

CALM and RESPECTFUL
THOUGHTS on the NEGATIVE
of the CROWN on a SPEAKER
chosen and presented by the REPRESENTATIVES of the PEOPLE :

Occasioned by some PUBLICATIONS in the
GEORGIA GAZETTE, of *May* and *June* 1772,
wherein the late ASSEMBLY of that PROVINCE
is charged with encroaching on the RIGHTS of
the CROWN.

BY A FREEMAN.

Pro Rege & Patria semper. Buckingham's Epitaph.

IT is a remark of a very considerable writer of our
own, " *that it cannot be improper to canvass any
constitutional question when decency is observed, and
nothing advanced but on the credit of the best authorities,*
because in a *British* country every man ought to be ac-
quainted with the laws by which his liberty and property
are insured." Under the shelter of this observation
some remarks have been ventured abroad, which I
humbly apprehend have been rather condemned with
severity, and replied to with personal reflections, than
canvassed or answered with calmness or strength of ar-
gument. As the subject never has been fully
dropt by one of the writers, I should not now take pen
in hand could the other have been satisfied to enjoy his
victory, without continuing to load the late Assembly
with reflections, which I will not say are designed, but
appear to have a tendency to set this province in the
worst light at home, and to render the late Representa-
tives as odious as possible in this province. My design

is to take off the odium which is cast upon this province as though it meant to invade the Prerogative of the Crown. If the late Representatives have acted contrary to the sense of their Constituents they will doubtless be marked for it at a next election; if the majority of inhabitants should think the Crown has not a right of rejection, let their arguments be first considered before they are accused of a design of encroaching on the Prerogative.

I will own my obligations; the most liberal I received in this controversy has been from that very writer, and, upon the most mature consideration, I must own the right he contends for appears to me more problematical than ever. I will however still leave this right as I found it (I always wished it should remain unagitated) undetermined and undecided; but I hope I am not too sanguine to flatter myself that those that read what may make against it will be convinced they that hold the negative may still be honest men, and good and loyal subjects, whether in a private character, or as the Representatives of a free and loyal people. I design to mention some arguments which persuade me this negative is not clearly established, and I shall take so much notice of the arguments brought in support of it to examine whether they really prove what is intended.

It may not be improper first to lay down a few general principles which are universally allowed. It is agreed on all sides that the existence of a House of Commons is now as necessary and essential to our Constitution as the existence of a King and House of Lords. It is agreed that the Commons being the Representatives of the people the people ought to chuse them, the King and Lords must not interfere in the choice, and any one duly chosen, and not by law incapacitated, the election cannot be set aside. It is agreed that the Crown must call the House, issue writs of election, and may adjourn, prorogue, or dissolve the House, but to reign without Parliament is contrary to the Constitution; to dissolve wantonly, and without cause, is not against the Constitution, but it seems an improper use of a very legal power. The design of a House of Commons is to be a check on the Prerogative, and to watch over the rights of the people. Prerogative is placed in the

Crown that the people may not encroach on the rights of the Crown. By the wisdom of the Constitution every branch of the Legislature forms a mutual check upon the other, the people are a check upon the Nobility, and the Nobility upon the people, while the King is a check upon both, and his executive power is again checked and kept within due bounds by the two Houses, through the privilege they have of enquiring into, impeaching, and punishing the conduct of the King's evil Counsellors. The House of Commons is to consult for the good of the nation, and all monies given to the King are given only by the Commons; whatever is necessary for this purpose is their undeniable privilege, for, unless they may freely consult, and do that for which they are called together and constituted a House, the very purposes of their meeting must be defeated. I suppose therefore it will not be denied, as the Crown calls the Commons together for national purposes, the Commons so met must have a right or privilege to every thing that appears necessary to answer the purposes for which they are called and met together. This I take the true idea of the privileges of the House, and as the House cannot subsist nor act properly without them, to deny or curtail these privileges is attempting the abolition of the House itself, and of course destroying the Constitution. The fairest way therefore to judge of any claim of either branch of the Legislature is to consider the effect it may have on the other branches, and whatever clasheth with any known right or privilege of either King or any of the two Houses cannot be constitutional, whatever would prevent the Crown in the execution of those laws made by the Legislative cannot be supported, and if the Crown has any power that may restrain freedom of debate, or abridge the liberty of giving and granting in the House of Commons, or impede them in business, otherwise than by adjournment, prorogation, or dissolution, I cannot see how the House may be conceived free and independent in their deliberations.

I believe few men will deny any of these principles; let them be kept in constant view when we enquire into the question whether the Crown has a right to reject a Speaker duly chosen and presented for approbation.

The House of Commons must have a Speaker. All Assemblies met for consultation have found it necessary to place one over themselves to keep up order and regulate their debates; if 500 men were all to speak at once, and none have authority to call them to order, the voice of wisdom must be lost in noise, and prudent counsel swallowed up in confusion. Formerly both Houses are said to have had but one Speaker between them, but as both Houses became more distinct, and the Commons more important, they of course had a Speaker of their own, who is so necessary that ordinarily they do no business without him.

This Speaker they must either chuse themselves, or he must be placed over them by the Crown. "The Speaker of the House of Lords is the Lord Chancellor or Keeper of the Great Seal, or *any other APPOINTED BY THE KING'S COMMISSION*; and if none be so appointed, the House of Lords (it is said) may elect;" *Blackstone, vol. 1. p. 181.* The Speaker of the House of Commons is chosen by the House, but must be approved of by the King, *ibid.* "It is true the Commons are to chuse their Speaker," *Coke.* How far the King's approbation is necessary is the question in dispute, but all agree that the Commons must chuse their Speaker, and it seems the choice is of more importance than presentation or approbation, because without choice there can be no such thing as either.

