the Commons believed that Charles was innocent

¹ Cabala, Mysteries of State, in Letters of the great Ministers of K. James and K. Charles, p.227; Rushworth, op. cit., i, pp.360-1; Paris Archives: Baschet's Transcripts: P.R.O. 31/3/63, f. 85.

of the sins of his minister and favourite, by attacking Buckingham in this way and in these circumstances they were saying something about the monarch and his government which had not been said previously in the seventeenth century. It may be that this was barely, if at all, realised, but the change of emphasis in 1626 seems to be summed up in the decision to base the charge against Buckingham on common fame. Because of his closeness to the King no one was prepared to come forward with a detailed accusation, while the type of charge required against him was unlikely to lend itself to proof based on specific evidence. Finally, one may speculate that, if in the early seventeenth century the term impeachment had a special significance, redolent of the errors of medieval monarchs and the reformation of their governments, it is perhaps not surprising that it first reappears in earnest in connection with the case against the Duke of Buckingham.

The only other case in this Parliament that was to have been submitted to the judicature of the two Houses, was that of Dr Richard Montague. He had first come to the notice of the Commons in May 1624 when Pym had reported from the committee of religion the receipt of a petition from two clergymen, complaining of the Arminian character of Montague's book, A New Gagge for an Old Goose. The House considered whether to send the petition to the King, but decided to report the matter to the Archbishop of Canterbury, George Abbot, who told Montague to revise his book. Montague, however, replied to these attacks by

writing a more extreme statement of his views, Apello Caesarem, which was licensed for publication by James just before he died.¹ In 1625 the Commons dealt with this defiance of their authority by committing Montague to the custody of the serjeant-at-arms for contempt. Shortly afterwards, Charles appointed him to a royal chaplaincy and tried to take the matter out of the Commons' hands. In a debate during the Oxford session leading speakers maintained the House's right to examine the King's servants, and Montague only escaped further proceedings by pleading sickness.²

Before Parliament opened in 1626 the King withdrew his objections to the Commons' examination of Montague's opinions, although five bishops had pronounced them in no way contrary to the doctrines of the Church of England and had recommended the prohibition of further controversy about them. In the committee for religion the Commons duly set to work to investigate them, surely encouraged by the knowledge that in doing so they were also sniping at one of Montague's chief supporters, the Duke of Buckingham. This committee rapidly set up a sub-committee to prepare for a conference with the Lords, but not until

¹ Gardiner, History, v, pp.351-4; Diary of Edward Nicholas: S.P. Dom. 14/166, f. 199; Diary of Sir Walter Erle: B.M. Additional MS 18597, f. 182.

² Gardiner, History, v, pp.373, 400; Roberts, op. cit., pp.51-2.

after Easter was a full report presented to the Commons.¹ This was made by Pym, whose performance was so masterly that Montague's best friends left the House rather than take part in the divisions. Pym was careful to emphasise that the committee had concerned itself only with the effects, not with the truth, of what Montague had written. It had found that he had caused disturbances in the Church, that he had tended to create sedition by dividing the King from the people and the people from each other, and that he had violated the doctrine of the Church of England and endeavoured to reconcile the people with Rome. Some members - we do not know who - wished to implement at once the committee's recommendation that, as he was a public offender against the peace of the Church, his case should be transmitted to the Lords; but Wandesford and Whitby wanted him to answer in the Commons first, an important confirmation of a growing tendency in these cases. Accordingly, the House arranged to give him notice that it would hear him if he wished, and in the meantime it imposed a fresh duty upon the

