SPEECHES

OF THE

MANAGERS AND COUNSEL

IN THE

TRIAL OF WARREN HASTINGS.

EDITED BY

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1794

By the terms of the vote of the House of Peers, previous to the prorogation in 1793, the resumption of proceedings on the trial had been fixed for the second Tuesday in the following session. The Parliament assembled on the 21st of January, 1794; and, on the 23d of the month, the House of Lords, on the motion of the Duke of Norfolk, postponed the reopening of the Court to Thursday, the 13th of February. On the Tuesday before the day thus appointed, Mr. Wigley moved, in the House of Commons, that a message be sent to the Lords representing the wish of the Commons to proceed upon the trial from day to day, which was agreed to without a division. Mr. Jekyl seized the opportunity given by a motion on the subject of the impeachment to reflect on the unexampled tediousness of the proceedings, and to stigmatise the protraction of the trial as a serious violation of the liberties of the people. He was checked in further observations of the same character by being called to order by the Speaker.

Assembling of Parliament.

Desire of the Commons to proceed with the trial from day to day.

Observations of Mr. Jekyl.

The Lords having assembled in Westminster Hall, on the 13th of February, the 118th day of the trial, Mr. Law made a request to the Court that, although

Resumption of the trial.

1794. Mr. Hastings had closed his defence, he might be allowed to put a few questions to the Marquess Cornwallis, late Governor General of India, who had lately arrived in England from his government. This was not objected to by the Managers; but they took the opportunity of pointing out that Mr. Larkins, intimately connected, as the Company's Accountant General, with matters of the revenue, during Mr. Hastings' administration, was also recently returned from India, and that they might probably desire to examine him on several points of the evidence.

Request of the Defendant to summon the Marquess Cornwallis.

Desire of the Managers to examine Mr. Larkins.

Adjournment on account of the Marquess Cornwallis' illness.

On account of Lord Cornwallis' illness, the trial was adjourned to the 19th, and from that day to the 25th of the month; on which day, the Lord Chancellor informed the Managers that, as the Marquess' indisposition still prevented him from attending, the Defendant had signified his readiness to renounce the benefit of his evidence, and to enter at once on the business of the trial. Mr. Grey, on the part of the Managers, consented to the examination of Lord Cornwallis by the Defendant, whenever he might be well enough to attend, and again took the opportunity to remark on the disinclination of Mr. Hastings to summon Mr. Larkins as a witness, and intimated the intention of the Managers to call him on the part of the prosecution. Mr. Law protested that Mr. Hastings was not accountable to the Managers for his motives in forbearing to call any particular witness; and, after a few observations from Mr. Burke, the Managers proceeded to put in counter evidence to that of the Defendant on the Benares Charge.

Disinclination of Defendant to call Mr. Larkins.

Counter evidence on the Benares Charge.

Evidence to disprove the concurrence of the Council in the exactions on Cheyt Sing.

Almost the first point aimed at by the Managers, was to disprove the statement of the Counsel, that the exactions on Cheyt Sing had been concurred in by Mr. Hastings' colleagues. The first paper produced by them with this view was objected against by the Counsel, on the ground that

the concurrence of the different members of the Council of Calcutta in Mr. Hastings' measures had only been argued in their speeches, but had not been brought forward in their evidence. The Lord Chancellor's opinion, however, was in favour of its admission, as being part of a consultation already received, and explanatory of other written evidence. The Managers, therefore, following up their success, proceeded to call Mr. Francis, in order to examine him on the degree of assent given by him to the demands on Cheyt Sing. But Mr. Law at once interposed, with the objection that, if the examination of Mr. Francis were allowable at all, it should have taken place at an earlier stage of the proceedings, when the evidence for the prosecution was being brought forward; but that, if he were now summoned "for the purpose of repelling any arguments or inferences that were drawn by the Counsel, he is called for a purpose for which his testimony is not by law competent." He subsequently added the objection, that the parole evidence of Mr. Francis could not be admitted to contradict the written minute given in evidence. The discussion which ensued, and in which Mr. Grey and Mr. Fox were the leading speakers, on the part of the Managers, consumed the remainder of the day's sitting; and eventually the Lords adjourned to their chamber of Parliament, in order to consider the question proposed,—whether it was competent for the Managers to examine Mr. Francis respecting the debate held by the Council of Calcutta, on the 9th of July, 1778, previous to the written minutes that appear upon the consultation of that date? On the motion of Lord Thurlow, a question was proposed to the Judges, for their opinion on the admissibility of the evidence offered by the Managers.

1794.

Objection to evidence by Defendant's Counsel.

Summons of Mr. Francis

His examination objected to by Defendant's Counsel.

Question referred to the Judges.

On the 27th of February, the result of the consideration given to the proposed question by the Peers, assisted by the

1794. opinion of the Judges, was delivered by the Lord Chancellor. Their Lordships had decided that it was not competent to the Managers to examine Mr. Francis on the subject of the debate.

Examination of Mr. Francis not allowed.

Remonstrance of Mr. Burke and Mr. Fox.

This adverse judgment of their Lordships, delivered without explanation of the grounds on which it was founded, drew from Mr. Burke a very indignant remonstrance. He first made the technical objection to it, that, as the Managers had been allowed to put the question to Mr. Francis whether he had been present at the debate referred to, it was, "likewise, inclusively com- "petent to them to demand an account of what that debate "was. Otherwise, to give the first is nugatory; and, in "our view of it—if your Lordships had not otherwise "decided—it would be downright fraud and cheat." He then complained that no explanation had been given of the ground of their decision—no information either of the state of the case proposed to the Judges, or the case stated for their own discussion; and, though called to order by the Earl of Radnor, proceeded to justify his view of the law by reference to the proceedings in the trial of Lord Mohun. Mr. Fox followed Mr. Burke in insisting on the right of the Managers to be made acquainted with the ground of their Lordships' judgment.

Answer of the Lord Chancellor.

The Lord Chancellor reminded the Managers that the rule of proceeding, applied to the present case, had been fully considered and determined on at an earlier period of the trial, and had been all along consistently adopted and acted on. But Mr. Burke, admitting the precedent, as far as the present trial was concerned, again argued against its equity, and protested against it as a departure from the course followed on similar occasions, in former impeachments.

The discussion objected

Earl Stanhope objected to the continuation of the discus-

sion, as irregular; and, in reference to the complaint of the Managers that they were left in the dark as to the principle which had guided the Lords in their decision, stated that the House was not bound to give reasons for its judgments, but that, for himself, he was willing to let it be known that he had decided mainly on the principle "that no "parole evidence should be adduced to explain written "evidence."

1794. Observations by Earl Stanhope.

Lord Carnarvon reminded the Managers that they were out of order in commenting on a decision already given by the Court; and suggested that they would obtain the opportunity of discussing the matter in the regular course by continuing the examination of the witness. Whereupon, Mr. Grey put the following question to Mr. Francis:— "Whether, between the time of the original demand on Cheyt Sing and the period of your leaving Bengal, it was at any time in your power to have reversed or put a stop to the demand on Cheyt Sing?" Mr. Law objected to the question, on the ground that the Defendant had produced no evidence on the subject it referred to. He declined to add to a delay already intolerable by further agitating a question he had recently discussed.

Observations by Lord Carnarvon.

Question put to Mr. Francis.

Objected to by Mr. Law.

Mr. Burke quoted precedents in support of the right of the Managers to produce new evidence in opposition to that for the Defence. He spoke on the question for more than an hour, particularly insisting on the principle that impeachments were governed by laws of their own, and were not to be fettered by common law rules. Mr. Fox also spoke at length, dwelling on the duty of the Lords to free themselves from technicalities, and insisting on the principle that the publicity of the decisions of the Judges was that which made men respect them; whereas, private decisions were a disgrace to the character of the Judges.

Reply of Mr. Burke and Mr. Fox.

Further time was consumed in discussing the form of the

1794. question proposed for their Lordships' decision; and, when the terms were arranged and the Peers were about to adjourn to their chamber, Mr. Hastings rose and addressed the Court, as follows:—

Address of Mr. Hastings.

"Before your Lordships adjourn to your chamber in Parliament, I humbly entreat that you will allow me to address a few words to you. My Lords, this was not my original intention, till a very short time before I came down to this place; but I was alarmed with many suggestions that were made to me, and I thought it absolutely necessary. What I have heard to-day renders it more necessary for me to say to your Lordships what I wish to say. I have hastily put down my thoughts in a few loose sheets, almost too incorrect to be read to your Lordships, but I had not time to do it better. Something, too, I have added here. May I have permission to read these minutes?"

Several Lords.—"Hear, hear."

Mr. Hastings.—"In the petition which a noble Lord* had the goodness to present to your Lordships for me on Tuesday last, I informed your Lordships that I should forego the benefit which I had hoped to derive from the testimony of the noble Marquess Cornwallis, whose ill state of health might possibly disable him from attending to deliver it, without the loss of so much time as might involve me in the peril of losing this session, and seeing my trial adjourned over to another year; and I prayed your Lordships, therefore, to order that the trial should proceed, and that it should proceed with that degree of acceleration and dispatch which a due regard to the general rights of justice and the sufferings of an individual now in the seventh year of his trial might induce your Lordships to adopt. The immediate cause of my troubling your Lordships with that address, was a report conveyed to me that your Lordships had been pleased, in consideration of the noble Marquess' illness, to adjourn the trial, which stood for Monday last, to the Tuesday following, for the purpose of allowing me to make my option in the mean time, and to signify it to your Lordships, either that the proceedings on the trial should be stopped until the noble Marquess' health should be sufficiently restored to enable him to attend in his place, or that it should proceed without it.

"If this information had been given me on grounds of authority, I should not trouble your Lordships at this time, but rely with implicit and most assured confidence on such a pledge as it would be criminal to distrust, since it would be impossible to admit, for an instant, the supposition, that your Lordships would offer me an alternative which included so great a sacrifice, without a most absolute determination to fulfil the condition of it. But I neither know the terms on which that

* Lord Hawkesbury.

declaration of your Lordships was made, nor with certainty do I know whether it was made at all; and, when I see the time so very near in which it has been annually customary for your Lordships to adjourn the trial for many weeks, to allow for the absence of the Judges on the circuit, I cannot but feel the greatest alarm lest the same obstruction should be given to this trial, in this period of it, when the evidence on the part of the prosecution and defence have been finally and declaredly closed, and almost a whole year elapsed since the close of the latter. 1794.

"I need not remind your Lordships of the sacrifice I made to cut off all possible delay, that I omitted evidence on two charges, and gave up the pleadings of my able advocates on both. This year, it is known to your Lordships with what earnestness and anxiety my Counsel solicited your Lordships for permission to call Marquess Cornwallis as an evidence, and that I have departed from the whole tenor of my conduct throughout this trial by being the mover myself of these delays of my cause to attain it, and I thank your Lordships for acceding to it.

"My appeal to that noble witness was not made on slight grounds. When I first notified to him my intention of calling for his evidence, I had never had any communication with his Lordship respecting the subject, but I knew what was the truth, and I was confident that he would declare it. I knew his heart and mind; I knew myself; and therefore I knew with the most absolute certainty what his testimony would be. Yet I have made this great sacrifice, added to the past; and surely, my Lords, I am not unreasonable in exacting this only, as a requital, that my trial may suffer no further delay. I do, therefore, most earnestly supplicate your Lordships to grant me the indulgence of a continuation of your proceedings in this Court without any adjournment for the circuits, or any other delay, except the other business of Parliament should render it unavoidable; and that you will afford me such an assurance of it as shall quiet my mind from [its present]* apprehensions.

"[My Lords, do not think this request presumptuous, nor that it proceeds from an impertinent curiosity.]* There are other more urgent motives; and pardon me if once more I repeat, as my plea for making it, that I am now in the seventh year of my prosecution [in this Court],* which has never before suffered any trial, [even of the most criminal nature, except in the times of originating disorder and rebellion],* to exceed a period of twenty-two days; that, as I have already been subjected to a prosecution which has now endured past six years, I may yet, if I may trust to my understanding of all that I have heard this day and the past, be the continued subject of it during six more years, if I live so long."

Mr. Burke observed that the delay the cause had recently Answer of Mr. Burke.

* "History of the Trial."

1794. experienced was occasioned by Mr. Hastings' application for permission to have the Marquess Cornwallis' evidence. He further remarked that Mr. Hastings had made similar complaints of delay from the beginning of the trial.

Reply of Mr. Hastings. Mr. Hastings replied in these words: "Five years ago, I did complain of the length of this trial;* for it was then without precedent that a criminal trial should endure so long. And, if I have complained every year, has not every year been the cause of it? I do complain of it; and I say that, from whomsoever it proceeds, it is an abuse of justice. If I have undergone a prosecution of six years, is that an argument why I must endure it six years longer?"

After a few words from Mr. Fox, who concurred with Mr. Hastings in the request to the Lords that the trial might be proceeded in with as much expedition as their Lordships' important avocations might admit, the Lords adjourned to their chamber.

Proposed question to Mr. Francis not allowed by the Lords. On the reassembling of the Court, on the 1st of March, the 121st day of the trial, the Lord Chancellor announced the decision of the Lords, assisted by the opinion of the Judges,—that it was not competent for the Managers to put the proposed question to Mr. Francis.

Production of evidence by Managers. The next evidence offered by the Managers was a letter signed by Mr. Hastings, Mr. Barwell, Mr. Wheler and Mr. Francis, but which the Counsel had argued from as not signed by Mr. Barwell. Mr. Law waived any objection to the admission of the paper, admitting he had been misled by a duplicate of the letter, to which Mr. Barwell's signature was wanting. The Court refused to allow a discussion, raised by the Managers, on their right to the admission of the paper, irrespective of the Counsel's assent.

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* Mr. Hastings refers to his petition to the House of Lords, presented on the 3d of February, 1789, and which is noticed in the present "Summary of Proceedings;" Vol. ii., p. xv.

The reading of this paper was followed by a discussion on the admissibility of a letter from Mr. Eaton to Mr. Fowke, printed in the Appendix to the Benares Narrative; but on this the Managers gave way, on the recommendation of the Lord Chancellor. Other discussions followed on the admission of a report by Mr. Duncan to Lord Cornwallis on the state of Benares, in 1788. This was eventually conceded to the Managers, and long extracts were read from the report, occupying the attention of the Court for the space of two hours. 1794.

Discussion on admission in evidence of a pamphlet of the court of Directors on Mr. Hastings' treatment of Cheyt Sing.