The Speaker chosen ought to be a person properly qualified. If every Member of Parliament ought to be independent and uninfluenced by any views of honour or interest but the publick good, the Speaker ought to be so much more. He ought to be equally well acquainted with the privileges of the House and the rights of Prerogative, and of sufficient fortitude to act consistent with both on every occasion, neither courting popularity by disputing the just rights of the Crown, nor have an eye to gain or promotion by betraying any right of the subject. *The election of any Member to be Speaker is a solemn declaration of the House that they judge him the man best qualified for that business.* I believe it seldom, if ever, happened, that a Member was chosen Speaker the first time of his serving as a Member. A person is usually pitched upon who, from long experience, is well acquainted

quainted with the privileges and proceedings of the House, and of whose abilities also the House have had long and sufficient experience. The Speaker has been called a servant of the House, and as the King has an undoubted right to chuse, and must be the best judge of his own servants, so the Commons are best acquainted with the character of every Member of their House, and thereby best able to judge who is the fittest for any particular business that may be assigned.

The Speaker sits in the House, not in the name or as a Commissioner of the King, but (though his seat is a little raised) as a Member upon a par with the rest, chosen and appointed by themselves; not to do any business for the King, but their business, to be their mouth, regulate their debates, and execute their orders; neither is he to have "eyes to see, or ears to hear, but as directed by the House."

It is not denied by any that the Commons must chuse, nor that their choice ought to be free, and it has been allowed that they are not obliged to chuse a person nominated or recommended by the Crown, supposing the Crown should think proper to recommend or make such a nomination, but as it has always been customary to present the Speaker so chosen to the King for approbation, it is hence concluded that the King may set aside the choice of his Commons, and reject a Speaker so presented. If the want of such a right of rejection had any apparent tendency to render some other absolute rights of the King more precarious, or to endanger his Crown or the Constitution, the King ought undoubtedly to have it, for he ought to have his right, and every thing that may legally secure it; if the exercise of that right, though not necessary to the King, might add to his greater dignity, and in no case whatever bring any danger to the subject, I would in mere decency make a compliment of it to the King; but if it should appear that the claim and exercise of that right had even a distant tendency to hurt the subject, and wound the Constitution, I would then wish that the King had and insisted to have all the just rights of his Royal Prerogative, and no more.

That I may treat the question in the most inoffensive manner, I declare that I mean not to write against the right claimed by the Crown; I only propose some doubts which

[6]
which I shall be glad to see cleared up, and with pleasure will I join all my fellow loyal subjects to acquiesce in any claim that may appear the constitutional right of the Crown.

AS it is agreed on all hands the Commons must chuse their Speaker, in the very nature of things it seems implied that he whom they chose ought to be considered as Speaker. Whom are they to chuse? A Speaker. By whose authority are they to chuse him? By the King's command, and as the Representatives of the people; if, after having thus received the King's command, and sitting as the Representatives of the people, they have chosen a man to be Speaker, the person so chosen is not what they chose him, it will be equally difficult to assert what it seems just as difficult to deny, that they made a choice, or that they had not authority to make the choice they actually have made.

It has been allowed " that the Commons may freely chuse whom they please for their Speaker, but asserted, " that the Crown, for its own preservation, has a right to reject an improper person, (*Georgia Gazette, June 10.*) By an improper person here must be understood one whom the Commons thought proper, but who is thought improper by the Crown. Now let any one ask himself whether he should think he enjoyed the right of freely chusing whomsoever he pleased for his own servant if another had the right to put a negative on the servant he had actually chosen, under pretence of being improper for the service of him by whom chosen, and thereby deprive him of his service at pleasure. To talk of a free choice, which yet may be controuled and annulled by another, seems inconsistent with the very nature of choice, and at most it can only be called a freedom to chuse upon condition that another do not invalidate the choice; if the person chosen be equally acceptable to him that chuses and to him that must approve, it matters very little by whom such a choice is made; but if acceptable and necessary only to those by whom the choice was made, I cannot see what their choice avails if it may be set aside at pleasure by another, perhaps too it might be set aside for that very reason because the person chosen is suspected of being more in the interest of those by whom he is chosen than may be

consistent with the designs of him by whom he is rejected.

Those that chuse a Speaker to do the business of the House have first been chosen themselves to do the business of the nation; they are not met by their own authority, nor to do their own business, nor the King's business, but the business of the nation; they cannot debate the concerns of the nation without a Speaker to direct and regulate their debates; but it is of infinite concern to the nation that no man mislead, restrain, or impede their debates; a Speaker might do all this, and were he to do it to serve the Crown, it would be in vain to look to the Crown for relief, he would be a dead weight to them, and they unable to help themselves; it seems therefore that the choice of a Speaker by the Representatives should be as free and final as the choice of the people of the Representatives who are to chuse the Speaker.

The sitting of the Commons, though called by the King's writ; the privileges of the House, though prayed for of the King; the freedom of debate; are all matter of right, and not of favour; the very design of the House of Commons is to prevent too extensive or an undue influence of the Crown; if any proceedings of the House become matters of favour of the Crown, what becomes of the intrinsic right and authority of the Commons? A Speaker was excepted against, because, "if the King always should accept a person pitched upon by the House, then it would be no great favour to be chosen a Speaker." Here the exception against a Speaker was however sweetened with a reason being given; but if the Speaker holds his place, not by the choice of the Representatives, but by the favour of the Crown, it is then evident that the principal man in the House of Commons holds his place under the favour and influence of that very power to prevent whose too powerful influence, and restrain it within its proper bounds, is, or ought to be, the principal object of the Representatives of a free people.