¹ Rushworth, op. cit., i, pp.202-3; W. Scott and J. Bliss, eds., The Works of the Most Reverend Father in God, William Laud (Oxford, 1847-60), vi, p.249; Whitelocke, ff. 19, 20, 84, 85. On 24 March Erle told the committee for evils, causes and remedies, that Buckingham had greatly encouraged Montague, but Fleetwood said that the Duke detested Arminianism. If Buckingham's support was waning at this time Meddus saw little sign of an estrangement later: writing on 22 May he described Buckingham as a great supporter of "Montagutians": Whitelocke, ff. 84, 85; Williams, op. cit., i, p.105. For Buckingham's support of Montague at the York House disputation in February, see I. Morgan, Prince Charles's Puritan Chaplain (London, 1957), p.163. Morgan sees this conference as marking the final disillusionment of Buckingham's puritan friends, after which the real attack on the Duke began: pp.166, 168.

sub-committee by asking *it* to frame appropriate questions to put to him. Montague did not accept the Commons' invitation and so, on 29 April, the House resolved on three charges, closely modelled on the findings of the committee. Pym moved for the usual conference with the Lords, but Rich objected and proposed instead that Pym should deliver the charge in a message at the Bar of the Lords. He gave three reasons: this method would be more public than a conference; it was the ancient way which the Commons had employed in 1614 against the Bishop of Lincoln and which they must not lose; it would obviate the risk that some of what was said at the conference might be omitted from the subsequent report to the Lords. Rich's suggestion was adopted and the Commons asked the committee to write down the objections to Montague's books, which would be handed to the Lords.¹

The impeachment of Buckingham and its aftermath was presumably responsible for the slow progress made by the committee, but early in June several lawyers were added to it. On the 10th Pym reported the charge and the articles, and the engrossing of the latter was probably just completed when the dissolution brought the case to a sudden halt.²

¹ Williams, *op. cit.*, i, p.96; *C.J.* i, pp.845, 851; Whitelocke, f.133; *S.P. Dom.* 16/25, nos. 10, 87.

² *C.J.* i, pp.866, 871; Whitelocke (MS 12.22), f. 50v. The case was revived in 1628 and Montague was invited to appear before the committee for religion. But although the House eventually ordered the transmission of his case to the Lords the *Journals* of that House contain no indication that this was ever done: *C.J.* i, pp.889, 911; Stowe MS 366, ff. 234-234v; *H.M.C. Lowther's Notes*, pp.42-3.

It is unfortunate from our point of view that the case against Montague in 1626 did not advance one stage further. It would be most interesting to know how Pym would have introduced it at the Bar of the Lords. Although Rich was correct in his reference to the case of Neile in 1614, the Commons were varying the practice of the recent past in ordering Pym to present a message at the Bar of the upper House. A few days afterwards they were to make another variation when they approved procedure by bill against Buckingham; but the reasons they gave for the changes were not similar and there is no suggestion that, at any time, they thought of presenting to the Lords a bill against Montague, although the evidence against him, but not apparently the charge, was to have been handed to the Lords in writing.¹ Furthermore, the bill against Buckingham was presented at a joint committee meeting of the two Houses, not at the Bar of the Lords. Perhaps in altering their procedure in both cases the Commons were remembering their dissatisfaction at the outcome of the trials of Middlesex and the Bishop of Norwich two years earlier; while it may be significant that Selden believed that the case against Middlesex ceased to be an impeachment because the charge was not presented either in writing at

¹ C.J. i, p.851; Whitelocke (MS 12.22), f. 50v. Montague wrote to Cosin on 20 April that he had been told that his pardon would not help him because the Commons intended to proceed "by an Act of Parliament which will avoid the pardon". Even if he was referring to a bill of the type used against Buckingham, it would be dangerous to accept his statement in the absence of any corroborating proof in the Parliamentary records or diaries: G. Ornsby, ed., The Correspondence of John Cosin (London, 1869, 1872; Surtees Society, vols. lii, lv), part i, pp.88-9. The articles against Montague are printed in State Trials, ii, columns 1263-6.

the committee with the Lords or orally at their Bar. But there is no indication that Montague was to be formally impeached and Selden does not mention the case in his writings. Nevertheless, the modification in procedure, unchallenged though it seems to have been, interestingly foreshadows the change made at the same stage during Buckingham's case, and both point to the continuing flexibility of the process of Parliamentary judicature.