After the reading of another paper by the Managers, Mr. Grey proposed to read what he designated a pamphlet, written and published by the authority of the court of Directors, and containing their opinion upon Mr. Hastings' proceedings with regard to Cheyt Sing. Mr. Law objected that the publication in question had the sanction of a certain number only of the Directors, and that it was a party pamphlet, written at a time when there was a contest between the Company and other persons who were bringing the affair before the Parliament; adding, that "any publication of the sort, not in the course of duty, is a libel—an actionable libel." Minutes of the court of Directors were read, to show that the paper in question was the authorised production of the Board; but Mr. Law still insisted that the publication of such a paper was libellous. Mr. Burke was proceeding to observe on "the prostituted audacity of the criminal at the bar," in writing an insolent letter to the Directors, but was interrupted by the Marquess Townshend. A prolonged discussion ensued on the character of the paper in question, and the proofs of its being an authorised publication of the Directors. Mr. Law maintained that the paper professed to be written for the justification of the Directors, and was not communicated

1794. to Mr. Hastings. Mr. Burke, in answer, stated, he was ready to prove, if it were necessary, another communication of their disapprobation from the Directors to Mr. Hastings. Mr. Hastings interposed, and spoke as follows:—

Interruption by Mr. Hastings.

"My Lords, I beg that I may be allowed to speak one word. I will venture to say that there is no one instance, besides this, in the whole service of the Company, of the court of Directors publishing any strictures upon the conduct of their servants, which they did not communicate to their servants. If I had committed any offences which the court of Directors thought deserved their reprehension, I was the person that should have known it, not the public. If it was for their own justification, they are parties, and what they say cannot reach me. There are many instances in which the court of Directors, in the course of my service, did find fault with me; but, upon the close of my service, they gave one sanction to all that I had done, and that, I should suppose, obliterated all their former censures, so far as they respected my general conduct. Of this I was never apprised; and I believe it is the only instance of the court of Directors ever ordering such a paper to be laid before the public."

Mr. Burke replied that it was the sentiments of the Directors, as contained in the paper, and not the publication of them, with which they were concerned; and retorted on Mr. Hastings that he had published at Calcutta a libel upon the court of Directors, relative to their judgment upon him, given regularly in their court, without previous communication to them of the subject of that libel. Mr. Hastings answered:—"I beg leave most solemnly to deny it, and to affirm that that declaration is a libel, and is of a piece with all the declarations I have heard from this authorised and licensed"—adding, after a pause, and looking at Mr. Burke—"Manager." Mr. Burke reasserted that Mr. Hastings had published at Calcutta an unauthorised paper, censuring the court of Directors for their reflections on his conduct. To this Mr. Hastings replied:—"I published a narrative. I published no letter to the court of Directors.

I knew my duty too well, and I owed them too much respect." 1794.

Further conversation ensued respecting the description of the paper which it was the object of the Managers to put in evidence; and, before the adjournment of the Lords to deliberate on their decision, Mr. Hastings again addressed them as follows:—

Address of Mr. Hastings.

"It is with great reluctance I trouble your Lordships, and I have only two words to say. I have prayed your Lordships that there may be no further delay in this trial. I have perhaps presumptuously prayed your Lordships to afford me some assurance that this cause shall go on without any further interruption. This is the first of March, and it has been rare that your Lordships have sat after this date; but you have adjourned five or six weeks, to let the Judges go their circuit. I beseech your Lordships not to let me suffer the torment of so long delay again. I am totally worn out. I can bear it no longer."

Observation by Mr. Burke on a Petition of Mr. Hastings.

Mr. Burke remarked that the Managers were quite prepared to discuss the causes of the delay complained of by Mr. Hastings, and intimated that he expected to be allowed to submit evidence in reference to the statements contained in a petition of Mr. Hastings recently presented to their Lordships.*

The Court reassembled on the 7th of April, after the

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* The Petition referred to was presented on the part of Mr. Hastings to the House of Lords on the 25th of February. It was in the following terms:— "That the trial of the Petitioner having been, by the indulgence of their Lordships, already in two instances adjourned, for the purpose of enabling the Petitioner to avail himself of the evidence of the Most Noble Marquis Cornwallis, at such time as the restoration of his Lordship's health might permit his Lordship with safety and convenience to attend the trial of the Petitioner, the Petitioner has lately learnt, with the deepest concern, that the present state of his Lordship's health affords no reasonable prospect of his early attendance in their Lordships' House. The Petitioner, therefore, feels himself reduced to the painful alternative of foregoing altogether the advantage he had assured himself his cause and character would have derived from an appeal to his Lordship's testimony, or of postponing the continuance of this long depending trial, at a time when every moment is of the most pressing importance, to a

1794. usual adjournment during the absence of the Judges on circuit, when the Lord Chancellor announced, "that it is not competent for the Managers for the Commons to give in evidence the paper read in the court of Directors on the 4th of November 1783, and then referred by them to the consideration of the Committee of the whole Court, and again read in the court of Directors on the 19th of November 1783, and amended and ordered by them to be published for the information of the proprietors." Mr. Burke stated that the clear expression of their Lordships' opinion of the inadmissibility of the paper referred to would deter him from offering other evidence, with which he was prepared, on the same matter, and that the evidence in reply on the first Charge was now complete.

Mr. Plumer informed the Court that the Marquess Cornwallis was so far restored to health as to be able to give evidence in person, and obtained the consent of the Managers to examine his Lordship on the next day's sitting.

Evidence by Managers on the second Charge.

Mr. Sheridan then proceeded to give in evidence in reply on the second Charge, relating to the Begums of Oude. Numerous papers were read, in most instances the continuations of documents already partially quoted by the Counsel; and, although frequent discussions arose between Mr. Sheridan and Mr. Plumer, the course of the proceedings during the day was not materially interrupted.

Examination of the Marquess Cornwallis.

On the 9th of April, the 123d day of the trial, the Hall

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further and indefinite period. Under these circumstances, therefore, and in humble confidence that the evidence already laid before their Lordships is fully sufficient for every necessary purpose of exculpation and defence, he begs leave, however reluctantly, to waive the benefit of this additional testimony; and to request that the trial may proceed with that degree of acceleration and dispatch which a due regard to the general rights of justice and the sufferings of an individual, now in the seventh year of his trial, will undoubtedly induce their Lordships to adopt."—Printed in the "Journals of the House of Lords."

presented a fuller attendance of both Peers and spectators than on any previous day of the last three years, in expectation of the examination of the Marquess Cornwallis.* His Lordship was sworn in his place, and was examined by the Counsel, principally to prove the prosperous state of the British provinces in India, and the favourable opinion of Mr. Hastings entertained by the natives. The noble Marquess was cross-examined by Mr. Burke, with the view to show that he had elsewhere, especially in his written despatches, represented the country in a state of depression and impoverishment, on his accession to the Government. He was also questioned by Earl Stanhope and Lord Hawke respecting the character of the coalition of the native powers against the British Government, during Mr. Hastings' administration, and the unusual exertions it necessitated on his part, to contend against it. 1794.

Examination of Mr. Larkins.

On the conclusion of the Marquess' examination, Mr. Larkins, the Accountant General in Bengal during the period of Mr. Hastings' administration, was called by the Managers, and examined by Mr. Burke, chiefly with respect to Mr. Hastings' private accounts, of which he had had the superintendence. Mr. Burke was proceeding with questions to elicit from what books Mr. Larkins had taken the entries of the several sums of money mentioned in his letter to the Chairman of the Company, in 1786, respecting receipts by Mr. Hastings, when he was interrupted by Mr. Plumer, who objected to his going into evidence, at this stage of the proceedings, which ought to have been produced in support of the prosecution at an earlier period.

Questions objected to by Defendant's Counsel.

The remainder of the sitting was consumed in the discussion arising from this opposition of the Counsel to Mr. Larkins' examination; Mr. Plumer and Mr. Dallas, on the

* "History of the Trial;" Part vi., p. 94.

1794. part of the Counsel, and Mr. Burke and Mr. Fox, on the part of the Managers, being the principal speakers. It was argued by Mr. Burke, that the circumstance of Mr. Larkins' absence in India having prevented the Managers from producing him in Court at the proper period, they ought to be allowed the liberty of examining him now that he was returned. "There is no rule of evidence that must not yield to the strong necessity of human affairs. If we had had this witness here in England, and had by fraud kept him back from your Lordships, I should think you ought to have rejected for ever all offers on our part [to produce him now]; but your Lordships know that neither you nor we can pump dry the ocean that is between India and this country—that we cannot call evidence here at our pleasure." It was answered by Mr. Dallas that the difficulty complained of by Mr. Burke had been provided against by a special Act of the Legislature, which had given power, under circumstances like the present, to take evidence by a special commission sent out to India. The view taken by the Managers was very forcibly stated by Mr. Burke in reply. He said:—

"If the prisoner at the bar had had, or himself shown, the smallest compassion to man or woman, I should, in truth, compassionate the miserable and contemptible figure he makes before your Lordships this day. He, my Lords, rests his sole proof of innocence upon the confidence that he had in this gentleman who is now at your bar, and then this is to cover a transaction of theft, peculation, bribery, and everything that is mean, base and corrupt, that can enter into the mind of man; and, when it is his interest and his pretended wish to come forward to clear himself, by every means, before your Lordships, of those foul imputed crimes, and that person comes, in whom he placed his confidence, —and relied upon that confidence as a presumption of his innocence— he abandons that innocence completely: he suffers all these calumnies under which he sees he is sunk, and has been sunk for years; he suffers his Counsel to get up, and not to put up his innocence as a screen or as a shield, but to pick up some technical rule, by which they mean to save him .... 'I have constantly contended,' says he, 'that my confidence in Mr. Larkins was a proof of my innocence.' 'Well, here is Mr. Larkins.

Defend yourself. Examine Mr. Larkins, sift him to the bottom: produce everything that may make your innocence appear.'—'No; I won't.' 'Why?'—'Oh, there may be doubts—suspicions.' . . . I have only to say, after remarking upon the practice, that it would have sunk him in any court in the world. He complains that winds and seas were between them: then, when Mr. Larkins comes to England, he says, 'I will not hear him. There is a rule by which I may screen and cover the guilty peculations I have been guilty of; I will not suffer my confidant to be examined.'" 1794.

After further discussion, the Lords adjourned to their own chamber for the purpose of deliberation.

Decision of the Court against the Managers.

On the 14th of April, the 124th day of the trial, it was declared by the Lord Chancellor that it was not competent for the Managers to put the question proposed to Mr. Larkins.

Resumption of examination of Mr. Larkins, and objection by Defendant's Counsel.

Mr. Burke immediately proceeded to resume his examination of the same witness, but was soon interrupted by Mr. Plumer, who pointed out that the questions put were open to the same objections as were made to his previous examination. He added, however, that "so much has been said—so often repeated and so industriously circulated—respecting Mr. Larkins' testimony, if it were adduced, and the motives operating upon Mr. Hastings for resisting it, that any longer to forbear bringing these bold assertions to that test which has hitherto been fatal to all the accusations against Mr. Hastings, namely, the test of proof, might, perhaps, seem to justify the insinuations cast against Mr. Hastings, of shrinking from the inquiry, and dreading the result of it," and that he therefore withdrew his opposition to the examination of the witness. The Lord Chancellor pointed out that, as an objection had been previously made to the proposed question, it was necessary that the present express consent of the Counsel should be entered in the proceedings at length. Mr. Burke immediately insisted that a positive assertion of the right of the Commons, and their protest against the exercise of it being considered an indulgence, should also be entered; and further

1794. demanded that reference should be made to a precedent of an order of the House, on the 10th of April, 1641. A long conversation ensued; Lord Mansfield stating that the reference to the precedent could not be entered without a hearing having been given to the objections of the Counsel, and a debate by the Lords in their chamber. A simple protest of the right of the Commons was eventually agreed to.

Examination of Mr. Larkins.

Mr. Larkins was then questioned by Mr. Burke on a variety of points; particularly respecting sums of money alleged to have been received by Mr. Hastings, and the indorsement of the bonds, in 1782. Before the adjournment of the Court, Mr. Hastings made the following short address:—

Address of Mr. Hastings.

"I rise to request your Lordships would indulge me but one moment. My Lords, I have been alarmed with informations which it may not be very material for your Lordships to be acquainted with, but which press with a great weight upon my mind, and compel me to repeat the request which I have already twice made to your Lordships, and do most earnestly make. Indeed, what has passed this day makes it still more necessary that I should address your Lordships upon the subject. All that I have to ask is—and most earnestly and most importunately I do supplicate your Lordships—that you will resolve to finish this eternal trial this session; that you will come to judgment this session; and that, by whatever means your wisdom may devise, I may receive some assurance of it. My Lords, twice I have made this request. I now repeat it. It is not from an idle curiosity, but it is to guide myself in some resolutions that I, perhaps, may be obliged to form, and which it is impossible that I should make, when the event shall have already passed which I wish to deprecate."

Observations by Mr. Burke on evidence of Mr. Larkins.

On the 16th of April, the 125th day of the trial, Mr. Burke addressed to the Court some observations on the preceding evidence of Mr. Larkins, and the points he proposed to investigate in his future examination. He was interrupted by Mr. Law, who objected to the address as irregular; but it was pronounced by the Lord Chancellor to be entirely in order.

Further examination of Mr. Larkins.

The further examination of Mr. Larkins was proceeded with, almost uninterruptedly, until, on an objection being

made by Mr. Law to a form of question put to the witness, Mr. Burke reflected on the unwillingness exhibited by the Defendant and his Counsel to have certain questions put. This drew from Mr. Law a protest against any imputation of his being moved to interfere in what he considered an illegal mode of examination by an apprehension on Mr. Hastings' account. What he aimed at was to prevent an unfair protraction of proceedings, at an already advanced period of the session. After an explanation by Mr. Burke of the motive of the question objected to, Mr. Hastings rose, and made the following appeal to the Court:— 1794. Objection by Counsel.

"My Lords, I pray I may be heard a few words. If the requests I am about to make to your Lordships are granted, I am sure, and will answer for my Counsel, that they will object to no questions that shall be put. Their apprehension is, and my apprehension is, only, lest there should be further delays in this trial. My Lords, I beg leave to call to your recollection that, in the year 1791, when the prosecution was closed, I told your Lordships that, for the sake of acceleration, and because I could not bear the idea of being for ever under trial, I would waive my defence, if your Lordships would then go to judgment. Long before the close of the last year, when I saw that there was a probability that time would not be left sufficient for the Managers to make their reply, I then waived a great deal of the evidence for my defence upon the two last Articles. I waived the opening and application of the two last Articles, at least the application of the first, and the opening and application of the last, of my Counsel, for the sake of leaving sufficient time for the Managers to reply and for your Lordships to proceed to judgment. My concession was received, but I did not derive any benefit from it; the trial was adjourned over to this year. In this year, when my Lord Cornwallis arrived, I consented myself, nay, I applied for delay, for the purpose of receiving his testimony, but I was told that his Lordship's state of health was so bad, that it was not possible for him to attend before your Lordships were to adjourn, that the judges might go upon their circuits. Even then, material as I thought the evidence of the noble Marquess, I consented to forego it. All these sacrifices I made for the sake of acceleration, and it has been told me that I was afraid of the examination of this witness, Mr. Larkins, because his examination was to draw down upon me crimes, I think the expression was, so great, that I should call upon mountains to hide me. Address of Mr. Hastings.