"The whole of the law and custom of Parliament
 "has its original from this one maxim, that whatever
 "matter arises concerning either House of Parliament
 "ought to be examined, discussed, and adjudged, in
 "that

“ that House to which it relates, and not elsewhere,” *Blackstone Com.* 1. 163. In consequence of this the Commons may judge void the elections of Members already sitting, and declare those duly elected, who have not been returned so by the proper Officer; and it would seem strange if they, who have a right to judge of every election in the kingdom, should not have a right to chuse their own Speaker, if they were judges who is properly elected a Representative of the whole nation, and yet liable to have a negative put on a choice made by themselves of their own servant. The House of Commons have an undoubted right by their own act, and without any concurrence or interfering of the Crown, to expell any of their Members, the Speaker not excepted, for misbehaviour, the reason of which seems to be, as the Crown is not supposed to interfere in elections, neither ought it in expulsions; but if the Speaker holds his place by the King’s favour and approbation, so as without that he is not Speaker “ *pleno jure*,” it would seem strange that the Commons should have a right to drive a man by their sole authority from a post where they never could have placed him without the King’s command and favour. To depose a man from a post which he could not hold, nor be chosen to, but with the King’s approbation, seems to be a greater power than to chuse their Officer without the King’s approbation.

If the King has a right to reject a Speaker chosen, he must hold that right either in virtue of some act of Parliament, or it must be a part of his Royal Prerogative; the former was never asserted, the latter is the subject in question.

Upon a supposition the King had a clear constitutional right to nominate, or even impose a Speaker, as soon as the House meets, that right seems clearly given up, by his ordering or giving the House leave to chuse a Speaker themselves. As it is said even the Lords may elect, unless the King appoints a Speaker for them, it seems clearly to follow that the King requiring the Commons to chuse, he means that the person by them chosen shall actually be Speaker, for they are not commanded to make choice of one or more persons of whom the King may chuse one, but simply and absolutely to chuse a Speaker for themselves. That the

King

King does not interfere in the choice of a Prolocutor of the Law vocation, which has been called a Parliament in miniature, I conclude, because when Dr. *Jane* was preferred to Dr. *Tillotson*, King *William* did not reject, though certainly not as agreeable to the King's principles, as that excellent man Dr. *Tillotson*; and as elections are to be made, according to *Coke*, *sine prece*, without prayer or gift, so he observes they ought also to be made *sine præcepto*, without the King's command by writ or otherwise, and he saith an act for that purpose was a close and prudent salve, not only for that sore, but for all other in like case, and is but an act declaratory of the ancient law and custom of Parliament.

If we would argue from facts, but one instance has been produced where the choice of the Commons was excepted against, and none whatever where the Commons submitted to a rejection; but the case of Sir *Edward Seymour* will come in more fully hereafter. It is difficult to conceive how the House may preserve freedom in debate if they are not at liberty to chuse the person by whom these debates are to be directed. That they may chuse any man whom the King shall approve is in reality saying they may chuse no man but whom the King approves, and that would seem perfectly equivalent to they have no right to chuse any man but whom the King chuseth; the King will not approve of any person but who he is morally sure will enter into all his measures; it by any means, whether by influence, nomination, choice, refusal of approbation of any other, the King gets a man of such a cast in the chair of the House of Commons, the King then has so far the direction, and a most powerful influence over the whole House. *

B

can

* That a Speaker may impede the business of the House in favour of arbitrary measures of the Crown we have a striking instance in the Parliament 1673; the Commons remonstrated against the marriage of the Duke of *York* with a Papist, which has been productive of so much mischief to the nation. " To cut short these agreeable attacks, the King resolved to prorogue the Parliament, and with that intent came unexpectedly to the House of Peers, and sent the Usher to summon the Commons. It happened that the Speaker and the Usher nearly met at the door of the House, but the Speaker being within, some of the Members suddenly shut the door and

can be the Crown's interest to contend. Such a Speaker, under pretence of calling to order, may interrupt the freedom of debate, and stop an enquiry into any mal practice or escape; by a sham sickness, or his absence from the House, an offender may escape; but, supposing the Crown should reject a Speaker, on account of his being too popular, or having too great an influence in the House, it would not only be treating the body of Representatives as men that are not able to judge for themselves, but it is apparent that the power of rejecting a man because he is popular and disagreeable to the Crown is as dangerous a power in the hands of a bad ruler as can well be imagined.

When a Speaker is presented to a King for approbation the King must either be willing that all things should continue and proceed according to the known Laws and Constitution of the land, or he must have contrary views; in the former case he can hardly have any motive or cause to reject any person that is presented, the Speaker alone can make no alteration, and if the Commons should attempt any thing against the Crown a dissolution would legally entue; but should a ruler intend to make any alteration in the laws, a Speaker might be a proper instrument in his hand for that purpose. The King it should seem can have no reason or motive to reject any Speaker, but on a suspicion of his having a stronger bias to the popular side than to the just Royal Prerogative; but besides, that he King, in case of rejecting such a one, must also harbour very hard thoughts of his Commons, it is easily seen what such a power might lead to. Of a wise and good Prince nothing is to be apprehended, but against wicked or weak Princes, or rather pernicious and evil Counsellors, the people can never be too much upon their guard.

It

and cried, *To the chair, to the chair*; while others cried, *The black rod is at the door*. The Speaker was hurried to the chair, and the following motions were instantly made—*The alliance with France is a grievance—Evil Counsellors about the King are a grievance.—There was a general cry, To the question, to the question*; but (behold now the benefit of a Speaker agreeable to Charles II.) the Usher knocking violently at the door, **THE SPEAKER LEAPT FROM THE CHAIR**, and the Parliament being prorogued gave the Duke leisure to consummate his marriage. *Rapin.*

It is not to be supposed, when a Speaker is presented, his character and principles can be unknown to the King's Ministers, but supposing they were, I cannot see how that should be any ground for rejection; if he is known to be a fit tool the right of rejection will be immaterial, he will be sure not to be rejected; if known to be a man zealous for the just rights and liberties of the nation, a patriot Prince can have no thought to reject such an one; and that an arbitrary Sovereign, who will not reject a man of a contrary stamp, should have a right to reject the only man that is fittest to oppose him and serve the nation, I think a very dangerous part of the Prerogative, and I am at a perfect loss how to reconcile such a power with the spirit and design of the Constitution of a free people.