If Buckingham's case looks temptingly like the climax of Parliamentary judicature in the 1620s, it is not the final case in the series. In Charles I's third Parliament one man, Dr Roger Manwaring, who was chaplain to the King, was presented to the Lords by the Commons, and this study will conclude with an examination of his case. Charles had issued a warning that a revival in 1628 of the proceedings against Buckingham would be followed by an immediate dissolution, but he seems to have made no attempt to interrupt the attack on Manwaring which was well under way before Coke's outburst against the Duke. We do not know how nor exactly when the Commons' enquiries began, and some of the dating in two of the printed collections of material is wildly inaccurate.¹ But there is no reason to doubt the entry for 3 May

¹ The first entry in State Trials is dated 23 June, 1629. It consists mainly of a speech by Pym, probably delivered on 14 May, 1628, though it may also contain elements of another speech by him of 31 May, and possibly of an earlier speech by Rouse, to whom State Trials credits the whole entry: State Trials, iii, columns 336-8; H.F. Snapp, 'The Impeachment of Roger Maynwaring'. Huntingdon Library Quarterly (1967), vol. xxx., no. 3, p.221; Stowe MS 366, f. 204; Diary of Sir

in Sir Richard Grosvenor's diary. On that afternoon a member, Rouse, reported from a sub-committee to the committee for religion that Manwaring was aiming at subverting the commonwealth and overthrowing Parliament, robbing people of their property and condemning those who would not lend money to the King, and attempting to divide the monarch from his people. These wide-ranging accusations stemmed from two sermons preached by Manwaring in which he upheld the King's right to raise forced loans without the consent of Parliament, and castigated as impious and rebellious those who refused to pay. The committee probably held a debate on the report and it agreed to a motion of Spencer's "to have a Bill to attaynt him".¹ Doubtless because of a preoccupation with the Petition of Right, the Commons did not hear of its committee's resolution until 14 May, by which time Manwaring had preached further sermons reiterating the themes of his earlier ones. But when Pym made his report Spencer's motion was the centre of attention and caused some controversy. We do not know why he had proposed a bill of attainder but he gained the support of Phelips who seems to have been concerned about the need for haste. Phelips thought

Richard Grosvenor for 1628: Trinity College, Dublin, MS 612, pp.166-7 (references are to a typescript of this manuscript). A similar account among the State Papers has been supplied, subsequently, with the date, 11 June, 1628: S.P. Dom. 16/107, ff. 3-4v; C.S.P. Dom. 1628-9, p.158.

¹ Grosvenor, 1628, pp.110-1; State Trials, iii, column 335.

that Spencer's motion would not preclude the possibility of transmitting Manwaring's case to the Lords, presumably in the customary way, at a later stage. But Digges had already objected to the bill on the ground that it would prevent Manwaring from receiving sufficient punishment. Why he believed this is not recorded, but he did propose that the Commons should go to the Lords. However, a second speech by Pym is more enlightening. Diverging from his committee's recommendation, he declared that a bill would debar the Commons from stating their reasons - presumably for their accusation. He also warned the House that such procedure might provoke the Lords, because of their claim that bills of attainder should begin in the upper House; and he explained that the Lords held this view because the Commons were not empowered to administer the oaths upon which such a bill must be based. His opinion that the House should present itself to the Lords combined with Selden's, who argued that attainder should be used only in cases where the defendant could not be brought before the Commons or where the issue at stake was outside the jurisdiction of the House, as in doctrinal matters. The debate concluded with a speech by Rich who advocated sending Manwaring's case to the Lords but asserted that either method was within the Commons' power. The House resolved as most of these speakers had suggested, and thus, exceptionally, in the field of Parliamentary judicature, rejected the recommendation of one of its committees. However, it asked the sub-committee of the committee for religion to draw up the charge for presentation to the peers, though