"My Lords, after having made such sacrifices for the sake of acceleration, and to get rid of this trial, was it to be expected that, for the

1794. accommodation of my accusers, I should call this witness? No, my Lords, it was because I feared delays, which have happened and still portend, that I objected to it; and, so far from ordering my Counsel,—which was a term made use of, and which I felt exceedingly,—when your Lordships gave me Counsel for my defence, I trusted implicitly to their management of my cause, and have had no reason to repent of the confidence reposed in them. I never directed them; they judged and decided for me; but my own consent and inclination went with them. When I heard the insinuations thrown out against me, one of my learned friends here will bear me witness that, at that time, I did express an impatience to him that he would give it up; he made me forego it; and I sat down with patience.

"I have consented that Mr. Larkins may be examined; and now I only pray that his examination may be concluded. I most earnestly entreat and implore your Lordships, for that purpose, that you will be so good as to allow me one day more, or, if it can be, a few hours only of one day, for the purpose of concluding the examination of this witness, before the adjournment for the Easter holidays, which are now very fast approaching. Your Lordships will have the goodness to recollect, I am sure, the circumstances under which, and the declared hope and intention with which, this examination was consented to on my part; and I hope your Lordships will consider how precious and how valuable every moment of my time must be, at this period of the trial, when I have been now so many years—nine years almost—under accusation, and seven complete years under trial; and I hope that your Lordships will have the goodness to forgive me the length of this address, and that it will not have been made ineffectually."

Examination of Mr. Larkins.

Mr. Burke continued and completed his examination of Mr. Larkins; and the Court was adjourned during the cross-examination on the part of the Defendant, by Mr. Dallas, which ensued.

Report on the causes of delay in the trial.

On the 17th of April, in the House of Commons, Mr. Burke brought up the Report of the Committee appointed to inquire into the causes of the delay in the trial. The Report was read and ordered to lie on the table. Mr. Burke then moved that it be printed for the use of the Commons, which was agreed to, after a warm opposition from Sir Pepper Arden and others.

Cross-examination of Mr. Larkins.

On the 28th of April, the 126th day of the trial, Mr. Dallas proceeded with his cross-examination of Mr. Larkins,

occasioned by the confederacy of the native powers against the Company, he proposed, in order to rebut Mr. Hastings' defence, to produce evidence of the origin, progress and termination, of the Mahratta war; and he should make it clear that Mr. Hastings was the author of that war, which occasioned the confederacy against the Company, and excited France to aim at the overthrow of the British empire in India. 1794.

Objections by Mr. Law.

Mr. Law objected to the proposed evidence, on the ground that it charged Mr. Hastings with a substantive crime, viz., the commencing a wanton and unjust war; and that it had been repeatedly decided by their Lordships that that which is a substantive and distinct head of crime cannot be given in evidence, in aggravation of other crimes specifically charged, unless it be itself so charged or collaterally introduced. He denied, moreover, that the production of the proposed evidence was justified by the evidence given in defence. He referred to page 757 of the printed Minutes, where it was recorded that the Managers had stated that "they would proceed to show that, whatever the circumstances of the danger [to the Company] might have been pretended to be, in the dominions of Oude, before the time of signing the treaty of Chunar, yet, after that time, and after the seizure of the treasures was determined, no state necessity whatever existed, upon which the Defendant could pretend to justify that measure,"—adding, that, "the honourable Managers having given evidence that there existed no state exigency at the time when these sums of money were specifically charged to be received, we, to repel that evidence, give the evidence which the honourable Manager has commented upon, showing that there existed a state of the most grievous distress on the part of the Company, and that these monies were necessarily applied to the alleviation of that distress."

1794. The evidence on the origin and progress of the Mahratta war, proposed to be now read, had been collected by the Select Committee of the House of Commons, of which Mr. Burke was the most active member, in the year 1781, and consisted of a mass of papers, filling several folio volumes. It referred, moreover, to transactions not brought forward in the Articles of Impeachment. The Court, accordingly, evinced a manifest disapproval of the attempt on the part of the Managers to involve them in this voluminous and irrelevant matter. Lord Kenyon, who was presiding in place of the Lord Chancellor, clearly indicated this feeling in the course of the discussion which ensued. Mr. Burke, however, and Mr. Fox insisted on the right of the Managers to put in all the papers, in answer to the evidence produced by the Defendant. Mr. Burke especially exhibited extreme irritation at the discouragement given to the production of the evidence. He declared that every word they heard increased the alarm of the Managers. When a person charged a crime with a fraudulent intention, and the other party admitted the fact, but took issue on the crime, it was for him to prove his good intention and good service, and then for the accuser to disprove it. "That is the order that has hitherto been used in all tribunals and all courts; and it is the strangest and newest thing [to reject the evidence in disproof]. Therefore, I take it, your Lordships will not do it; that your Lordships will not add this exceptional novelty to all the other proper novelties you have introduced in this trial." Increasing in excitement, he proceeded,—"I really have sometimes wished for an audience: and the British laws wish for an audience, as a control upon all judgments. I am glad to-day that a part of your audience does not understand one word that passes here. I am glad to find that a part of this auditory [alluding

Unwillingness of the Court to admit the evidence.

Observations of Mr. Burke.

to the Turkish ambassador and his suite], which has come from an Eastern part of the world, which is supposed not to administer the correctest and purest justice, does not hear that there is a chicane in this country, that is worse than the bowstrings of all the pashas in the East. Let us hear and see if, in the diwan, they could be found to try in the way tried here. We take for granted your Lordships will not disgrace the English justice in the eyes of foreigners. You will take care that it shall be pure and uncorrupted." 1794.

Reflections on the conduct of the Court by Mr. Burke.

Lord Kenyon desired an explanation of these charges against the Court from Mr. Burke; who stated that they were conditional on their Lordships rejecting the proposed evidence. The Bishop of Rochester—Dr. Horsley—reminded him of the expressions he had uttered; and Mr. Burke desired his words might be read. However, on the Earl of Carnarvon interfering with a further explanation that Mr. Burke, as he had understood him, referred only to what had passed between the Managers and Counsel, Lord Kenyon proceeded to arrange the form of the question to be decided by the Court; and the Lords withdrew to their chamber.

Rejection of the evidence by the Court.

On the following day, the 6th of May, the 129th day of the trial, Lord Kenyon, who again presided for the Lord Chancellor, announced the judgment of the Lords, that it was not competent for the Managers to give the proposed evidence relative to the Mahratta war.

Complaint of Mr. Burke.

Mr. Burke regretted that the Lords had given the Managers no insight into the ground and reason of their determination. They felt their want the more on this occasion, because they had heard from the Defendant's Counsel no argument, but, in the place of it, the grossest and most outrageous insult.* He complained that an

* Mr. Burke here alluded to Mr. Law's reply to the arguments he had used on the preceding day for the production of the evidence—"that it would be an

1794. opinion was suffered to be spread among the public, that they had offered this evidence with a probable knowledge of its incompetency and impropriety, for the mere purpose of oppressing the Defendant by the waste of time. He said:—"The manner in which we have been treated in this House, from the beginning to this time, is a thing without precedent or record in the Journals of Parliament, or known in the history of any country in the world. The manner has been perfect and almost uniform, from the beginning of this trial to this time." None suffered from the protraction of the trial more than the Managers, who were obliged to bear the laborious part of it, and were "obliged to bear all that obloquy from the hired pens and voices which Indian delinquency is able to procure, throughout the whole country." He justified the Managers from suspicion of malice towards Mr. Hastings, who, to the greatest number of them, had not been personally known before the impeachment, from whom they had received no injury whatever, and with whom they were no ways concerned upon any party principles. And he refuted the presumption that they could be misled by ignorance, since their full acquaintance with all the evidence, much of which the Court had not suffered to be produced before them, gave them an advantage over their Lordships. He continued in the following strain:—"I am afraid that almost all the precedents we have quoted are obliterated and gone from the minds of men: but I remember one of the oldest judges we have heard of, and who has been remarkable for his patience—though, with all his patience, he bitterly reprehended those that reproached him. I mean Job. He says—'The cause I knew not I searched out:' but if he had told us—'The cause I knew not I was resolved to remain ignorant of, and

insult to their Lordships, and treachery to Mr. Hastings, were he to waste a moment in further observations on what had been said by the Managers."—"History of the Trial;" Part v., p. 107.

formed to myself rules and principles which fortified me in my ignorance,' he might have given it as a proper answer to his yoke-fellow and friends, of whom he bitterly complains that they became his accusers. No: he says—'The cause I knew not I searched out;' and therefore, he says, he made the widow's heart to sing for joy. And why? Because she knew the cause that he searched out, and therefore the widow and fatherless blessed him. He never appeared in the gate without having the honour and obedience of all mankind. Now, my Lords, if there is delay in this business, we have never reproached your Lordships with it once: you have suffered us to be reproached with it every day." 1794.

Here Mr. Hastings rose, and exclaimed—"My Lords, I do claim your protection. I do reproach the Manager with this delay. In all the time that he has wasted, in speaking upon delay, has he said one word by which the trial has been accelerated? Has the process of the trial gone on; or has anything been said which can be of use to your Lordships in judging my case? I come here to be tried." Interruption by Mr. Hastings.

Lord Kenyon urged Mr. Burke to proceed in the reply to the defence: and Earl Stanhope assured him that he was in error in supposing that the reason for rejecting the evidence in question was only the delay it would occasion. But the words of Mr. Hastings had given fresh occasion for Mr. Burke to reiterate his complaint of the imputation levelled against the Managers of purposely endeavouring to protract the proceedings. He now insisted that the charge was made directly against the Court itself; and that it was their duty to investigate it. He renewed his complaint that the Court had, from the beginning, permitted the Managers to be taunted with the accusation of maliciously delaying the trial; and had suffered, what had never before been tolerated by the House, "that the parties in the

1794. Court should be regularly, daily, and without exception of one hour, libelled, misrepresented and falsified, in the public papers." Notwithstanding efforts of dissuasion from Lord Somers and Lord Kenyon, Mr. Burke proceeded to read an extract from a daily paper,—"The Oracle,"—but was interrupted by Lord Thurlow, who said it was impossible for the Court to proceed upon anything but the trial; and that, if there were cause of complaint, the proper course was for the Commons to apply to the Lords by message. A long conversation ensued, at the end of which Mr. Burke stated he had been ready to prove that "what protraction there has been in this business has arisen from your Lordships and the prisoner, and not from us," and desired to be allowed to enter a protest on their Lordships' Journal, but which Lord Kenyon declined to receive.

Evidence on the Charge relating to presents.

On the termination of this long discussion, Mr. Fox proceeded to give in documentary evidence, in reply, on the sixth, seventh and fourteenth, Articles of the impeachment, relating to illegal presents; and the papers produced were read, with little interruption on the part of the Defendant's Counsel.

Evidence on the Charge relating to contracts.

Mr. Taylor followed with evidence in reply on the fourth Article, relating to corrupt contracts, which was also brought to a close without opposition. It was presumed that the evidence was now entirely closed on both sides. Mr. Burke, however, once more rose, and claimed to put in additional evidence, in the first place, in reply to evidence of Mr. Hastings concerning his circumstances, which was unopposed by the Counsel; and, secondly, in reply to the certificates from the inhabitants of Bengal, relative to the character of Mr. Hastings, to show the impossibility of their being *bonâ fide* testimonials. A portion of the evidence on the second head was not at the time ready at hand for production, and Lord Kenyon, complaining of the neglect of the Managers in being unprepared with the documents they desired to

read, urged that they should be dispensed with, and the evidence finally closed. Mr. Burke, however, though he declined to persist, in the face of a positive request from the Court, asserted most solemnly the great importance of the proposed evidence; and, after further conversation on this point, the books were brought into Court and the papers read. 1794. Additional evidence.

Mr. Burke then offered to produce the report of Mr. Paterson concerning the transactions in Dinagepore and Rungpore, during the time of Mr. Hastings' government, and their effect on the minds of the inhabitants. Mr. Law, however, opposed the evidence, as having been already rejected by the Court, after a special debate on the point, when produced in reference to the case of Deby Sing.* Mr. Burke insisted that it was now produced for another purpose, viz., as evidence of the state of the country, in opposition to the pretended certificate of the inhabitants. Attempt of Mr. Burke to read Mr. Paterson's report on the cruelties in Dinagepore.

Mr. Law pointed out that the evidence elsewhere collected relative to the state of the provinces of Rungpore and Dinagepore filled four folio volumes,† that their Lordships had pronounced this matter inadmissible, and that it was too much to expect the Counsel to relinquish the advantage of that judgment. In answer to further arguments of Mr. Burke, Mr. Law stated that the Counsel had repeatedly challenged the Managers to bring this evidence forward under a specific charge, which could have been met by specific evidence; but which they had not ventured to do; they should therefore maintain their objection to the admission of the evidence on the present occasion. Objection by Mr. Law.

After a protracted discussion, in which Lord Kenyon repeatedly intimated his opinion that the evidence could not Rejection of the evidence by the Court.

* See vol. ii., p. xxxiii.

† A complete copy of the proceedings in relation to the disturbances in these provinces was purchased for the British Museum, in the year 1834, and now forms Nos. 9790-9795 of the Additional MSS.

1794. be received, he was eventually induced to state the grounds of his objection, which were, that the report of Mr. Paterson with its accompanying certificates was not made on oath, or was made on oath not taken in presence of the parties now at issue, and therefore was inadmissible. Whereupon, Mr. Burke intimated to the Court that, since they refused the proposed documents, he should make no attempt to bring forward other material evidence, with which, however, he was prepared.

Lord Kenyon then reminded Mr. Law that it was his turn to reply upon the fresh evidence given by the Managers: upon which Mr. Law addressed the Court:—

Address of Mr. Law.