These considerations I must own strongly influence me to doubt whether the Crown has a constitutional right to set aside and reject a Speaker chosen by the Representatives of the people. It is but fair, however, to hear what has been said in support of this right, and I do not mean that the arguments in favour of it should lose any of their force in my hands, I mean to represent them in all their weight, and as to these arguments and my remarks *valcant quantum valere possunt*, let them go as far as they may.

Two writers have appeared among us in favour of this claim of the Prerogative; what *NEUTER* advanced, like his signature, is nothing neither here nor there; but, as he talks of a contagious political delirium, I am much afraid he has been in the neighbourhood of the contagion, however I wish him well over.

I intend to consider every argument of *G. B. si per- gama dextra defendi potuissent hac vice defensa fuissent*. I dare say what books and arguments in this cause are not found with him will in vain be looked for any where else in this province.

Two passages have been quoted from *Coke* in support of this negative; *Coke* saith: "*The Commons shall present their Speaker in the Upper House to the King, who shall disable himself, and in most humble manner intreat the King to command them to chuse a more sufficient man.*" From this passage it is said to appear that the new Speaker in the face of the whole House of Commons admits a power

of rejection in the Crown; but is not this rather a large conclusion from small premises? Does not the Speaker's intreaty that the King would order a fitter man to be chosen favour as much of compliment as any thing else? Does it not at least look as much like compliment as like an acknowledgment of the right of rejection? However, if this proves any such right, the argument I conceive must stand thus: The Speaker is to disable himself, (*i. e.* plead his inability) and intreat the King to command the Commons to chuse a fitter man; therefore (because he pleads his inability, and wisheth a fitter man may be chosen) the Crown has a clear right to put a negative on any man the Commons shall chuse as their Speaker. I despair to convince that man of any thing, except what he himself pleaseth, who can be convinced by such an argument. Coke also saith: "*It is true the Commons are to chuse, but seeing that after their choice the King may refuse him, for avoiding of expence and time, and contestation, the use is, (as in the congé d' eslier of a Bishop) that the King doth name a discreet and learned man, whom the Commons elect, but without their election no Speaker can be appointed for them.*" The only expression in this passage that may be construed in support of this claim is, that the King *may* refuse. It has been observed that all this may mean no more than that the King may do it though he has no constitutional right so to do; and to this it has been answered, that Coke declares what he writes is grounded upon the authority and reason of books, rolls of Parliament, and judicial records, and that to make any objection against it is to make objections not against Coke, but (forsooth) against the Constitution itself; but as no book, authority, reason, parliamentary roll, or judicial record, has been produced older than this passage, I apprehend all this, notwithstanding what Coke saith with regard to the King's *may* may be bare narrative still, and no legal declaration of what the King may legally do; and I am the more inclined to doubt this matter, because I find Coke does not always speak like a Legislator, or one that declares the law; in this case, *e. g.* he saith every Member of the House being a Counsellor, he should have three properties of the elephant---that he has no gall---that he is inflexible and cannot bow---and that he is of ripe and most

most perfect memory. Now this seems a very good simile, but that any law declares a Member of Parliament should be like an elephant I still doubt, though I think all that write and act in publick ought to be without gall, and all Legislators inflexibly right. I don't know when *Coke* wrote, but should any writer now assert, while the Parliament sits, the King has as much authority in the choice of their Speaker as in the election of a Bishop by *cong   d'   slier*, he would hardly be in any danger of receiving the thanks of the House; but perhaps these things may better suit the meridian of *Georgia*, and, great as the authority is, I presume it is no treason to say that the Constitution is now better understood than even a *Coke* explained it in the days of the *Stuarts*; and yet after all he expressly saith, though he seems to begin rather abruptly: True it is the Commons must chuse their own Speaker, and he cannot be appointed for them. All that was thought law in the days of *Coke* has not been thought so since. *

I am really surprized at the stress that has been laid on the case of Sir *Edward Seymour*, rejected by *Charles II.* in 1679. It has been said "he was rejected," "the King never gave the matter up," "prorogued the House for a few days," "that the House dropt the matter," which it seems they had mistaken," "and proceeded to the choice of another person," (*See Georgia Gazette for April 29, 1772:*) And again, (*Georgia Gazette for May 13*) "that the King asserted the right of nomination," "rejected one Speaker and nominated another," and, *N. B.* because "the House declined to chuse

* Sir *Edward Coke*, the great oracle of the *English* law, had not only concurred with all other Lawyers in favour of this Prerogative of dispensing power, but seems even to believe it so inherent to the Crown that an act of Parliament itself could not abolish it, because from the law of nature the King has a right to the service of all his subjects. *Hume's Hist. of England*, vi. 394. On this principle Papists may be made Counsellors in *Grenada*, and why not in *England*? and men of known loyalty and approved abilities may be rejected as Speakers. I dare say, however contemptibly *G. B.* may speak of those that do not understand an ambiguous passage of *Coke* as he does, he will never set his name to any proposition that with *Coke* declares the dispensing power legal. The Revolution, as *Hume* justly observes, having put an end to these disputes, the acquisition of real liberty shewed the danger of the substance of such a Prerogative.

chuse him prorogued them," " that the House did not assert their right but chused *Gregory*," " and did not shew a want of publick spirit by impeding publick business, had they done so it is supposed *Charles* would have dissolved them, lest they should serve him the same trick that had been served his father:" And again, (*Georgia Gazette May 29*) " that in the next session they repaired their mistake, and chose a different person." Now, whoever puts all this together will naturally conclude, that the Commons chose a Speaker disagreeable to the King, whom the King rejected; that, on their not rescinding their choice, the King insisted on his having such a right, and never gave it up, but prorogued them for some days, and that then they dropt the matter, repaired their mistake, gave up their claim so far that now " it can't be said to be undecided," chose another person, and so all was well, the King's right established, and whoever now thinks and saith otherwise is a fiery Republican, and as bad (or nearly) as the Long Parliament. I do not mean to criticize upon this account given by an author of whom it has been said " that he writes unsoured by party, and with an apparent view to give candid information;" but I advise the reader next to peruse a different account given by two authors who have never been deemed partial, and who at least cannot be said to be influenced by our *Georgia* disputes.