it added to this sub-committee five new members including Pym and Selden.¹

The sub-committee was given power to examine the printer of those of Manwaring's sermons which had been published, as well as the usual authority to call for witnesses and records. Preparation of the charge was nearly complete by the end of May, when Manwaring suddenly announced that he wanted to be heard by the Commons. Eliot, who with Coke seems to have taken little part in this case, pointed out that this could not be denied him, and he was given a day to appear. In fact, there is no indication that he took advantage of the opportunity, and on 4 June a message was sent to the Lords asking for a conference. There is no evidence of any suggestion that the Commons should present their case at the Bar of the Lords as they had done, through Pym, against Montague in 1626. On the contrary, as in Buckingham's case, both Houses appointed committees which met on the afternoon of 4 June in the Painted Chamber. Pym again bore the chief responsibility, though he was probably assisted by Rich, Ball, Rowse and Hampden. But Manwaring's charge was not distributed among several speakers as Buckingham's had been.²

¹ B.M. Additional MS 27878 (a "True Relation", one of many copies), ff. 260-260v; Frosvenor, 1628, p.168; Harleian MS 5324, f. 16v; Diary of Edward Nicholas: S.P. Dom. 16/97, f. 70v; Stowe, MS 366, ff. 165, 204; C.J. i, pp.897, 907. Further members were later added to the sub-committee which was soon being described as a committee. They included Noy, Hakewill and Littleton: C.J. i, pp.898, 907; Snapp, op. cit., p.222. We do not know the names of the original members.

² B.M. Additional MS 27878, f. 340v; L.J. iii, p.838; C.J. i, pp. 901, 902, 906, 907, 908, 909; H.M.C. Lowther's Notes, p.35.

Pym began by reading out a declaration against Manwaring, and this was later handed to the Lords. It describes itself as a "Bill of Complainte" and it does not "accuse and impeach" Manwaring of offences as the bill against Buckingham had done two years earlier. Its approach is perhaps less direct: the Commons pray that he may be put to answer their complaints. They do, however, reserve the right to exhibit subsequently "any other accusa^on or impeachment" against him, to reply to his defence and to offer further proof. The Commons were clearly safeguarding their interests in the later stages of the case and, in fact, writing into their bill many of the requests which Eliot had made in his concluding speech at the impeachment conference in 1626.¹ If different types of Parliamentary judicature had previously existed or been recognised, it may be that they were now merging into one.

Having read the declaration Pym then made a long and elaborate speech. Manwaring may have been a relatively insignificant person, but in the year of the Petition of Right the position which he had taken up was of fundamental importance.² Pym conducted a detailed

¹ L.J. iii, p.845. The declaration is among the acts of Parliament, kept in the House of Lords Record Office, and should be used in preference to the version printed in State Trials, iii, columns 338-40.

² Snapp, op. cit., p.217, believes that, from the standpoint of demonstrating the positions of Parliament and Crown, the case rivals, if it does not surpass, in importance the proceedings against Mompesson, Bacon and Middlesex.

examination of Manwaring's opinions and of the reasons for the Commons' objections. The conference ended with the Lords asking for time to consider the matter and promising the Commons an answer.¹

When on 9 June the Lord Keeper reported the conference proceedings to the peers, the House at once took action. Although it had yet to charge Manwaring, it ordered that he should be taken into custody - and thus established for itself a new precedent. On the following day the Lords examined witnesses, including five M.P.s who attended and were sworn with the consent of the Commons. Manwaring himself was brought to the Bar on the 11th and was charged by Mr Serjeant Crew and the Attorney General with the offences contained in the Commons' declaration. In the course of his speech the Attorney General pointed out the similarity between Manwaring's offence and that of Cowell in 1610. Manwaring then denied that he had had any intention of proposing an alteration to the fundamental laws of the kingdom, and he annoyed the Lords by requesting them to refer to the bishops for judgment the logical deductions and inferences to be found in his printed sermons. They did, however, accept his plea for a copy of the charge and time to prepare his answer, and they permitted him to return to his house; but they denied him counsel to speak for him on the legal aspects of

¹ Stowe MS 366, f. 217v. Pym's speech is given in State Trials, iii, columns 340-351.

his case and they continued to employ a guard to watch over him.¹ Buckingham had been treated far less severely.