"The evidence on the part of the prosecution being now finally closed, it might be permitted us, under your Lordships' indulgence, to observe at large upon the evidence which has been adduced in reply, in the course of the present session of Parliament. But, my Lords, in pursuance of that purpose which induced us, in the course of the last session of Parliament, to forbear to submit to your Lordships evidence prefatory to, and concluding observations upon, one entire Article of Charge—the contracts; and which induced us likewise to forego the advantage of enforcing the observations which might apply to another Article of the Charge—the presents; in pursuance of the same purpose of acceleration and dispatch which dictated our conduct in the instances I have alluded to, and with a view to the near and more immediate termination of this trial, we forego an advantage which can only be purchased at the intolerable expense of further protraction and delay.

"My Lords, we confidently trust that all the attempts which have been made, in the course of the present session of Parliament, to weaken the evidence that has been produced on the part of the Defendant, and to strengthen that of the Prosecutor, have not only failed of their intended effect, but have produced an effect directly the contrary. We confidently trust, my Lords, that the strong and irrefragable conclusions which result from the invaluable oral testimony which you have lately heard at your bar, cannot either have escaped your Lordships' penetration, or fail to have their due effect hereafter upon your Lordships' judgment. After returning to your Lordships our sincere and grateful acknowledgments for the invariable patience and condescension with which, during so many years, our imperfect but zealous endeavours to sustain the cause of our client, and to give him the benefit of such poor abilities as we are possessed of, have been honoured, we have only to add, on the part of Mr. Hastings, and in his name and on his part to implore, that your

Lordships will allot so much of continued time to the termination of what yet remains of this trial, as may advance it to its entire and ultimate close in the course of the present session of Parliament. To that moment, my Lords, Mr. Hastings looks forward, with impatience indeed, but with fearless expectation, being assured, as he is, equally of his own innocence and of your Lordships' justice." 1794.

Mr. Grey's reply on the Benares Charge.

On the 8th and 12th of May, the 130th and 131st days of the trial, Mr. Grey, on the part of the Managers, summed up the evidence in reply on the Benares Charge.

Mr. Sheridan's reply on the Charge relating to the Begums.

On the 14th of May, the 132d day of the trial, Mr. Sheridan replied on the second Article, relating to the Begums of Oude.*

Reply of Mr. Fox on the Charge relating to presents.

On the 20th and 21st of May, the 133d and 134th days of the trial, Mr. Fox replied on the sixth, seventh and fourteenth, Articles, relating to illegal presents. As the Court was rising, at the close of the former day, Mr. Hastings made the following address:—

Address of Mr. Hastings.

"My Lords, before you depart, may I be permitted to address myself to your Lordships? Your Lordships cannot be surprised if, at this late period, I must feel myself exceedingly alarmed at the frequent adjournments which have been made; and those adjournments prolonged on the pleas of sickness, and inability to carry on the prosecution. With respect to the first instance, I will do the gentleman to whom I allude that justice which I am sure he will never allow to me, by saying that I acknowledge his plea was a just one. I saw that he was unable to pro-

* Sheridan's reply will be found to touch very lightly on the difficulties in the Charge. It has been suspected by some that neither he nor Fox, after their political separation from Burke, on the questions arising out of the French revolution, gave that cordial support to the impeachment, or assistance to Mr. Burke in his prosecution of it, that they had afforded in the earlier stages of the proceedings. Moore says of Sheridan that, on the occasion of his reply, he came purposely into Court unprovided with the necessary papers, professing that "he would abuse Ned Law; ridicule Plumer's long orations; make the Court laugh; please the women; and, with Taylor's aid, get triumphantly through the task;"—but he adds, that he had it on good authority that "Sheridan, previously to the delivery of his speech, passed two or three days alone at Wanstead, so occupied from morning till night in writing and reading of papers, as to complain in the evening that he had motes before his eyes."—Life of Sheridan; Vol. ii. p. 249. Adolphus' "History of England;" Vol. vi., p. 216.

1794 ceed. It was real sickness that prevented him. Whether the pleas since made are just or not, it perhaps will not become me to say before your Lordships: but I will complain of reports that were made that the right honourable gentleman who just now spoke had obtained your Lordships' permission, by a message from the Commons, to adjourn the trial to another day, because he was sick. I was told that he was in bed, so hoarse that he could not speak. My Lords, on the day on which he ought to have been in this Court and doing his duty, I saw him riding in the burning sun—certainly no cure for a cold or a fever—and I heard his voice, as audible almost as I hear it now. My Lords, I complain of this, not as an injury done to me, but as a hardship which I feel, because I see the time wasting. I see the very small period that yet remains of this month, in which I am told not only the session, but this Parliament must conclude—I see it daily wasting away, and so little done.

My Lords, I have been accused with delays. Your Lordships, I am sure, well know that it is true that, in all this period, in the seven years that I have attended this bar, I never once made the plea of sickness, nor desired to be excused from my attendance; and yet you will not suppose that I am more exempt from infirmities of human nature than my accusers. I suffer more than they do. This very day, that I undergo these aggravating invectives thrown out against me, I must feel what every man in my situation would feel. I have never desired to be excused from my attendance one day; yet I can tell you, my Lords, that there were two days in which I rose from a bed of sickness, and with a fever in my veins, and attended in this place; and, so far was I from making it an excuse, that I did all I could to conceal it from your Lordships, and to conceal it from others, who perhaps would have made it a plea of compassion to adjourn the trial.

Now, all that I have to request and implore of your Lordships is, that these delays, whether true or false, may not operate to my injury; and I care not how many days I do attend, if your Lordships will be resolved to finish the trial this year. There cannot be much time wanting for what remains merely of speaking; and this indulgence, which I think I have a right to crave, is what I most humbly implore your Lordships to grant me."

To this address Mr. Fox made the following reply:—

Reply of Mr. Fox.

"It becomes absolutely necessary for me to trouble your Lordships with a very few words. I certainly do feel the situation of the Defendant, and therefore think many things may be allowed to that situation which perhaps, in many others, may not be considered as strictly proper. But a sort of accusation that has been made against me makes it necessary for me to take the opportunity of this full Hall, merely to state what is to your Lordships fully known. The trial was to come on

on Friday. I wrote letters to several noble Lords in this House, particularly the learned Lord who during the indisposition of the noble Lord on the woolsack executed that office for him, in which I did distinctly state that, so far from being ill in bed, I was ready to go on on Friday, if it was thought it would be of any material advantage towards accelerating the ultimate end of this trial; but that, having been indisposed—which I do assure the gentleman at the bar I was, and that that which he thinks not a very wise conduct those who advised me thought proper—I could attend this House on a subsequent day, such as yesterday or Saturday, with greater ease than on Friday. I stated then that I was ready to go on; but I did state truly that, having been indisposed, I could with more satisfaction to myself go on on a future day; and, in consequence of that, your Lordships were so good as to adjourn the sitting: but I am sure I shall, at least, be acquitted from having made an unfair and improper state of my own health." 1794.

Mr. Burke.—"These complaints have so often come before your Lordships from this criminal, that I think it is necessary to say a few words upon the subject. We made no complaint when, at his desire, your Lordships chose to adjourn for ten days, to receive the evidence of a noble Lord, who was not in India, and who could not speak to any one circumstance of his transactions. We did not deny him that time, though he now presumes to accuse us of ill designs, upon the idea of an existing illness. He says, his case is harder than ours. Your Lordships know, whatever is the length of the chain, we have the other end of it; but there is this difference, that we have not got 90,000*l.* of Rajah Nobkissin's money in our pockets, to console us under the troubles which we bear. Let him answer to that."

Mr. Taylor's reply on the Charge relating to contracts.

On the 23d and 27th of May, the 135th and 136th days of the trial, Mr. Taylor replied on the fourth Article of the Charge, relating to corrupt contracts.

Final reply by Mr. Burke.

On the 28th of May, Mr. Burke commenced his final reply, on the part of the Commons, on all the Articles of the Charge. He continued his speech on the 30th of the same month, and on the 3d, 5th, 7th, 11th, 13th and 14th, of June, and finished it on the 16th of that month, the 145th day of the trial.

In this, his final and most remarkable effort to support the case of the prosecution, Mr. Burke reviewed the whole series of circumstances included in the several Charges; not so much for the purpose of making plainer the broader features of the case insisted on by his fellow Managers, who

1794. had preceded him, as with the aim to heighten the criminality of the actions impeached by tracing corrupt motives in relation to them, and to bring into stronger light minor and correlative circumstances altogether passed over, or but slightly noticed, during the process of establishing the more substantial facts of the impeachment. The unflagging eagerness with which he unravelled all the intricacies of transactions complicated in themselves or purposely obscured shows that his early conviction of the reality of the crimes he was prosecuting was still unchanged. The invective of his final reply surpasses in its vehemence that of his first opening of the Charge. So intolerable was the bitterness of his denunciations to the Defendant himself, in whose presence they were uttered, that in one instance they drew from him a passionate exclamation of dissent from the assertions of the orator, occasioning an interruption in his address.*

It will be observed that Mr. Burke was stopped by the Lord Chancellor in an endeavour to introduce and comment upon a portion of the Charge which had been abandoned by the Commons during the progress of the trial, or, as Mr. Burke himself explained it, had not been supported by evidence because admitted by the Defendant himself.†

The extraordinary length of Mr. Burke's final reply excited apprehensions in the mind of Mr. Hastings, during its delivery, that it was intended to be extended over the present session of Parliament; and he, accordingly, on the 5th of June, after the adjournment of the Lords to their chamber, presented to the House the following petition, through Lord Hardwick:—

Petition of Mr. Hastings to the House of Lords.

"That it is with the greatest reluctance and concern that your Petitioner feels himself obliged once more to address your Lordships on the

* See Mr. Burke's speech of the 11th of June, *infra*, p. 612.

† Speech of the 12th of June, *infra*, p. 636.

subject of his long depending trial. Your Petitioner begs leave to lay before your Lordships his well-founded apprehensions, excited by the manner in which the general reply on the part of the Managers is now evidently conducted, that such reply is meant to be extended beyond the probable limits of the present session of Parliament. Your Petitioner hopes he may be allowed to bring to your Lordships' recollection, that the reply was, at the instance of the Managers, adjourned over from the last year, under the assurance of an accelerated and early termination of it; and that the whole of the present session, except a small interruption occasioned by the examination of the Marquess Cornwallis, has been employed by the honourable Managers, notwithstanding that your Petitioner has, for the purpose of despatch, in addition to the sacrifices made for a similar purpose in the last year, waived his right to observe by his Counsel on the new evidence adduced in reply. 1794.

"Your Petitioner begs leave again to suggest to your Lordships the unexampled duration of his trial, the indefinite period to which it may be still further protracted, and the extreme vexation and injury to which he would be subjected, if the intention on the part of his prosecutors should be suffered to have effect. He implores, therefore, of your Lordships' humanity and justice, that such measures be adopted, on the part of your Lordships, as may assure to your Petitioner the speedy termination of this painful and unparalleled proceeding; and, further, if need should be, that your Lordships will graciously condescend, in such a manner as to the wisdom and dignity of your Lordships may seem meet, to become suitors to his Majesty's goodness, in his behalf, that the present session of Parliament may be permitted to continue, till the reply on the part of the honourable Managers for the House of Commons shall be fully and finally closed.

"Westminster Hall, June 5th, 1794."*

Complaint by Mr. Burke of Mr. Hastings' petition.

On the opening of the Court, on the 7th of June, Mr. Burke complained of the conduct of the Lords in recording in their Journal this petition of Mr. Hastings, which he stigmatised as "an audacious libel;" adding that he passed it by at present, in order to have the opportunity of consulting the House of Commons on the course to be pursued in reference to it.

Report of Committee on the causes of delay in the trial.

We have already stated that, on the 6th of March, in this year, Mr. Burke moved in the House of Commons for the appointment of a Committee, to inspect the Journals of

* "History of the Trial;" Part v., p. 129.

1794. the House, and to report the occurrences of the trial, and the causes of delay in the proceedings, and that the Managers were nominated a Committee for that purpose; that, on the 17th of April following, Mr. Burke presented to the House the Report of the Committee, which was ordered to be printed; and that, on the 29th day of the same month, Mr. Burke obtained the consent of the House to rescind the order for printing the Report, and to recommit it for correction, certain inaccuracies having been detected in it by the Managers themselves.

The Report, as amended, was again presented to the House on the 30th of April.

It had been drawn up by Mr. Burke himself, who, having shortly explained the causes of the slow progress of the trial, entered into an elaborate discussion of constitutional questions affected by the ruling of the Court on points of contest between the Managers' and the Defendant's Counsel, and especially in respect to the Lords' decisions in disputed claims for admission of evidence, and their refusal to accompany their judgments with the reasons on which they had been based. The Report, in addition to its other merits, affords so complete a view of the difficulties complained of by the Managers, as thrown in their way by the Court in the conduct of the proceedings, that a statement of its conclusions, chapter by chapter, will be an useful addition to the short account we have attempted to give of the incidents of the trial.*

Epitome of the Report.

The Duration of the Trial.—The Report pointed out that the Court had held, up to the 1st of March, inclusive, one

* The Report was printed for the House of Commons; it was published at the time by Debrett, and has since been frequently reprinted. An answer to it was given, in the form of a pamphlet, intitled "Observations on the Report of the Committee appointed to Report the Causes of the Delay in the Trial of Warren Hastings, Esq.," Debrett, 1794; but which avoided the questions of constitutional law discussed in the Report.

hundred and eighteen sittings, spread over seven sessions of Parliament; that the length of period comprised in the proceedings was principally due to the frequent prorogations, and one dissolution, of Parliament, and to adjournments of the Court—particularly to adjournments on account of the circuit of the Judges, interposed in the middle of the session. That, in addition to these causes, a few days were lost from special causes of interruption; viz., an adjournment of ten days [in the year 1789] on account of a complaint by the Defendant against one of the Managers [Mr. Burke];* two days' adjournment on account of the illness of one of the Managers; about two days lost at the close of the session of 1793, by the Managers not being prepared to commence their reply, owing to "the unexpected dereliction of the defence of the prisoner;" and a loss of about a week or ten days in the present session, from waiting for the recovery from indisposition of the Marquess Cornwallis. 1794. Purport of the Report on the causes of delay in the trial.

The length of the proceedings is attributed to the nature and extent of the matter to be tried, and the number of the documents produced in evidence, but more particularly to the objections raised by the Defendant's Counsel to the admission of evidence offered by the Managers. "These objections amounted to sixty-two; they gave rise to several debates, and to twelve references from the Court to the Judges." The objections by the Managers were few, shortly discussed, and not referred to the Judges, nor even debated in the chamber of the Lords.

The Report having thus very briefly indicated the causes of the protraction of the proceedings, discusses at very great length the jurisdiction of the Lords, as a Court for trying cases of impeachment, and its rules of proceeding,

* See the Summary of Proceedings on the Trial; Vol. ii., p. xviii.