Thus *Rapin*: The Parliament began with a warm dispute between the King and the Commons about the choice of a Speaker. The Commons having chosen *Mr. Edward Seymour*, the King, who knew *Seymour* was a particular enemy of the Earl of *Danby*, refused his approbation, and ordered the Commons to proceed to a new choice. The House was extremely displeased with this refusal, alledging, that it was never known that a person should be excepted against, and no reason given, and that the thing itself of presenting a Speaker to the King was but a bare compliment. The King, on his side, insisted on the approbation or refusal of a Speaker when presented to him as a branch of his Prerogative. During a six days dispute, the Commons made several representations to the King, to which he gave very short answers. At last, as the Commons would not desist from what they thought their right, the King went

to the Parliament, and prorogued it from the 13th to the 15th, that is, for *ONE* day's interval between the two *SESSIONS*. The Parliament meeting the 15th, the King ordered the Commons to proceed to the choice of a Speaker; then, to avoid a revival of the dispute, they chose Mr. *William Gregory*, Serjeant at Law, who was approved by the King. *Rapin, vol. 2. p. 703.*

The account given in the Parliamentary Debates is still fuller :

The Chancellor, by the King's commands, ordered the House of Commons to proceed to the choice of a Speaker, who was to be presented to the King the next day; and being returned to their House, Colonel *Birch* did nominate and recommend the Right Honourable *Edward Seymour*, Knight of the Shire for the county of *Devon*, Treasurer of the Navy, one of his Majesty's most Honourable Privy-Council, and Speaker of the last Parliament: Being a person acceptable to the King, and one who for his great integrity, ability, and long experience in the employment, was the fittest person for so great a trust. And Mr. *Seymour* being unanimously called upon to the chair, was conducted thither by Sir *Thomas Lee*, Sir *Thomas Whitmore*, and divers other members, and being there placed, he made a gratulatory speech to the House for their great kindness and affection towards him, in their unanimous choice of him: But still he desired the House that they would proceed to a new election, ' For the long sittings of the late Parliament had so impaired his health, that he doubted he should not be well able to undergo the service of the House as would be expected from him: ' But the House not admitting of any excuse, confirmed their choice; upon which *he desired leave*, ' That he might intercede with his Majesty, that he would be pleased ' to discharge him of the duty.'

But it appears, that he need not have been so urgent; for the King and the Earl of *Danby* taking this choice to be an ill presage, that this Parliament would begin where the last ended, were resolved not to approve of it: And as soon as he appeared to be presented, the Lord Chancellor stood up, and said, ' That if his Majesty should always accept a person pitcht upon by the House ' of Commons, then it would be no great favour to be ' chosen

' chosen a Speaker; and therefore his Majesty, being
 ' the best judge of persons and things, thought fit to
 ' except against Mr. *Seymour*, as being fitly qualified
 ' for other services and imployments, without giving
 ' any reason to the persons chusing or the persons chosen.'
 And therefore he ordered them to fix upon some other
 person by to-morrow morning, to be presented to the
 King for his approbation. The Commons immediately
 returned back to their own House, where Sir *John Erskine*
 stood up and acquainted them, ' He had orders from
 ' his Majesty to recommend Sir *Thomas Meers* to them to
 ' be their Speaker, as a person well known in the method
 ' and practice of Parliaments, and a person that he
 ' thought would be very acceptable and serviceable to
 ' them.' But the House in a great heat cried out, *No,*
no! and fell into a warm debate. Mr. *Sacheverell* said,
 ' It was never known that a person should be excepted
 ' against, and no reason at all given, and therefore
 ' concluded, that it was done purposely to gratify some
 ' particular persons. Mr. *Williams* said for above a
 ' hundred years, it had not been known that a Speaker
 ' presented was ever excepted against; and the thing
 ' itself of presenting him to the King, as he humbly con-
 ' ceived, was but a bare compliment. Sir *Thomas Clarges*
 ' alledged, that there were Parliaments long before there
 ' were Speakers chosen, and afterwards, for the ease of
 ' the House among themselves, they pitched upon a
 ' Speaker.-----All our lives and liberties are preserved
 ' by this House, therefore we are to preserve the liberties
 ' of it. Mr. *Garraway* objected, if Mr. *Seymour* be
 ' rejected and no reason given, pray who must chuse a
 ' Speaker, the King or we? It is plain not we?-----Sir
 ' *Thomas Lee* said, we address'd ourselves to his Majesty
 ' the last Parliament, as fearing his person to be in danger,
 ' but we received no answer at all in a whole week; we
 ' were immediately prorogued unexpectedly; and a little
 ' after dissolved, as unexpectedly; and I suppose, the
 ' same persons that gave that advice, gave this also.'
 Others concluded, that all this was only for a bone of
 contention, fearing they should agree, and so called to
 adjourn; which was soon agreed to.