Manwaring seems to have required little time to decide that a submission would be preferable to a defence. On the 13th he came to the Lords to deny that his sermons had any seditious or malicious intent or that they aimed at "destroying ... the municipal laws of the land, or slighting ... parliaments". His only objective had been "to persuade those honourable gentlemen, who refused to conform themselves, to yield a supply unto the present and imminent necessities of the state". He concluded by begging "pardon and mercy of their lordships, and of the commons ... humbly beseeching them to accept of this submission".²

This speech did not satisfy the Archbishop of Canterbury, who administered a sharp rebuke to Manwaring before the latter withdrew; but the House as a whole showed itself rather less hostile, and resolved on a sentence which accepted some of his denials. He was to be

¹ L.J. iii, pp.845, 846, 847; C.J. i, p.911; State Trials, iii, column 352; F.H. Relf, ed., Notes of the Debates in the House of Lords, officially taken by Robert Bowyer and Henry Elsing, Clerks of the Parliaments, A.D. 1621, 1625, 1628, pp.220n., 221. On the 12th the Lords agreed to a Commons' request to examine Manwaring's printer, to find out on whose authority his sermons had been published: B.M. Additional MS 27878, f.404; Stowe.MS 366, f. 244v; Relf, op. cit., p.221. Manwaring claimed on the 13th that they had been printed at the King's "special command": State Trials, iii, column 353.

² State Trials, iii, columns 353-4.

imprisoned during the pleasure of the House, fined £1,000, suspended from exercising his ministry for three years, prohibited for ever from preaching at Court or from holding any ecclesiastical or secular office, and ordered to acknowledge his offences to both Houses in a manner to be prescribed by a committee of the Lords. In addition, the Lords declared that his book of sermons should be burnt, and they resolved to ask the King to call in all copies and to prohibit any further printings.¹

Whether the Commons would have exercised the right, mentioned as long ago as 1621, of demanding judgment uninvited, we do not know. For, as so often previously, the Lords rapidly issued the customary invitation and the Commons presented themselves at the Bar. According to the Lords Journal the Speaker declared that "the Knights, Citizens, and Burgesses, of the Commons House of Parliament, have impeached before your Lordships Roger Manwaring ... of divers enormous Crimes", and one of the manuscript accounts tells us that he demanded judgment against him "uppon the Complaine before mentioned".² The sentence was then pronounced, and in due course Manwaring formally recognised the justice of his punishment and apologised for his offence in a

¹ Ibid., iii, column 356.

² Ibid., iii, columns 355-6; L.J. iii, pp.855-6; B.M. Additional MS 27878, ff. 409v, 428; H.M.C. Lowther's Notes, p.47.

statement which he read out to both Houses.¹

From the moment when the Commons considered the possibility of attainder and rejected the recommendation of their committee for religion to proceed in this way, the case exhibits some unusual features. The Commons sent to the Lords a written declaration, although their reason for adopting this course against Buckingham - the length and complexity of the case - hardly applied in 1628. The declaration was not closely modelled on the bill of 1626, although men like Pym and Selden seem to have been intimately associated with the drafting work in both Parliaments. When the Commons' case was presented to the Lords, Manwaring was at once taken into custody, although he had yet to be charged. In the matter of counsel, his treatment was closer to that received by Middlesex than by Buckingham, and the requirement that he should submit in the Commons as well as in the Lords was an interesting comment upon the interest of the lower House in the case. Finally, there is evidence that by the end of the case, but not perhaps at its beginning, it was being referred to as an impeachment.