1794. and also the rights and powers of the House of Commons, in their impeachments. These observations are distributed under the following heads :—

Epitome of the Report on the causes of delay in the trial.

Relation of the Judges, &c., to the Court of Parliament.—The Judges are no integrant and necessary part of the Court. Their writs of summons are different; and they have no deliberative voice in the judgments given in the House of Lords. Their attendance in the Court is for the purpose of answering questions, and advising in matters on which they may be consulted.

Jurisdiction of the Lords.—The Lords are judges both of law and fact; and ought not to submit themselves to the direction of the Judges of the inferior courts, in reference to receiving or rejecting evidence.

Law of Parliament.—The Lords, in matters of appeal or impeachment in Parliament, are not of right obliged to proceed according to the rules of any law, except only the law and usage of Parliament. Reference is made to an appeal in Parliament, in the year 11 Richard II.

Rule of pleading.—The rules of pleading observed in the inferior courts have no authority in causes where the whole procedure has been within the jurisdiction of the House of Lords. No "demurrer or exception, as of false or erroneous pleading, has ever been admitted to any impeachment in Parliament." The trials of Lord Strafford and Dr. Sacheverel are referred to, and the Act of 7 Will. III. is quoted, to show that proceedings in Parliament are exempted from rules affecting trials in other courts.

Conduct of the Commons in pleading.—A laxity is allowed, in the pleading of the Commons in the High Court of Parliament, which is not admitted in the inferior courts. The case of Lord Wintoun, in 1715, is referred to, where exception was taken against the impeachment on account of error, the day on which the treason was committed not

having been alleged. The exception was overruled, on the ground that "the impeachment is sufficiently certain in point of time, according to the form of impeachments in Parliament." The law of Parliament, and the law of Parliament only, should prevail in a trial of the impeachment of the Commons. 1794. Epitome of the Report on the causes of delay in the trial.

Publicity of the Judges' opinions.—It is argued at great length, and with references to several precedents, that "from the 30th year of Charles II. until the trial of Warren Hastings, Esquire, in all trials in Parliament, as well upon impeachments of the Commons, as on indictments brought up by *certiorari*, when any matter of law hath been agitated at the bar, or, in the course of trial, hath been stated by any Lord in the Court, it hath been the prevalent custom to state the same in open Court."

Publicity general.—Although no positive law is found which binds the Judges of the courts in Westminster Hall to give a reasoned opinion publicly from the bench in support of their judgments, the course has prevailed from the earliest times. The same practice prevails where the Judges are consulted by the Peers on the law, in all writs of error brought before them.

The Report produces opinions of law-writers, and argues on the value of the practice. It then states that, in the present trial, a marked innovation is observed. Against the reiterated requests, remonstrances and protestations, of the Managers, the opinions of the Judges were always taken secretly. It further complains that the very questions proposed for the Judges were not settled in open court, "but differed materially from what your Managers contended was the true state of the question, as put and argued by them;" and that the Managers have never been able to form a clear opinion upon the ground and principle of the decisions on these questions.

1794.

Epitome of the Report on the causes of delay in the trial.

Mode of putting the Questions.—On this head, the Report charges the Lords with following an unprecedented course, striking at the vital privileges of the House of Commons, inasmuch as the form of the questions submitted to the Judges was always, after statement of the case, "What evidence is it competent for the Managers of the House of Commons to produce?" thereby referring it to the Judges to decide on what it might be competent for the Commons to do, and subjecting to their discretion the law of Parliament, the privileges of the Commons, and, in a great measure, the judicial privileges of the Lords themselves. The novelty and danger of the practice is argued at great length; and it is asserted that the effect of it was, "not only to make the Judges master of the whole process and conduct of the trial, but, through that medium, to transfer to them the ultimate judgment on the cause itself and its merits."

Debates on Evidence.—Great ingenuity is exercised to show that the rigorous and precise rules of the lower courts, in relation to evidence, are not applicable in cases of impeachment; and that "the Court of Parliament ought to be open with great facility to the production of all evidence, except that which the precedents of Parliament teach them authoritatively to reject, or which hath no sort of natural aptitude, directly or circumstantially, to prove the case." "The Lords ought to enlarge, and not to contract, the rules of evidence, according to the nature and difficulties of the case." When evidence produced was denied to be admissible, the burden lay with those who opposed it to set forth the authorities, whether of statute or precedent, which rejected it. This was not the practice of the Court in the present trial, either of the Lords in their debates, or of the Judges in the opinions given by them. "Therefore, for anything which as yet appears to your Committee

to the contrary, these responses and decisions were, in many of the points, not the determination of any law whatsoever, but mere arbitrary decrees, to which we could not, without solemn protestation, submit." After references to precedents in earlier impeachments, and to opinions of writers on civil law, it is asserted that "the Committee can find nothing to support any one of the determinations given by the Judges, and adopted by the Lords, against the evidence which your Committee offered." 1794. Epitome of the Report on the causes of delay in the trial.

In the practice of the law of England, the rules of evidence are "rather less strict, more liberal, and less loaded with positive limitations, than in the Roman law." Numerous cases are referred to and authorities quoted to prove the liberality of the rules of evidence; and the conclusion is drawn that—"if anything of an over-formal strictness is introduced into the trial of Warren Hastings, Esquire, it does not seem to be copied from the decisions of these tribunals. It is with great satisfaction your Committee has found, that the reproach of 'disgraceful subtleties,' inferior rules of evidence which prevent the discovery of truth, of forms and modes of proceeding which stand in the way of that justice, the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the common law of England, or to the ordinary practice of the courts below."

Circumstantial Evidence, &c. It is complained that the Managers have been obliged by the Court to state the purpose for which they produced each part of their circumstantial evidence; and this practice was most strictly enforced at the period when it was most injurious and difficult to comply with it; viz., in proving their charges of secret crimes, peculation, pecuniary frauds, extortion and bribery. "Much industry and art have been used, among the illiterate and unexperienced, to throw imputations on this prosecution and

1794. its conduct, because so great a proportion of the evidence offered on this trial (especially on the latter charges) has been circumstantial:" and precedents are quoted to show the value of circumstantial evidence when properly produced. Referring particularly to the trial of Captain Donellan, who was found guilty of murder wholly on circumstantial evidence, the Report observes, that, "comparing the proceedings on that trial and the doctrines from the bench with the doctrines we have heard from the woolsack, your Committee cannot comprehend how they can be reconciled. For the Lords compelled the Managers to declare for what purpose they produced each separate member of their circumstantial evidence; a thing, we conceive, not usual, and particularly not observed in the trial of Donellan." The Report proceeds to illustrate the difficulties to which the Managers were subjected, in this respect, by detailing the circumstances of the refusal of the Lords to receive in evidence a paper containing the charges brought against Mr. Hastings by the Raja Nundcomar, and drawn up by the Members of the Council of Calcutta, hostile to Mr. Hastings, forming a majority of the Board;* and animadverts severely on the judgment of the Lords which excluded the proposed evidence.

Epitome of the Report on the causes of delay in the trial.

Order and time of producing Evidence.—The Managers "found great impediment in the production of evidence, not only on account of the general doctrines supposed to exist concerning its inadmissibility, drawn from its own alleged natural incompetency, or from its inapplicability, under the pleading of the impeachment of this House, but also from the mode of proceeding in bringing it forward. Evidence which we thought necessary to the elucidation of the cause was not suffered, upon the supposed rules of exami-

* See a notice of the circumstances referred to in a previous part of the Summary of Proceedings on the Trial; Vol. ii., p. xx.

nation in chief and cross-examination, and upon supposed rules forming a distinction between evidence originally produced on the charge and evidence offered on the reply. On all these your Committee observes in general that, if the rules which respect the substance of the evidence are (as the great lawyers, on whose authority we stand, assert they are) no more than rules of convenience, much more are those subordinate rules which regard the order, the manner, and the time of the arrangement. These are purely arbitrary, without the least reference to any fixed principle in the nature of things, or to any settled maxim of jurisprudence, and consequently are variable at every instant, as the conveniences of the cause may require." It is argued at length that it was the duty of the Court to receive evidence, at whatever stage of the proceedings produced, if apparently material; and, after quoting numerous precedents, the Committee state that "exclusion of evidence brought for the discovery of truth is unsupported either by Parliamentary precedent, or by the rule as understood in the common law courts below," and they think "they had a right to see such a body of precedents and arguments for the rejection of evidence during trial in some court or other, before they were in this matter stopped and concluded."

1794.

Epitome of the Report on the causes of delay in the trial.

Practice below.—The Committee "not having learned that the resolutions of the Judges (by which the Lords have been guided) were supported by any authority in law to which they could have access, have heard by rumour that they have been justified upon the practice of the courts in ordinary trials by commission of Oyer and Terminer." The Report points out the difference in the constitution of the court of Peers from that of the ordinary courts; where, as the case is decided by a jury taken promiscuously from the mass of the people, the judge properly decides on the competency of the evidence to be set before them. The

1794. Lords, on the other hand, are by law fully and exclusively equal to decide on the competency of evidence, and ought not to submit themselves to the authority of the Judges. The Report concludes with an argument to show that "this final and independent judicature (exercised by the House of Lords) because it is final and independent, ought to be very cautious with regard to the rejection of evidence."

Epitome of the Report on the causes of delay in the trial.

Appendix to the Report.

In an Appendix to the Report, all the questions, twelve in number, which had been referred to the Judges, were collected, with their opinion upon each.

Observations on the Report by Lord Thurlow, in the House of Lords.

The strong reflections contained in this Report upon the principles on which the trial had been conducted were not suffered to pass altogether unnoticed by the Peers. In a debate in their House, on the 22d of May, on the Habeas Corpus Suspension Bill, Lord Thurlow, under whose presidency, as Lord Chancellor, the proceedings had principally been conducted, drew the attention of their Lordships to it, as "a pamphlet which had been published by one Debrett, in Piccadilly, and which had that day been put into his hands, reflecting highly upon the Judges and many members of that House." He proceeded to say that—"it was disgraceful and indecent, and such as he thought never ought to pass unpunished. He considered that vilifying and misrepresenting the conduct of Judges and magistrates, entrusted with the administration of justice and the laws of the country, was a crime of a very heinous nature, most destructive in its consequences, because it tended to lower them in the opinion of those who ought to feel a proper reverence and respect for their high and important stations; and, when it was stated to the ignorant and the wicked that their Judges and magistrates were ignorant and corrupt, it tended to lessen their respect for, and their obedience to, the laws of the country, because they were taught to think ill of those who administered them."

His Lordship's observations drew no remarks from any other member of the House; but, on the following day, Mr. Burke called the attention of the House of Commons to what had passed in the Upper House. In reference to what Lord Thurlow had said, of the necessity of preserving the authority of the Judges, he said he agreed with him; but added—"This, however, does not depend on us, but upon themselves. It is necessary to preserve the dignity and respect of all the constituted authorities. This, too, depends upon ourselves. It is necessary to preserve the respect due to the House of Lords: it is full as necessary to preserve the respect due to the House of Commons; upon which (whatever may be thought of us by some persons) the weight and force of all other authorities within this kingdom essentially depend." He justified the language of the Report, as not charging the Judges with either ignorance or corruption, but complaining that their opinions had been given not on the law but on the case; and he reiterated the statement it conveyed, that the Managers were "extremely dissatisfied with those opinions, and the consequent determinations of the Lords. The Report," he said, "speaks for itself. Whenever an occasion shall be regularly given to maintain everything of substance in that paper, I shall be ready to meet the proudest name, for ability, learning or rank, that this kingdom contains, upon that subject." No reply or observation was made on the subject by any other member.

1794.

Notice of Lord Thurlow's remarks by Mr. Burke, in the House of Commons.

Seven years had now passed since the House of Commons had voted, by large majorities, the impeachment of Warren Hastings, on the greater number of the Articles charged against him. The members of the House, to whom the management of this arduous prosecution had been committed, had applied themselves to their very difficult and laborious duty with unflagging zeal through this protracted period. Mr. Burke, above all, the leading Manager of the prosecution, had

Exertions of Mr. Burke in prosecuting the impeachment.

1794. urged on the proceedings with all the energy of his great and ardent mind, excited by a sense of the importance of the cause, and a thorough conviction of the reality of the crimes imputed. Indeed, nothing but such a persuasion, and the hope that, in exposing and bringing to punishment a systematised course of tyranny, pursued in a dependency of the empire too remote for the supervision of the home Government, he was rescuing many millions of his fellow-creatures from unchecked oppression, and saving a rich and populous empire from misrule and degradation, could have sustained him under the labours and discouragements his self-imposed task brought upon him. He had to bear to see political friends fall off from him, and those who had warmly seconded him in urging on the House of Commons the necessity of the impeachment grow lukewarm, at the moment when increased zeal was needed to work through the details of the trial. He had to suffer the sneers of his personal opponents, as well as the open attacks and secret insinuations of the numerous personal supporters of the man he was prosecuting. He had to endure the loss of the assistance of Mr. Francis, the only man influenced by an equally intense interest in the prosecution—though from a different motive—and whose intimate acquaintance with affairs of India would have lightened to him the toil of mastering those difficult details of the cause which might have daunted a less powerful or a less enthusiastic mind. He had to contend, almost unaided, with the astuteness of trained lawyers, always watching to baffle him in his pursuit of evidence with all the intricacies and wiles of technical practice. All this—even to the hostility of the very President of the court he pleaded before—he had to endure, as patiently as he might, through seven long, toilsome, years, and amidst the distraction of public events more threatening and terrible, especially in his eyes, than any recorded in the page of modern history;

yet to the last moment his energy never flagged. His portion of the labour was at length finished. He had succeeded in bringing the cause he had devoted so much of his time and genius to up to its final stage, where only the judgment of the Court remained to terminate the trial. The prorogation of Parliament was impending; and the House of Commons could not decently defer to another session the duty of honouring those who had given such great talents and so much gratuitous labour to the task imposed on them. 1794.

Mr. Pitt's motion of thanks of the House to the Managers.

On the 20th of June, Mr. Pitt moved "that the thanks of the House be given to the members who were appointed Managers of the impeachment against Warren Hastings, Esq., for their faithful management in their discharge of the trust reposed in them." He prefaced his motion with arguments dissuasive of opposition from those who had avowed themselves hostile to the impeachment. This, he said, had been voted, not only under the conviction of the guilt of the party impeached, but as a terror to those placed in a similar situation, in the government of our distant provinces; and, whatever the ultimate decision might be, he was confident that the example of Mr. Hastings would deter other governors from a repetition of the practices which marked his administration. He exculpated the Managers from the charge of having unduly protracted the trial, and threw the responsibility of the length of the proceedings on the Counsel for the defence: and he warned the friends of Mr. Hastings that it was doubtful "whether an unanimous vote of that House (honourable though it was) would be so honourable to the Managers as a vote of thanks marked with the discriminating negative of those who felt themselves irritated and stung by the faithful and admirable discharge of the task imposed upon them by their country."