These heats were so much the greater, because they
 reasonably supposed that it was all occasioned by the East

of *Danby*; whose power was not wholly at an end; and between whom and Mr. *Seymour* there was a particular resentment. However, the first thing resolved on the next day, being *Saturday*, was, 'That an humble application be made to the King, to acquaint his Majesty, that the matter yesterday delivered by the Lord Chancellor, relating to the Speaker, is of so great importance, that this House cannot immediately come to a resolution therein: And therefore do humbly desire his Majesty, that he will graciously be pleased, to grant some further time for this House to take the matter into consideration.' And they ordered the Chancellor of the dutchy, the Lord *Cavendish*, the Lord *Russel*, and Sir *Henry Capel*, immediately to attend his Majesty with this vote. Being returned in a short time, the Lord *Russel* acquainted the House, That they had attended his Majesty, who was sitting in Council; and that his Majesty, as soon as he was informed they were to wait upon him from the House immediately came out, and received them with great chearfulness and kindness: And having delivered their message, his Majesty retired to the Council-Chamber, and coming out again, was pleased to return the following answer by word of mouth, which they had reduced to writing:

Gentlemen,

'I HAVE considered of your message, and do consent to a further time, which I appoint to be on *Tuesday* next, unless you shall find some expedient in the mean time; for as I would not have my *prerogative* intrenched upon, so I would not do any thing against the privileges of the House.'

Upon the said Tuesday they drew up this humble Representation.

WE your Majesty's most dutiful and loyal subjects, the Commons in this present Parliament assembled, do with all obedience return your Majesty most hearty thanks for the favourable reception, and gracious answer your Majesty was pleased to return to our late message; wherein your Majesty was pleased, not only to *allow us longer time*, to deliberate of what was delivered to us by the Lord Chancellor, relating to the choice of a Speaker, but likewise to express so great a care *not to infringe our privileges*. And we desire your Majesty to believe no subjects ever had a more tender regard, than ourselves,

to the rights of your Majesty, and your Royal Prerogative, which we shall always acknowledge to be vested in the Crown, for the benefit and protection of your people. And therefore for the clearing all doubts that may arise in your Royal mind, upon this occasion now before us, we crave leave humbly to represent unto your Majesty, That it is the undoubted right of the Commons to have the free election of one of their Members to be their Speaker, and to perform the service of the House: And that the Speaker so elected, and presented according to custom, hath by the constant practice of all former ages, been continued Speaker and executed that employment, unless such persons have been excused for some corporal disease, which has been alledged, either by themselves, or some others in their behalf, in full Parliament. According to this usage, Mr. *Edward Seymour* was unanimously chosen, upon the consideration of his great ability and sufficiency for that place, of which we had large experience in the last Parliament, and was presented by us to your Majesty, as a person we conceived would be most acceptable to your Majesty's Royal judgment. This being the true state of the case, we do in all humility lay it before your Majesty's view; hoping that your Majesty, upon due consideration of former precedents, will rest satisfied with our proceedings, and will think fit not to deprive us of so necessary a Member, by employing him in any other service; but to give us such a gracious answer, as your Majesty, and your Royal predecessors, have always done heretofore upon the like occasions; that so we may, without more loss of time, proceed to the dispatch of those important affairs, for which we were called hither: Wherein we doubt not but we shall so behave ourselves, as to give an ample testimony to the whole world of our duty and affection to your Majesty's service, and of our care of the peace and prosperity of your kingdoms.

To this Representation the King immediately gave this short Answer:

Gentlemen,

‘ALL this is but loss of time; and therefore I desire you to go back again, and do as I have directed you.’

This giving no satisfaction to the House, the next *March 12th*, the Commons, after a warm debate, drew up this following Address:

Me

Most Gracious Sovereign,

WHEREAS by the gracious answer your Majesty was pleased to give to our first message in Council, whereby your Majesty was pleased to declare a resolution, *not to infringe our just rights and privileges*, we your Majesty's most dutiful and loyal Commons were encouraged to make an humble representation to your Majesty upon the choice of our Speaker, which on *Tuesday* last was presented by some of our Members: We do, with great trouble and infinite sorrow, find by the report made to us by those Members, at their return, that your Majesty was pleased to give us an immediate answer to the same, without taking any further consideration; which we are persuaded, if your Majesty had done, what we then offered to your Majesty would so far have prevailed upon your Royal judgment, as to have given your Majesty satisfaction in the reasonableness of our desire; and preserved us in your Majesty's favourable opinion of our proceedings. And since we do humbly conceive, that the occasion of this question hath arisen from your Majesty's not being truly informed of the state of the case; we humbly beseech your Majesty to take the said representation into your further consideration, and give us such a gracious answer, that we may be put in a capacity to manifest our readiness to enter into these consultations which necessarily tend to the preservation and welfare of your Majesty and your kingdoms.

Upon reading this address to the King, he immediately gave this quick and sharp return; *Gentlemen, I will send you an answer to-morrow.* Accordingly, as he had often done before upon great difficulties, he resolved to put an end to the dispute; and on the next morning, being *Thursday* the 13th of *March*, he came to the House of Peers, and sending for the Commons, he immediately prorogued the Parliament till *Saturday* following, after the Commons had sat without a Speaker but six days. And thus the King found a way to gain his point, but with very little advantage to his own business and affairs.

On the appointed day, *March* 15th, his Majesty came to the House of Peers in his Royal robes, and the House of Commons attending, his Majesty was pleased to put both Houses in mind of what he said to them at the opening of the Parliament: And then the Lord Chancel-

for, by the King's command, directed the Commons to return to their House, and to proceed to the choice of a Speaker. And being returned, the Lord *Ruffel* put the House in mind of the King's commands, and immediately recommended *William Gregory* Sergeant at law, as a person, for his great learning and integrity, fit for the employment. And Mr. *Sergeant Gregory* being unanimously called upon to the chair, he in a short speech modestly excused himself, and desired of the House, that another might be nominated; but no excuse being admitted, he was formally conducted to the chair, by his two intimate friends, the Lord *Ruffel* and the Lord *Cavendish*, and there confirmed in the place.