How Parliamentary judicature would have developed in the years after 1629 if Parliament had continued to meet, we can only guess.

¹ State Trials, iii, columns 357-8; L.J. iii, p.870; C.J. i, p.916. The King issued the desired proclamation on 24 June: C.S.P. Dom. 1628-9, p.175. He pardoned Manwaring on 6 July and conferred on him the rectory of Stamford Rivers: Gardiner, History, vi, p.330.

By the time when Strafford was brought to trial conditions were very different. But there can be little doubt that the trials of 1626 and 1628 consolidated and extended that judicature as a significant and important part of Parliamentary procedure.

Conclusion

The Parliamentary judicature revived in 1621 was called into existence in response to the needs of the moment. The Commons resolved to go to the Lords when they discovered that their own powers were inadequate to cope with the requirements of the situation. Although, on occasion, they experimented with other procedures, they kept faith with this method and their trust in the Lords was, on the whole, rewarded. Cautiously, Parliament was regaining its power to right the wrongs which the courts of equity were increasingly failing to remedy. But this judicature was not to be confined to the private and personal: in 1626 Parliament declared Buckingham incompetent to discharge the trust laid upon him.¹ This increased assertiveness was matched by a development in procedure: in particular, the Commons assumed a larger part in the cases of 1626 and 1628 than they had done in those of 1621 and 1624. While we may suspect that the earlier cases resemble more closely the 'complaints' of Selden and Elsyngge than their 'impeachments', we cannot be sure that such distinctions

¹ F.H. Relf, ed., Notes of the Debates in the House of Lords, officially taken by Robert Bowyer and Henry Elsing, Clerks of the Parliaments, AD 1621, 1625, 1628, pp.xii-xiv, xviii ff.

meant anything to the majority of members at the time, and there is some evidence that the two terms were being used to describe the same case in 1628. If there had previously been two separate procedures, they were perhaps merging by the time when Manwaring was brought to trial. Nevertheless, when Selden and Elsynge distinguish between complaint and impeachment, they point to two main differences - whether or not the Commons present to the Lords articles against the accused, and whether or not the lower House has an automatic right to participate in a case after its transmission to the peers. Now in the cases of 1621 and 1624 the Commons were inclined to leave to the Lords the work of drawing up the articles of the charge. Certainly there are exceptions, but the tendency for the Commons to take on this work becomes much more marked in and after 1626. Furthermore, the trials of 1621 and 1624 show the Commons playing virtually no part in a case after it had left their House, until the moment when they are called upon by the Lords to demand judgment upon the accused. Here again the trial of Buckingham in 1626 does not exhibit a clean break with past procedure, because on one occasion in 1621 the Commons had threatened to demand judgment uninvited; but in 1626 they inaugurate the practice of asking for a copy of the accused's defence and of claiming the right to reply to this. Moreover, the frequency with which the cases of 1621 and 1624 are described as complaints cannot be overlooked; and even though this term is not absent from the records of 1626 and 1628, the appearance of the word impeachment

during the trial of Buckingham should not be ignored.

Nevertheless, whether or not the distinction between complaint and impeachment has any practical application in the 1620s, it is important to emphasise that impeachment did not, as is often assumed, re-emerge in its full form in 1621. Such an assumption obscures the very important developments in judicial procedure which occurred in both Houses in the 1620s. Not only do these developments point to the flexibility of that procedure, a procedure which, as Coke said of the medieval precedents, had "beene with some varietye"; they also yield evidence that the Houses modified their practice, cautiously and perhaps reluctantly, in response to the requirements of the moment, rather than in accordance with any long-term plan.