Debate on the motion of thanks.

The debate on the motion of the minister gave to

1794. the friends of Mr. Hastings the opportunity they desired of blackening the character of the impeachment, by denouncing the conduct and language of the principal Manager. Mr. Sumner lead the way in this attack on Mr. Burke. After objecting to the motion, as being prematurely proposed, while neither the verdict nor judgment of the Lords had been pronounced, he said that, though he thought the charges ill founded, he, if the time were proper, should be willing that the Managers should receive the thanks of the House for doing their best to support them, provided they could except "the leading Manager, who had by his conduct disgraced and degraded the House of Commons." Although called to order by the Speaker, the member proceeded to cite instances in which Mr. Burke had gone beyond the intentions of the House, by criminating other parties, by persisting in the prosecution of Articles of the Charge which the House had ordered to be dropped, and by charging Mr. Hastings with murder, and repeating the charge, even after he had received the reprimand of the House for exceeding his instructions; and he quoted the most violent passages in Mr. Burke's speeches addressed to Mr. Hastings.

Speech of Mr. Sumner against Mr. Burke.

Other members urged similar objections; which were answered by Mr. Windham, a Manager, Mr. Francis and Mr. Fox. Mr. Francis showed that Mr. Sumner had misunderstood some of the expressions of Mr. Burke, which he had denounced as most objectionable; and Mr. Fox, disclaiming all separation between the leading Manager and his colleagues, assumed to himself the blame, if there was any, in persisting to think the fate of Nundcomar a murder, after the censure passed on Mr. Burke by the House of Commons.

Speeches in defence of Mr. Burke.

Mr. Ewan Law, a brother of Mr. Hastings' Counsel, took up the debate on the side of the opposition. He

Speech of Mr. E. Law against Mr. Burke.

repeated in the coarsest terms the charge against Mr. Burke of unjustifiable violence of language; averring that his expressions "were universally reprobated, from the first characters amongst the numerous audience that had heard them, down to the messengers, door-keepers and guards." He went at great length into an explanation of the story of Deby Sing, to show that Mr. Hastings had no concern in the atrocities exposed by Mr. Burke. He accused Mr. Burke of purposely protracting the trial; and particularly criticised his final speech in reply. 1794.

Mr. Anstruther, one of the Managers, spoke shortly in justification of Mr. Burke, on the subject of the charge relating to Deby Sing; and Mr. Sheridan stated that, having originally intended not to vote, the nature of the opposition to the motion induced him to remain in the House and vote in support of it.

The previous question being put, the House divided, when the votes in favour of the question were 55 against 21 in the negative. Division.

The main question being then put, the House again divided, and it was carried by 50 votes againt 21.

The Speaker accordingly communicated the thanks of the House to the Managers; adverting, in the course of his address, to the increased security given to the constitution, "by the recognition and full confirmation of the principle, that an impeachment is not discontinued by a dissolution of Parliament." Thanks of the House conveyed by the Speaker.

Mr. Burke, in the name of the Managers, expressed their gratification at the acknowledgment their labours had received from the House, and at the dignified and elegant manner in which the Speaker had conveyed it. He entered into a short defence of the conduct of the impeachment. He explained that he had thrown no general reflections on the Company's servants, but had merely repeated what Reply of Mr. Burke.

1795. Mr. Hastings had himself said of the troops serving in Oude: as for the other expressions complained of, they had been very much misrepresented. He attributed the bitterness of the personal remarks upon his conduct to the prejudices of private friendship, and assured the House that no asperity of language should provoke him to say a word in recrimination.*

Mr. Burke's retirement from Parliament.

This was the last speech that Mr. Burke made in the House of Commons; and indeed his last appearance there. He, the very next day, applied for the Chiltern Hundreds, and retired for ever from public life.

Debates of the Lords on the form of procedure in giving judgment.

The Parliament reassembled early in the year 1795, and, after a short adjournment, on account of the indisposition of Lord Thurlow, the House of Lords entered into a consideration of the mode of proceeding in giving their final verdict in the great cause that had been so long disputed before them in Westminster Hall.

Committee to report on precedents.

On the 23d of January, Lord Chancellor Loughborough moved for a Committee to inspect the Journals, and to report on the course followed in previous cases, in giving judgment on trials of high crimes and misdemeanours. The Report of this Committee was presented on the 19th of February, and was taken into consideration on the 26th.

Course of proceeding proposed by Lord Thurlow.

Lord Thurlow, after stating that the precedents collected in the Report had no resemblance to the case under the consideration of the House, observed, that, as out of the twenty Articles of the impeachment the Commons had given evidence on only six, it was an act of justice to acquit Mr. Hastings of the remaining fourteen. The six Articles on which they had given evidence contained severally so many allegations of criminal facts that he thought it impossible to put one question only on each Article, as had been the general practice;

* "Parliamentary History;" Vol. xxxi., 936.

and he thought it might be necessary to put a separate question upon each allegation. He proposed, therefore, that the House should resolve itself into a Committee of the whole House, to afford opportunity for a full discussion of the proceedings. The proposal was assented to, and the Report was referred to a Committee of the whole House. 1795. Committee of the whole House.

On the 2d of March, Lord Thurlow, in opening the discussion on the mode of proceeding, entered into a consideration of the character of the impeachment. He complained of the looseness and inaccuracy with which the Articles had been drawn, and that they contained many assertions that could not be substantiated. The impeachment, in its present form, rested on the following points—breach of faith, oppression and injustice, as charged in the two first Articles; corruption, as charged in the Article of Presents; and wanton waste of the public money, for private purposes, as charged in the Article of Contracts. With regard to the first of these, the question would be whether Mr. Hastings had exerted the power he possessed for the public good, or had been actuated by base and malicious motives. Unless the latter were proved, the charges in the two first Articles fell to the ground. The preamble of the Articles was materially defective, inasmuch as it fixed on Mr. Hastings the sole responsibility for acts, in some instances done by others, in other instances in which others participated. Speech of Lord Thurlow on the character of the impeachment.

He proposed that, in discussing among themselves the merits of the prosecution, they should debate on the several allegations in the Articles on which evidence had been given, *seriatim*, because, although, if the whole House were of opinion that no part of an Article had been proved, a single vote would suffice on that Article, yet, if any individual Peer thought that some allegations in the Article were made out, though others were not substantiated, it would be necessary to vote on each allegation. The Benares Proposal to discuss the several allegations in each Article of the Charge.

1795. Article, for instance, contained many charges, on each of which, if a difference of opinion existed, the House must give a separate vote.

Speech of Lord Loughborough.

The Chancellor, Lord Loughborough, concurred in the proposal of Lord Thurlow, who forthwith opened the discussion on the Benares Charge. In this, he said, no question would arise till they came to the demand made on Cheyt Sing of a war subsidy, in 1778. The criminality charged in this measure consisted in the malice imputed to Mr. Hastings in originating it. In reviewing the subject, he justified the measure, and exculpated Mr. Hastings from any malicious motive in connexion with it.

After a few words from Lord Carnarvon and Lord Moira, the Committee reported progress.

Discussion on the demands made on Cheyt Sing in 1778, 1779 and 1780.

On the 3d of March, the attention of the House was engaged in hearing the evidence read on the subject of the demands made on Cheyt Sing in the years 1778, 1779 and 1780.

Right of Lords to vote on the verdict.

On the 5th of the same month, the discussion was renewed, but was interrupted by a proposal from the Earl of Carnarvon to the House to consider which Lords had, and which had not, the right to vote; as it would be to the eternal disgrace of the House, if Lords who had not attended the proceedings on the trial should ultimately vote in Westminster Hall. Several Lords spoke on this subject, but the House tacitly acquiesced in the view expressed by Lord Thurlow, that it must be left to the conscience and sense of honour of every Peer to determine how many days' attendance on the trial intitled him to vote on the verdict.

After observations by Lord Loughborough, in which he acquitted Mr. Hastings of criminality in the demands made in the years 1778 and 1779, but imputed a certain degree of blame to him in respect of that made in 1780, the question was put—"That the Commons had made good their

Division on the first question.

charge in respect to the tribute claimed and received from Cheyt Sing, in 1778 and 1789," and the motion was unanimously rejected. 1795.

In the course of the discussion, it was clearly explained that their present proceedings were merely designed to assist the House in forming its conclusions on the several allegations in the Articles; and that the questions decided in the Committee were not to interfere with those that were ultimately to be put in Westminster Hall; such ultimate questions remaining for future consideration. Purpose of the discussions.

On the 6th of March, the Lord Chancellor proposed a motion in reference to several of the allegations in the Benares Charge, on all which he argued that criminality had been proved. Lord Thurlow objected to the departure from the course agreed to, of voting on each allegation separately, and moved—"That the Commons had made good the first Article, so far as it related to the war subsidy of 1780." The Earl of Carnarvon argued in support of the motion, but it was negatived on a division. Discussion on the exaction in 1780. Division.

On the 9th of March, Lord Thurlow opened the next part of the Charge, relating to the demand of cavalry in November 1780, and reviewed the whole of the evidence most minutely, arguing throughout in defence of Mr. Hastings. Lord Carnarvon and the Lord Chancellor supported the Charge; but the motion that the Commons had made good the Article in respect to the demand of cavalry from Cheyt Sing was negatived. Discussion on the demand of cavalry. Division.

The next question moved by Lord Thurlow was in respect to the charge of conspiracy for the sale of Cheyt Sing's provinces to the Wazir; and the motion was negatived unanimously. Sale of Cheyt Sing's provinces to the Wazir.

The motion which followed was to approve the Charge relating to the allegation by Mr. Hastings of Cheyt Sing's unpunctuality in the payment of his kists, in 1780. The Unpunctuality of payment of tribute.

1795. Charge was again refuted by Lord Thurlow, and supported by the Lord Chancellor. The motion was negatived.

Arrest of Cheyt Sing. On the 10th of March, Lord Thurlow moved the next question—"That the Commons had made good the first Article, in so far as it related to Mr. Hastings' preferring false and malicious charges against Cheyt Sing, and arresting his person." The circumstances and the evidence on either side were very elaborately discussed by Lord Thurlow himself, Lord Mansfield, the Marquess of Lansdowne and the Bishop of Rochester, in favour of Mr. Hastings, and by the Lord Chancellor and the Earl of Carnarvon in support of the motion; which, however, was negatived.

Remainder of the Benares Charge. On the 13th of March, Lord Thurlow went through the evidence on the remainder of the Benares Charge, relating to the expulsion of Cheyt Sing, and the siege and plunder of Bidjey Gur, arguing in defence of Mr. Hastings, and moved—"That the Commons had made good the ten remaining allegations in the first Article." Lord Chancellor Loughborough argued in support of the Charge; but the motion was negatived.

Discussion on the Charge relating to the Begums. The second Article of the Charge, relating to the Begums of Oude, was discussed under one motion, on the 16th and 17th of March, the House having first negatived a proposal of the Duke of Norfolk to report progress, and to proceed to a vote in their House on the first Article, as a whole, each Peer giving his verdict of guilty or not guilty. The Charge and defence on the second Article were discussed very minutely by Lord Thurlow and the Lord Chancellor; the Bishop of Rochester and the Earl of Morton supporting Lord Thurlow in Mr. Hastings' defence.

Division. The motion was then put—"That the Commons had made good the charges in their second Article, respecting the Begums," and was negatived.

On the 20th of March, the House proceeded to the consideration of the sixth Article, relating to corrupt presents. Lord Thurlow opened the discussion. He divided the Charge into what related to presents received by Mr. Hastings in the years 1772, 1773 and 1774, and those taken in the years 1780, 1781, 1782 and 1783. The presents received in the earlier period, and before the passing of the Act regulating the affairs of the Company, were stated to have been given as consideration for corrupt appointments to offices in Bengal, and by which Mr. Hastings added 100,000*l.* to his private fortune. With respect to the presents from the Rani Bowani and from Khan Jehan Khan, the faujdar of Hughly, there was no evidence to support the charge. The only remaining charge was that Mr. Hastings corruptly received three lacs and fifty-four thousand rupees, or nearly 40,000*l.*, from Nundcomar and Munny Begum, for appointing the son of the former diwan, and the latter guardian, of the Nawab of Bengal.

1795.

Discussion on the Charge relating to Presents.

Speech of Lord Thurlow.

Lord Thurlow reminded the House that, when Lord Clive acquired for the Company the diwani of Bengal, in the year 1765, he instituted a double government, by committing to Mohamed Reza Khan the entire management of the revenues, and the administration of civil and criminal justice, under the title of Naib Subahdar. This system continued till the year 1772, but with results so unsatisfactory that the income received barely sufficed to meet the necessary expenditure. In April 1772, Mr. Hastings assumed the government of Bengal, and received orders to abolish the double government, and to establish a new system for collecting the revenues, by the agency of the Company's servants. The arrangements he formed were submitted to the inspection of Parliament, in 1773; and the approval of the Government was strongly expressed,

1795. by the appointment of Mr. Hastings as the first Governor General of Bengal, under the regulating Act of that year. The new Government commenced in Bengal, in October, 1774. Lord Thurlow proceeded to state the circumstances of Nundcomar's charges against Mr. Hastings, of which he acquitted him, on the judgment of the law officers of the Company, to whom the papers relating to them had been submitted. His Lordship then stated the circumstances relative to the ziafat, or present for entertainment, paid to Mr. Hastings from the treasury of the Nawab. This, he showed, was applied to Mr. Hastings' expenses while at Moorshedabad, and was the customary allowance received by previous Governors under similar circumstances. Finally, he considered the character of the Munny Begum, from Mr. Hastings' alleged partiality to whom the Managers had inferred a corrupt understanding between them. He went through her history, in order to clear her from the reflections of the Managers, and concluded by stating that, after Mr. Hastings' retirement, she received from Lord Cornwallis, on the ground of her own representations of her services, a pension of about 12,000*l.* a year.

Speech of Lord Loughborough.

The Lord Chancellor concurred in thinking that the Commons had failed in making good any part of their Charge, except the receipt of a lac and a half of rupees for entertainment at Moorshedabad. This present Mr. Hastings himself acknowledged, but there certainly was no proof of his having taken it as a consideration for a corrupt appointment to office. He added that he was induced to think that, if this Article had stood alone, the Commons would not have charged it; but that it was mixed with others, of which, under their Lordships' rules, no evidence could be given. In preference to a motion of Lord Thurlow's, he moved—"That the Commons had made good the sixth

Article, as far as it related to a corrupt receipt of presents, in the years 1772, 1773 and 1774. This motion was put and negatived by a unanimous vote. 1795. Division on the first part of the Charge.