“ On the *Monday* following, he was presented by the Commons to the King in the House of Lords, who without hesitation approved of the choice.” * I

* *Sir Edward Seymour* having so often been mentioned in this debate, it may not be amiss to take some notice of his character as drawn by *Burnet*, and of his behaviour as Speaker: “ In pride he had neither shame nor decency: He was violent against the Court till he forced himself into good posts: He knew the House, and every man in it, so well, that by looking about he could tell the fate of any question: He was the most assuming Speaker that ever sat in the chair: If any thing was put when the Court party was not well gathered together, he would have held the House from doing any thing by a wilful mistaking or misstating the question; by that he gave time to those who were appointed for that mercenary work to go about and gather in all their party, and he would discern when they had got the majority, and THEN he would very fairly state the question WHEN he was sure to carry it.” It is most likely that in favour of such a man the Court party would exert all their influence to get him chosen, and very improbable that being chosen the Commons would so strenuously have opposed his rejection, if they had not thought it illegal and a dangerous precedent; but from this very instance it appears to demonstration how essential it is to the regularity, freedom, and just issue of national debates, that no such Speaker should by any means be obtruded, or one of a contrary stamp be rejected. The Commons maintained their claim as long as they were suffered to continue, and till a prerogation put an end to all their proceedings. At the next session they might be the more unwilling to revive their former choice because they could easily fix upon a better man; *Gregory* was then chosen, and in the two succeeding Parliaments that very *Williams* who had asserted that the presenting the Speaker to the King was a bare compliment; the King did not shew any resentment, but approved of him without hesitation. The true reason of *Seymour's* rejection, who had been Speaker before, was this: The Earl of *Danby* expected to be prosecuted for things done by the King's order; the King, in order to secure him, granted him a pardon.

I shall not make many remarks on these accounts, but I cannot forbear observing that the only instance where a Speaker appears rejected by the Crown was in the reign of a *Stuart*, when there was a settled design against the religion and liberties of the nation, which is far from being a presumption favourable to such a claim; even then the King does not reject *ex plenitudine potestatis*, but assigns as a reason that Sir *Edward Seymour* was proper for other services; and yet the Commons tell the King, that to chuse their Speaker without being deprived of their choice is their undoubted right. When *Charles* recommended another as one who he thought would be very acceptable and serviceable to *THEM*, they cried, No, no, and never would nor did chuse him; the King wisheth then to find an expedient, did not insist on his nomination, but prorogued them for a single day, which was plainly done to compromise the matter; when they met again, he recommended nobody, but Lord *Ruffel*, who afterwards fell a martyr to liberty, nominated *Gregory*, who was unanimously chosen, and formally conducted to the chair, and there confirmed in the place, and *Monday* after the King approved of him without hesitation. *Burnet*, in his memoirs, expressly saith the point was settled, that the right of electing was in the House, and that the confirmation was a thing of course.

The argument, that if the King has no right to reject he may be under a necessity of admitting disagreeable persons into his presence, as persons may be chosen disaffected to his Majesty's person and government, of which *Wilkes* being made Sheriff is given as an example, I cannot think of any great strength. I suppose the law calls no man disaffected who takes the oaths prescribed by law, and if any should be personally disagreeable to the King there is no necessity for his coming into his presence. *Wilkes* I believe never did, but I conceive the

very illegal manner; *Seymour* was looked upon as *Danby's* enemy, and it was thought too dangerous that upon this occasion he should be Speaker; hence the King rather excused himself for not admitting than harshly rejected him; and thus it appears that this rejection was made with a manifest view to obstruct publick justice, and the right of rejection was never claimed nor contended for but upon this single occasion, it does not seem to derive any merit from the only instance when it was pleaded.

the Constitution disables no man to serve his country in any place not in the gift of the Crown merely because he may be disagreeable to the King. The same Parliament that chose *Seymour* deputed Lord *Russel* to the King, who never was a friend to the King's measures, and yet *Charles* had more grace than to receive him otherwise than politely. The right of rejecting a disagreeable person can be of no manner of service to the Crown, unless it may be exercised as often as a disagreeable person is chosen. Supposing the case to happen, it can hardly be expected that a House so ill disposed as to chuse a disagreeable person at first would become so good-natured, by the affront of a rejection, as to chuse a person more agreeable in a second election; or, supposing elections were repeated till the Commons gave way and chose a person perfectly agreeable to the Crown, what must be the natural consequence to the people? it can be no other than an express introduction of a Member would have to represent the King. The Speaker is not the King's Representative, but if the Crown insists none shall be Speaker but one that will obey the orders, or, which may be just the same, is agreeable to the King, he might as well; in that case the King would have an Officer in the House, introduced, not by bribery and corruption, but by refusing to approve any other, and he might have the casting vote in a place where he ought to have no vote at all.

That to present a Speaker for approbation implies a right of rejection has been alledged with greater shew; but that it is the Commons choice, and not the King's approbation, that constitutes the Speaker, seems very plain, because he is placed in the chair immediately after the election, and sometimes acts as such some days before he is presented and approved of by the King. It would be very indecent to vest him in the office, and place him in the chair, if after all the King's negative might set aside the choice; and I would apply here what Sir R. *Atkins* saith with regard to a form observed at the same time when the Speaker is presented, "*That humble and modest way of the people's addressing their Sovereign, - - for granting privileges,*" of which the right to chuse and have a Speaker seems necessarily one) "*shows great reverence and becomes the majesty of the Prince to be addressed to; but let it not be made an argument that either the laws thereupon made, or the privileges allowed, are precarious, and merely a favour, or may be refused them of right.*" There are many presentations in law which allow not of rejection. The usual privileges, without which the House cannot act nor subsist, must be asked for; but as this is a petition not of favour, but of right, so it seems the approbation of a Speaker is as much so. If the Constitution requires some application

the King, it also obliges the Crown never to put a negative on some applications. The new Speaker humbly *PRAYS* for the privileges of the House, but should any Prince be so ill-advised as to look upon that application as a matter which he may refuse, he might perhaps be informed that such a refusal implied no less than a breach of the original contract between him and his people, and that in this case it would be in vain to say that the power of giving (or approving) also implies a power of refusing.