The judicature which has been the main subject of this study should probably be seen as a part of the general growth of the judicature of the two Houses separately, which preceded and accompanied its development. The various strands are perhaps different themes in the same story, of which Parliamentary judicature is in many ways the most important aspect. Some, at least, of the other themes may have helped to determine its development. Much the same may be said about the medieval records which the Commons so eagerly studied. Many members tried to follow precedent and seem to have felt that they were picking up the threads of the past, but they were no more bound by precedent than by the rigid rules of contemporary courts of law. Like their predecessors in 1388, the Commons applied what they

called the "laws of Parliament": these might be age-old or they might be newly created, but they were invoked or ignored as circumstances required.¹ In consequence, although Parliamentary judicature showed considerable qualities of adaptability, it also possessed sufficient substance to attain its objectives. To study its power in evolution is to understand more fully the advance in Parliamentary authority during the early seventeenth century.

¹ J. Rushworth, Historical Collections, i, p.407; M.V. Clarke, 'The Origin of Impeachment'. Fourteenth Century Studies, p.269; E. Coke, The Fourth Part of the Institutes of the Laws of England, pp.14-15.

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14 111 Proceedings adopted, 1604-8

cases described in the records as a complaint
case described in the records as an impeachment

table must be used in conjunction with the text,
the adoption in different cases of similar
names may not necessarily be the result of
like circumstances

| 1 Case | 2 Commons' conditions used (specified where known) | 3 Commons' sub- committees used | 4 Accused/defendant examined or heard by Commons or their committee | 5 Accused/defendant committed to custody/imprison- ment by Commons | 6 Commons warrants present | 7 Cases sent to Lords verbally | 8 Cases sent to Lords in writing | 9 Formal resolution in Commons to trans- mit case or accused to Lords | 10 Joint conferences or committee meetings of both Houses | 11 Lords' committees used |
|---------------------------------------|---|--|--|--|-------------------------------------|--|---|---|---|------------------------------------|
| Dyball (C) (privilege) | x | | | | | Probably | | | x | |
| Cowell (privilege) | Grievances | x | | | | Probably | | | x | |
| Proctor (privilege in part) | Grievances | | x | | | | Bill | | Only at end of case | x |
| Spiller | Grievances | | x | | | | | | | |
| Helle (privilege) | Four used | | | | | x | | | | |
| Hoggeson (C) | Grievances; one other | | x | x | x | x | | x | x | Four used |
| Michell (C) (privilege in part) | Grievances | | x | x | x | No initiative by Commons | | | x | |
| Necon (C) | Abuses in courts of justice | | | | | Divisions headed over without resolution | | See column 7 Commons resolve to do this | x | Three used |
| Belverton | x | | x | | | x | | | | |
| Floyd (I) | x | | x | | | | | | At Lords' request | |
| Sennet (C) | Abuses in courts of justice; two others | | Commons offered hearings; not taken up | x | | x | | x | x | |
| Field (C) | Abuses in courts of justice | | | | | Commons propose Lords' investigation | | | x | |
| Middlesex (C) | Grievances; twelve; two others | | x | | | x | | x | x | x |
| Derick (C) | Grievances | | | | | Almost certainly | | x | x | |
| Anyan (C) | x | | | | | | | Declines letter reversed | | |
| Buckingham (I); occasionally (C) | Deils, causes and remedies; three others | x | x | Commons asked Lords to commit Bucking- ham to custody | | x | Bill | x | x | x |
| Montagu | Religion | x | Commons offered hearings; not taken up | In 1605 | | | | x | | |
| Hamerling (C; I) | Religion | x | Hamerling asked to be heard. Commons offered hearings; probably not taken up | By Lords, on their own initiative | | x | Declaration | x | x | |