The discussion on the Charge of presents was renewed on the 23d of March. Lord Thurlow explained that the remaining part of the Charge referred to presents of large amounts received by Mr. Hastings in and subsequently to the year 1780, for the use of the Company, as contended on his part, but, as imputed by the Managers, for his own use; though, as they said, he was subsequently induced by fear to apply them to the public service. He recapitulated the circumstances of the present taken by Mr. Hastings of Cheyt Sing, in 1780, and urged that, having declined it, when offered as a present to himself, he subsequently accepted it, in order to apply the sum to the carrying out an important act of policy, in which he was thwarted by the refusal of the Council of Calcutta to agree in furnishing the funds requisite for its execution. He next pointed out that Mr. Hastings had communicated the receipt of the present, for that purpose, to Mr. Markham, shortly after its receipt, as stated by that witness in his evidence before the Commons and referred to by him in Westminster Hall, and that he had subsequently communicated it to Mr. Sullivan. He dwelt on an expression used by Mr. Hastings, in a letter to Major Scott, in December, 1782, implying a belief that he had made him also acquainted with it at the time. He stated that a fourth communication of the present was made in a letter from Mr. Hastings to the court of Directors, dated the 29th of November, 1780. An intention of converting the money to his own use had been inferred from his paying it into the treasury as a deposit; but in this letter he expressly says—"The money was not my own; and I neither could nor would have received it but for your benefit." Lord Thurlow then stated the subject of the remaining

Discussion on the second part of the Charge.

Speech of Lord Thurlow.

1795. portion of the letter of the 29th of November, which was, to explain the importance of Mr. Hastings' object in sending money to Mudaji Bosla, commander of the Berar army, and which mentioned his having taken bonds for that portion of the amount raised from his own funds. He then related the history of the bonds; and reviewed Mr. Hastings' explanations respecting the presents to the Directors, in his letters from Calcutta of the 22d of May and 16th of December, 1782, and from Cheltenham in June, 1784; concluding his observations on them by stating that "though the subject of the presents has taken up so many years in the discussion, the Managers have never been able, to this moment, to procure a tittle of evidence beyond what Mr. Hastings himself has furnished them with;" and that when Mr. Hastings, in his letter of the 16th of December, 1782, told the Directors that, if he had had a wrong motive, he could have concealed the receipt of the presents from the public eye for ever, he believed the assertion to be strictly true. After exculpating Mr. Hastings from any intention of deceit in reference to his misstatement on the subject of the date of indorsement of the bonds, he dwelt on the substance of Mr. Larkins' evidence, as being favourable to Mr. Hastings, and concluded with the motion —"That the Commons had made good the sixth Article, in so far as related to the sum of two lacs of rupees, corruptly received from Sadanund, the buxey of Raja Cheyt Sing."

Speech of Lord Loughborough.

Lord Chancellor Loughborough began a very long speech on the opposite side of the discussion, by laying down the principle, that, independently of the Act of Parliament of 1773, a President of Council or Governor General, in taking a present from a person connected with or dependent on him, committed a crime, by the common law of England; as also, in like manner, to give or accept a bribe was a crime at common law. Mr. Hastings had received various sums

from different persons, which having been given to procure general favour, the acceptance of them was highly criminal. His Lordship proceeded to examine the circumstances of the receipt of each present. That received from Cheyt Sing Mr. Hastings deposited in the hands of the Company's sub-treasurer, where it remained for years, unapplied to the public service. The letter of Mr. Hastings to the Directors of the 29th of November, 1780, in explanation of the transaction, was evasive and unsatisfactory. He argued from the letter of Mr. Larkins to the Chairman of the Company, of the 5th of August, 1786, relative to the bond No. 89, taken by Mr. Hastings of the Company, that Mr. Hastings had by no means made out that part of his defence, relative to this transaction, which he had made before the House of Commons. Upon the whole, his Lordship said, regarding the present from Cheyt Sing from every point of view, he thought that Mr. Hastings could not stand excused on any pretext of reason or justice, but that he had been convicted in the clearest manner of the crime alleged by the Commons. 1795.

Lord Loughborough next discussed the allegation respecting the present of ten lacs of rupees from the Nawab. After enlarging upon each particular of the Charge, he contended that, taking the account as favourably for Mr. Hastings as possible, there remained a sum of not less than one lac and a half of rupees as yet wholly unaccounted for. Having dilated much at length on every part of the Charge relative to the Dinagepore peshcush, and the transactions of Mr. Hastings with Kelleram, with respect to which he contended that a small portion only of the sums received had been accounted for, his Lordship went minutely into the Charge relating to the present from Nobkissin, and declared that it appeared to him that not a shadow of excuse could be pleaded in palliation even, much less in defence of,

1795. conduct so open to the imputation of corruption as that of Mr. Hastings, in this instance.

Speech of the Earl of Mansfield.

The Earl of Mansfield said that, according to his construction of the law, Mr. Hastings had broken it in every instance charged of receiving presents; but he considered that the circumstances of his situation justified him in every case, excepting that of the present from Nobkissin. He received them with the express determination of applying them to the public service: they certainly were so appropriated; and the numerous contradictions in the accounts seemed to proceed from excessive carelessness, not from guilt. But as to the present from Nobkissin, it stood on different grounds. There was no state necessity pleaded for this breach of the law. The money, though taken for the Company, was appropriated to discharge a demand made by Mr. Hastings on the Company. He lamented that there should be a single point in which he could not acquit Mr. Hastings, for no man had a higher opinion of the services he had rendered his country; and, when he considered the many hardships he had suffered since his return from India, as well from the circumstances as from the extreme length of the arduous trial he had undergone, and the calm dignity and composure with which he had sustained what no man had ever borne before him, he felt himself strongly inclined to put the most favourable construction on all his actions.

Reply of Lord Thurlow.

Lord Thurlow replied that he was ready to stake all his credit as a lawyer, or his integrity as a man, on the question propounded by the Lord Chancellor. He differed from him completely in the doctrine he laid down, that the receipt of a present by a person in the situation of Mr. Hastings must be corrupt, and that it was not necessary to charge it to be a bribe in the impeachment, because the person giving the present could only give it with a hope of procuring general

favour. The Commons, to show corruption, ought to have charged some act done by Mr. Hastings in favour of the several persons from whom the sums were received. He again went over the circumstances of the Benares present, with a view to correct the statements of Lord Loughborough. 1795.

After a short answer from the Lord Chancellor, and a promise by Lord Thurlow to discuss the question of law in dispute between them at their next meeting, the Earl of Carnarvon rose. He declared that he considered the arguments of Lord Loughborough irresistible; and, after going over the particulars of the several parts of the Charge, concluded with saying that, in his opinion, had Mr. Hastings wished to conceal all the presents he had taken, he could not have used more art, or exercised more skilful cunning to provide against detection, than he had used in every instance of receiving presents. He therefore believed him guilty of the Charge. Speech of the Earl of Carnarvon.

The Bishop of Rochester saw nothing in the evidence to induce him to believe that Mr. Hastings had been actuated by bad or corrupt motives, and he fully concurred in all the reasoning of Lord Thurlow. The Bishop of Rochester.

On the 24th of March, Lord Thurlow resumed the discussion on the Charge of presents, by an argument against the principle of law laid down by Lord Loughborough, that, at common law, the receiving of presents by a person in Mr. Hastings' position from his inferiors was a crime for which an indictment would lie. He then very minutely examined the evidence on the parts of the Charge which he had not noticed in his previous speech, concluding, with respect to the presents from Kelleram and Cullian Sing, from Nundulol and the Nawab Wazir, that they were all of the same description—that they had been received for the Company, and faithfully applied to their service, and that Mr. Hastings had never the intention to appropriate them Further observations of Lord Thurlow.

1795. to his own use. He then entered into the circumstances of Nobkissin's present, which so far differed from the other cases charged against the Defendant, that it was admitted by himself to have been applied to his own convenience, by being retained as a set-off against expenses incurred by him on behalf of the Company. After going through all the particulars of the transaction, his Lordship argued that criminality could only be established by proving that the charges for the liquidation of which this money was retained were fictitious. That they were not so, was evident by their not having been objected to by the court of Directors. Mr. Hastings had left it to them to allow them or not. By not disallowing them, or even calling for vouchers, or further information respecting them, they admitted the demands to be perfectly fair and reasonable; and, in effect, they audited the accounts. On the whole, it was impossible to consider these presents as bribes. It was for each member of the House to satisfy himself from the evidence whether or not Mr. Hastings, in accepting them, had any intention of appropriating them to his own use, or did not, as alleged by him, *bonâ fide*, apply them to the Company's service. With regard to the assertion that the mere acceptance of them was a breach of the law, he had no hesitation in affirming that the clause in the Act of 1773, by which any receipt of presents was prohibited, had been repealed by the Act of January, 1787; therefore, if their Lordships were of opinion that Mr. Hastings had intended, in receiving the presents, to apply them to the public service, he must be acquitted.

Reply of Lord Loughborough.

After a short reply by the Lord Chancellor, who argued that, according to the statements to be collected from the evidence, and from the defence of Mr. Hastings, it did not appear that the whole of the money received from Kelleram and Cullian Sing, from Nundulol, and from the province of Dinagepore, had been accounted for by the Defendant, the

question was put—"That the Commons have made good the sixth Article, in so far as relates to a present or obligation received from Kelleram for four lacs of rupees;" when the non-contents were declared the majority. 1795. Division respecting the present from Kelleram;

The following question respecting the money received from Nundulol was immediately put; and was also negatived. and from Nundulol.

Lord Thurlow then moved the third question, on the subject of the present from the Nawab Wazir. The Lord Chancellor stated that he had already discussed the evidence on this charge, on a previous occasion; he would, therefore, only now reply to Lord Thurlow's statement respecting Mr. Hastings' durbar charges. It appeared to him that a balance of nearly a lac and a half was still unaccounted for, and that the account was not sent over till October, 1783. It was clear that, up to that time, Mr. Hastings had the money in his hands; and, for aught that appeared, he had it at that moment. Observation of Lord Loughborough on Mr. Hastings' durbar charges.

After a further explanation on this subject by Lord Thurlow, the Archbishop of York made some observations on the general character of the impeachment. He said that the present conversation reminded him of the case of Cato the Censor. "That great man, after having filled the first offices in the state, with the highest reputation, was impeached. He was impeached forty times, and was attacked by a factious demagogue of his day relative to the *items* of an account. What was the case of Mr. Hastings? No consideration for his high character, no consideration for his splendid and important services—for the esteem, love and veneration, in which he was held by the millions that he governed for so many years! No; he is treated, not as if he were a gentlemen whose cause is before you, but as if you were trying a horse-stealer." Speech of the Archbishop of York.

1795. After a few observations in reply by the Lord Chancellor, the question was called for, and negatived.

Division on the Charge relating to the present from the Wazir.

The question was then put on the remainder of the sixth Article. The Bishop of Rochester made some observations in justification of Mr. Hastings; and, on a division, the non-contents were in the majority.

Division on the remainder of the Charge.

Speech of Lord Thurlow on the Charge relating to contracts.

On the 31st of March, Lord Thurlow went over the whole of the case on the fourth Article of the impeachment, relating to contracts and allowances, under the separate heads of the opium contract, the bullock contract, the extra allowances to Sir Eyre Coote, Mr. Auriol's agency for supplying provisions for Fort St. George, and Mr. Belli's agency for provisions for Fort William. In commenting on the evidence on each of the allegations of the charge, his Lordship vindicated the conduct of Mr. Hastings.

Speech of the Bishop of Rochester.

He was followed by the Bishop of Rochester, who discussed particularly the part of the charge relating to the opium contract, as containing the only one of the five allegations in the Article, on which, he said, the smallest degree of doubt existed in his mind. He contended that there was no proof that Mr. Hastings knew anything of the transactions between the several contractors, Sullivan, Benn and Young; and that there was no crime charged which could be properly cognisable by impeachment. It was rather a matter between Mr. Hastings and the East India Company.

Earl of Carnarvon.

The Earl of Carnarvon argued that the not advertising a contract or putting it to public auction was a breach of the standing orders of the Directors. He animadverted on the concession of the contract for opium to Mr. Sullivan, who was totally inexperienced in business, and had no knowledge of the subject of his contract, and who immediately disposed of it, at a considerable profit, to Mr. Benn; and he

charged Mr. Hastings with having dishonoured the British government in India, by lending his countenance to the smuggling trade which he suffered to be carried on in opium, against the strict enactments of the Chinese Government. 1795.

The Earl of Mansfield stated that, having been too much employed to look minutely into the evidence on the different contracts, he suspended his judgment on them. With regard, however, to the extra allowances granted to Sir Eyre Coote, he conceived the conduct of Mr. Hastings to be not only justifiable but strictly meritorious. Earl of Mansfield.

Lord Loughborough said that, in every instance except that of the bullock contract—but which was too high—the evidence clearly proved that the Defendant had acted profusely and improvidently, as well as contrary to the express orders of the Directors. He was of opinion, therefore, that the Commons had made good their charge. Lord Loughborough.

Motions were put on the several allegations in the Charge, the divisions being all in favour of the non-contents. Division on the Charge relating to contracts.

It was finally moved and negatived that the Commons had made good the remainder of the impeachment; and the resolutions were read over and ordered to be reported on. Division on the remainder of the impeachment.

The Report was presented to the House, on the 13th of April, by Lord Walsingham, the Chairman of the Committee, who, having been debarred the privilege of joining in the discussion on the resolutions, by reason of his office, now delivered himself at length of his opinion on the merits of the several Charges. When he had ceased speaking, Lord Thurlow moved that the several resolutions agreed to in Committee should be voted on *seriatim* by the House. This course was objected to by Lord Loughborough, the Earl of Carnarvon, and the Earl of Lauderdale, as unnecessarily pledging the House, and exposing it to the possible risk of affirming any of the questions in one way in their chamber and in another in Westminster Hall. Lord

Presentation of the Report.

Speech of the Chairman, Lord Walsingham.

Proposal of Lord Thurlow to vote on each of the resolutions *seriatim*.

Objected to.

1795. Thurlow's proposition was rejected on a division, and the resolutions were agreed to.

Resolutions agreed to.

Form of giving judgment.