It has been said that this claim of the Crown was but once denied by Parliament; I believe it was always denied; but it might as well have been said it was but once claimed by the Crown. Some weight is laid on the circumstance that a Speaker was recommended as acceptable to the King, but it seems the King also recommended a man as one whom he supposed very acceptable to Parliament. When a superior recommends to an inferior it is no argument that those to whom he recommends have not a final choice. That a person (*ceteris paribus*) is acceptable to the King may be no improper recommendation to or motive with his electors.

To establish this claim of the Crown, it has been observed, that Speakers have been disallowed, like Sir *John Popham*; but the case amounts to no more than his excuse was admitted; formerly every Speaker begged leave of the House that he might excuse himself to the King; this request of leave seems rather a proof that the election of the House is looked upon as final than otherwise, and *Popham*, though his excuse must have been very good, appears the only instance in which it was admitted, and cannot be of much weight against so many instances where no excuse was allowed. It is very certain the King did not approve *Seymour*, but it is not less so that, in order to get rid of the choice, he was obliged to prorogue the House, and that all he gained is, that the Commons did not revive the dispute. The acquiescing of the Representatives of *New England* under a negative put on their choice is entirely owing to the tenor of their charter, and I am still of opinion that what rights the King reserved to himself in that charter are not such as are the undoubted prerogative of the Crown, but such as every Assembly or Parliament has a just claim to where the contrary is not expressly stipulated by charter.

It has been advanced, that "*when the King gave the Commons leave to chuse a Speaker he reserved to himself the right of rejecting a Speaker that might be disagreeable to him, and that there was a compact between the King and Commons for that purpose.*" This would be a strong argument indeed; but when and where was that compact made? What author or historian speaks of it? What authority is cited in proof of it? "*Why it is natural to conclude,*" but is it not as natural to conclude that, because no traces of any such compact are to be found, and that the Commons always regularly chose their own Speaker, and that not even an attempt was ever made to reject him, but in the case of Sir *Edward Seymour*, and that then the King never made any mention of such an original compact, but submitted to have his own nomination treated with a negative, and approved of one chosen in opposition to his own former recommendation, that therefore no compact ever existed? And as this country is very "*scarce of*" I am clearly of opinion *that* book is not on this side of the Atlantic where this compact stands upon record, but if a copy, or dissection

rection where it is compact may be found, is left with the Printer. It shall be duly acknowledged, and, if the owner chooses it, a promise given that his name shall not be mentioned.

I ought to take notice of one argument more, (*Georgia Gazette* Jan 24:) "If the Massachusetts-Bay hold their provincial Legislation under charter, do not we in this province hold it under His Majesty's commission and instruction to his Representatives? And if that charter has reserved the power of negation upon their choice of a Speaker, will not the commission and instructions to the Governor of this province have the same effect? I conceive a very great difference between his Majesty's instructions and charters; an *Englishman* I should think entitled to *English* laws, which I suppose implies Legislation any where and every where in the *British* dominions; that this right is prior to any charter or instruction, and is held not by instructions to a Governor, but is his natural right, which nothing but outlawry can deprive him of. Whatever is not law cannot be binding upon a *British* subject, and I suppose no man will say that, because the King has an undoubted right to instruct his servants, that therefore he has also a right to give instructions contrary to the Constitution, or derogatory of the right of the subject; such an instruction a Governor might look upon as a law to himself, but it is only the King can do no wrong, and the reason is plain, because the King can do nothing against law or the Constitution.

It has been said that a Speaker may have an undue influence to the prejudice of the Crown; but he can have no undue influence as Speaker before he is really such, and it cannot appear that he has any undue influence before he has actually entered on his office, and in this case the Crown is sufficiently guarded by its indisputable negative on every act of Legislature, and of dissolution whenever it shall be thought necessary. By this also it would seem as if the Crown had a right to reject a Speaker actually approved of whenever his influence should become disagreeable, which doctrine I believe is entirely new, perhaps not free from danger.

The Assembly of this province sometimes consisted only of 19 Members; 9 then made a House, and 5 a majority; as the number of Representatives increased it was thought necessary that the number to constitute a House should be increased in proportion; 19 now make a House, and 10 a majority, to do any business relating to the province. This remark that the strenuous advocate of the right of negative makes upon this alteration is this: "Such resolutions (which by the way were unanimous) could be made with no other view than the putting it in the power of a few leading men to impede the publick business by a secession whenever they pleased; which remark, as I suppose it had not been made had any Assembly subsisted, so every reader will judge with what justice and temper it was made. That he wishes men might have the power rather than 10 is self-evident, and that 1 man may more easily influence 4 or 5 than 9 or 10 need not be doubted.

I shall conclude with a citation from a debate in the House of Lords in 1675: "The Lords plainly spoke out, That men had been, might and were likely to be, in either House, too much for the King, as they called it, and that whoever did endeavour to give more power to the King than the law and Constitution had given, - - - might justly be said to be too much for the King, and to be corrupted in his judgment by the private advantages and rewards, though when it is considered that every addition of the Crown towards absolute power lessens the King in the love and affections of his people, - a wise Prince will not think it a service done him."