| 12 Lords' sub- committees used | 13 Accused/defendant examined or heard by Lords or their committees | 14 Commons demand copy of defence and claim right to reply | 15 Lords report to Commons | 16 Commons invited to demand judgment | 17 Other characteristics |
|---|---|--|-------------------------------------|---|--|
| | x | | x | | |
| | | | x | | |
| | x | | x | | |
| | x | | x | | False accuser punished by Commons |
| | | | | | Commons' case based on common fame |
| | Compassion had fled but Commons' case examined | | | x | Commons' written evidence presented to Lords. Both Houses active in accumulating evidence. |
| | x | | | x | Both Houses active in accumulating evidence |
| | x | | | x | Lords draw up charge |
| | x | | | | Lords add a charge to that of Commons |
| | x | | | | Commons resolved to punish |
| | | | | | Lords never gave judgment |
| | x | | x | | Commons threaten to demand judgment uninvited. Commons punish false accuser |
| Two used | x | | | x | Accusation compiled by both Houses. Middlesex made a detailed defence. Commons dissatisfied with sentence |
| | x | | | | Lords referred case to High Commission for a report |
| | | | | | Commons petitioned King for Anyan's removal |
| | x | x | | | Commons' case based on common fame. Commons made preparations to petition King for Buckingham's removal. (Request presented in 1628) |
| | | | | | Before the dissolution, the Commons had resolved to present the charge at the Lords' Bar, and to hand over their evidence in writing |
| | x | Commons reserved right to reply | | x | He was required to make a personal submission in the Commons as well as in the Lords |

Table I

This table is intended primarily for reference and should be used only in association with the text, since precedents are presented in a variety of ways, ranging from detailed discussion to a brief, passing reference.

Table of medieval precedents used to illustrate
or justify the exercise of joint Parliamentary
judicature.

| <u>Precedents used in 1621 debates (date given unless this is 8 March)</u> | <u>Precedents used by Coke & March 1621</u> | <u>Precedents used by Selden</u> | |
|--|---|---|--|
| | | <u>Priviledges of the Baronage of England</u> | <u>Of the Judicature in Parliaments</u> |
| 1368 | | | |
| Lee | x | x | x |
| 1376 | | | |
| I Bury | x | | x |
| I* Ellis 19.ii. | x | x | x |
| I* Latimer 19.ii; 26.iii; 2.v; 3.v. | x | x | x |
| I* Lyons | x | x | x |
| I* Neville 26.iii; 4.vi. | x | | x |
| I* Peach 19.ii; 26.iii. | x | | x |
| 1377 | | | |
| Gomeniz & Weston | x | ? | x |
| I Ferrers 28.ii. | | x | x |
| 1380 | | | |
| Ferriers | | | x |
| 1386 | | | |
| I Pole 3.v. | x | | x |
| 1397 | | | |
| I* Mortimer, Thomas | x | | x |
| 1423 | | | |
| Mortimer, John 28.ii. | x | | x |
| 1450 | | | |
| I* Suffolk | x | | x |
| Thorpe, Speaker 28.ii. | x | x | |
| | | Cavendish v Pole, 1384 Northumberland, 1404 | Despenser, 1321 Wesensham & Chiryton, 1348 Perreys, 1376 I Despenser, 1383 I* Burley I* Beauchamp I* Salisbury I* Berners I* Judges, 1388 |

Notes

- I indicates that a case is described in the medieval records as an impeachment.
 - * indicates that the phrase "accuse(d) and impeach(ed)" or "impeach(ed) and accuse(d)" is used in the records of a case.
 - ¹ The Bishop of Chichester was also "impeached" in 1388
 - ² These are the trials of the lords appellants of 1388. Thomas Arundel, though not one of these appellants, was a brother of Richard, earl of Arundel, who was. Thomas was "accused and impeached" in 1397.
- William of Wykeham, 1376, who does not appear in this table, was also "impeached".

Other unnamed cases, ¹ 1388

Appellants, ² 1397

I* Cobham, 1397

 Haxey, 1397

 Northumberland
 1406

Somerset
Duchess of
Suffolk
Bishop of
London
I* Stanley, 1459