On the 17th of April, the House of Lords took into consideration the order to be followed in Westminster Hall, in giving their verdict on the several Charges; and it was agreed that, on each of the two first Articles, a single verdict would suffice; but that distinct questions should be put on the six allegations contained in the sixth Article, relating to presents, and seven distinct questions should be put on the fourth Article, relating to contracts.*

Adjournment to Westminster Hall.

On the 23rd of April, after a discussion on the form of putting the several questions, the House of Lords was adjourned into Westminster Hall.

Proclamation having been made in the usual way, Mr. Hastings and his bail were called into court. Mr. Hastings having knelt, and been directed to rise, was ordered to withdraw.

Votes on the verdict.

The Lord Chancellor then rose, and said, "Your Lordships, having fully heard and considered of the evidence and arguments in this case, have agreed upon several questions, which are severally to be stated to your Lordships in the usual manner."

The Peers who had been created or had succeeded to their titles since the commencement of the trial, as well as others, from motives of their own, abstained from voting

* The proceedings in the House of Lords, of this session, on the subject of the impeachment, are not recorded in the "Parliamentary History." They are reported in a volume intitled "Debates of the House of Lords on the Evidence delivered on the Trial of Warren Hastings, Esquire; Proceedings of the East India Company, in consequence of his Acquittal; and Testimonials of the British and Native Inhabitants of India, relative to his Character and Conduct whilst he was Governor General of Fort William, in Bengal." 4to. 1797. Debrett. It was compiled and distributed under Mr. Hastings' directions, and at his expense, but not published. The contents, however, are given, almost *verbatim*, in the "History of the Trial;" Part viii. See Mill's "History of India;" ed. Wilson; Vol. v., p. 273, *note*.

on the verdict, and stood unrobed about the throne, as spectators of the solemnity. To those who had taken their seats, in their robes, the Lord Chancellor addressed the first questions—"Is Warren Hastings, Esq., guilty or not guilty of high crimes and misdemeanours, charged by the Commons in the first Article of Charge?" Then, putting the question to each, in order, beginning with the junior Peer, he said, "George, Lord Douglas, Earl of Morton in Scotland, how says your Lordship? Is Warren Hastings, Esq., guilty or not guilty of the said charge?" 1795. Votes on the verdict.

Whereupon, Lord Douglas stood up, uncovered, and, laying his right hand on his breast, pronounced—"Not guilty, upon my honour."

"James, Lord Fife, how says your Lordship?" "Not guilty, upon my honour."

In the same form the question was put to the other Peers in robes, and their verdicts given, in the following order:—Lord Sommers, "Not guilty;" Lord Rawdon, Earl of Moira in Ireland, "Not guilty;" Lord Walsingham, "Not guilty;" Lord Thurlow, "Not guilty;" Lord Hawke, "Not guilty;" Lord Boston, "Not guilty;" Lord Sandys, "Not guilty;" Lord Middleton, "Not guilty;" Dr. Horsley, Bishop of Rochester, "Not guilty;" Dr. Warren, Bishop of Bangor, "Not guilty;" Viscount Sidney, "Not guilty;" Earl of Carnarvon, "Guilty;" Earl of Dorchester, "Not guilty;" Earl of Beverley, "Not guilty;" Earl of Radnor, "Guilty;" Earl Fitzwilliam, "Guilty;" Earl of Warwick, "Not guilty;" Earl of Coventry, "Not guilty;" Earl of Suffolk, "Guilty;" Marquess Townshend, "Not Guilty;" Duke of Bridgewater, "Not Guilty;" Duke of Leeds, "Not guilty;" Duke of Norfolk, "Guilty;" Earl of Mansfield, "Not guilty;" Dr. Markham, Archbishop of York, "Not guilty." The Lord Chancellor, Lord Loughborough, pronounced his own verdict of "Guilty."

1795. Upon the remaining fifteen questions, the Peers voted in the following manner:—

Votes on the verdict.

2d Question: the second Article of the Charge:—"Guilty," 6. "Not guilty," 23.

3d Question: the sixth Article: Charge of taking presents in the years 1772, 1773 and 1774:—"Not guilty," 26.

4th Question: the same Article: Charge of taking a present from Sadanund, the Buxey of the Raja Cheyt Sing:—"Guilty," 4. "Not guilty," 23.

5th Question: the same Article: Charge of taking a present from Kelleram and Cullian Sing:—"Guilty," 3. "Not guilty," 23.

6th Question: the same Article: Charge of taking a present from Nundulol:—"Guilty," 3. "Not guilty," 23.

7th Question: the same Article: Charge of taking a present from the Nawab Wazir of Oude:—"Guilty," 3. "Not guilty," 23.

8th Question: the same Article: Charge of taking a present from Raja Nobkissin:—"Guilty," 5. "Not Guilty," 20.

9th Question: the fourth Article: Charge of granting a contract for provision of opium to Stephen Sullivan, Esq., upon extravagant terms:—"Guilty," 5. "Not Guilty," 19.

10th Question: the same Article: Charge of engaging the Company in a smuggling adventure to China:—"Not guilty," 25.

11th Question: the same Article: Charge of granting a contract for bullocks to Charles Croftes, Esq., corruptly:—"Guilty," 3. "Not guilty," 23.

12th Question: the same Article: Charge of granting the provision of bullocks by the mode of agency:—"Guilty," 3. "Not guilty," 23.

13th Question: the same Article: Charge relating to the allowances granted to Sir Eyre Coote:—"Guilty," 4. "Not guilty," 22.

14th Question: the same Article: Charge relating to the appointment of James Peter Auriol, Esq., to be agent for the purchase of supplies for the Madras Presidency:—"Guilty, 4." "Not guilty," 22. 1795. Votes on the verdict.

15th Question: the same Article: Charge relating to the appointment of John Belli, Esq., to be agent for the supply of provisions for Fort William:—"Guilty," 3. "Not guilty," 23.

16th Question: the residue of the impeachment:—"Guilty," 2. "Not guilty," 25.

The names of the Peers who gave the votes of guilty were as follow:— Names of Peers voting guilty.

Lord Loughborough, Lord Chancellor, voted "Guilty" on all the questions, except the 3d, the 10th and the 16th.

The Earl of Carnarvon, "Guilty" on all the questions, except the 3d and the 10th.

The Earl of Radnor, "Guilty" on the 1st, 2d, 8th, 9th, 13th and 14th, questions.

Earl Fitzwilliam, "Guilty" on all the questions, except the 3d and 10th.

The Earl of Suffolk, "Guilty" on the 1st, 2d and 4th, questions.

The Earl of Mansfield, "Guilty" on the 8th question.

The Lord Chancellor then addressed the Court in these words:—"I am to inform your Lordships that a majority of your Lordships have, upon each of the questions, found Warren Hastings not guilty. I have, therefore, in consequence of your Lordships' directions, only now to declare Warren Hastings, Esq., is acquitted of the Articles of the impeachment exhibited against him, and all the things contained therein." Acquittal of Mr. Hastings.

Mr. Hastings was then brought to the bar, where he knelt, but was bidden to rise. The Lord Chancellor immediately addressed him as follows:—"Warren Hastings, Esq., I am to acquaint you that you are acquitted of the Articles

1795. of impeachment exhibited against you by the House of Commons, and of all things contained therein; and you are discharged, paying your fees."*

Acquittal of Mr. Hastings.

* It is impossible to record this termination of the trial without referring to the effect of the verdict on the principle mover of the impeachment. The result had been long foreseen. As early as the beginning of the year 1789, Fox had declared his opinion of the hopelessness of obtaining a conviction. But the ardour of Burke suffered no abatement, and the sincerity of his own belief in the truth of the charges probably made him incredulous of eventual failure. He was deeply mortified by the verdict. He resented the obstructions he considered to have been placed in his way in pressing the evidence of the Charges in Westminster Hall; and after the struggle was over, and the acquittal declared, he turned his thoughts to the means of appealing to future ages against the equity of the judgment. With this view, he nursed the project of composing a complete history of the proceedings. But, again, he was doomed to disappointment. A species of torpor succeeded to the great excitement his public life had sustained in him, and he soon became conscious that he had no longer the strength requisite for this last effort in the cause he had so much at heart. Still he clung to his design, which, if he was unable to realise it by his own exertions, he trusted to engage the assistance of others to accomplish for him. He pressed this task, with the utmost solicitude, on Dr. French Lawrence, the most intimate and trusted of his friends, and who had acted as one of the two assisting Counsel for the Managers during the trial. The following extract from a letter he addressed to him, not many months before his death, exhibits the intensity of his wish to secure the fulfilment of his design: —

"As it is possible that my stay on this side of the grave may be yet shorter than I compute it, let me now beg you to call to your recollection the solemn charge and trust I gave you, on my departure from the public stage. I fancy I must make you the sole operator, in a work in which, even if I were enabled to undertake it, you must have been ever the assistance on which alone I could rely. Let not this cruel, daring, unexampled, act of public corruption, guilt and meanness, go down to posterity, perhaps as careless as the present race, without its due animadversion, which will be best found in its own acts and monuments. Let my endeavours to save the nation from that shame and guilt be my monument; the only one I will ever have. Let everything I have done, said or written, be forgotten, but this. I have struggled with the great and the little on this point, during the greater part of my active life; and I wish, after death, to have my defiance [recorded] of the judgments of those who consider the dominion of the glorious empire given by an incomprehensible dispensation of the Divine Providence into our hands as nothing more than an opportunity of gratifying, for the lowest of their purposes, the lowest of their passions—and that for such poor rewards, and, for the most part, indirect and silly bribes, as indicate even more the folly than the corruption of these infamous and contemptible wretches.

"I blame myself exceedingly for not having employed the last year in this work, and beg forgiveness of God for such a neglect. I had strength enough for it, if I had not wasted some of it in compromising grief with drowsiness

The Lords immediately adjourned to their chamber of Parliament. 1795.

Smallness of number of Peers voting on the verdict.

It will have been observed that only twenty-six Peers voted on the verdict. The reason was twofold: First, because only a small proportion of the whole House had attended the proceedings. The historian of the trial states that "the greatest number of Lords that sat at any time on this trial was one hundred and sixty-eight; but this number only assembled on Mr. Burke's opening speech, Mr. Sheridan's summary of the Begums, or on some extraordinary occasion. In general, the Court consisted of from thirty to fifty Lords." Secondly, in addition to the indifference of many of the Peers to the proceedings, it is stated, by the same authority, that no fewer than ninety-three changes had taken place in the members of the House of Lords since the opening of the trial; viz., forty-nine successions by descent in place of Peers deceased, and forty-four new creations, new Bishops, and new Scotch Peers. The effect of time was similarly shown in respect to the Managers. Nine of the twenty originally appointed had been replaced.*

Changes in the Peerage during the trial.

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and forgetfulness, and employing some of the moments in which I have been roused to mental exertion in feeble endeavours to rescue this dull and thoughtless people from the punishments which their neglect and stupidity will bring upon them, for their systematic iniquity and oppression. But you are made to continue all that is good of me, and to augment it with the various resources of a mind fertile in virtues, and cultivated with every sort of talent and of knowledge. Above all, make out the cruelty of this pretended acquittal, but in reality this barbarous and inhuman condemnation of whole tribes and nations, and of all the classes they contain. If ever Europe recovers its civilization that work will be useful. Remember! Remember! Remember!" "Dated the 20th of July, 1796. "Correspondence with Dr. Lawrence," 8vo., 1827, p. 53.

* The most noteworthy of the absences from the verdict, and the most to be regretted, was that of Earl Stanhope. From the commencement of the proceedings till the end of May 1794 he had never failed in his attendance, nor suffered himself to be absent for an hour. He had taken notes of the evidence, and had always shown candour and impartiality in dealing with the

1795.

Cost of the proceedings on the side of the prosecution.

Some curiosity may be felt to learn at what cost to the public purse proceedings of such solemnity and on so grand a scale were carried through. We are able to meet the inquiry by an epitome of the account of the solicitors to the Managers, audited on the 12th of January, 1814, and now reposited among the Exchequer Records. The total charge of Mr. Troward, the solicitor to the Managers, was 61,695*l.*, of which amount a sum of 16,996*l.* was disallowed by the examiners appointed by the Lords of the Treasury to investigate the account, leaving a balance of 44,698*l.*; to which was added a further sum of 1,858*l.*, as interest on the balance, which had remained due on the first settlement of the account, on the 25th of May, 1795, up to the date of the audit.*

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difficult questions frequently arising during the course of the trial. But, in consequence of the suspension of the Habeas Corpus Act, the Bill for which passed at the period above mentioned, he declined further attendance, on the ground that the Courts of Justice had lost their dignity.

* The following is extracted from the abstract of the Account presented to the Treasury by the Commissioners for Auditing Public Accounts:—

"An abstract of the Account, duly attested, of Richard Troward, Esquire, of monies received and disbursed for carrying on the Impeachment of Warren Hastings, Esquire, before the House of Lords, pursuant to orders of the Commons House of Parliament, between the 1st March, 1787, and 23d April, 1795; which said Account having been examined and audited by us, Commissioners for Auditing the Public Accounts, and a statement thereof approved by warrant of the Lords Commissioners of His Majesty's Treasury, dated the 12th day of January, 1814, was declared before the Lords Commissioners of the Treasury, the 4th day of February, 1814.

"The Accountant is allowed the following sums:—

	£	s.	d.
"*Attendances.*—Charges for his attendance at consultations with the Managers, for his attendances at the House of Lords, and on other occasions, from March, 1787, to 28th August, 1794. In all, for attendances, (whereof is surcharged 2,027*l.* 12*s.* 6*d.*) - -	5,988	7	8
"*Fees to Counsel and their Clerks.*—Charges for fees to Counsel and their Clerks who were employed during the trial of Warren Hastings, Esquire, from March 1787, to 28th August, 1794. In all, for fees to Counsel and their Clerks (whereof is surcharged 6*l.* 5*s.*) -	10,585	0	2

If the costs on the side of the Prosecution, the principal conductors of which gave their services gratuitously, were so

1795. Mr. Hastings' costs.

	£	s.	d.
" *Fees at the Exchequer and Treasury.*—Charged for fees paid on monies received by the Accountant at the Exchequer, between March, 1787, and 28th August, 1794. In all, for fees at the Exchequer and Treasury (whereof is surcharged 722*l.* 4*s.* 3*d.*) - -	2,817	15	9
" *Other Payments.*—Paid to Mr. Gurney, the short-hand writer, for taking minutes of the evidence at the trial, &c.; paid to printers and bookbinders for work done; paid expenses for removing records and other papers from the East India House; paid to the Officers of the House of Lords, the House of Commons, and the East India House, for divers expenses incurred by them, and for gratuities to the same for their trouble, and for serving orders on witnesses, and for the attendance of witnesses at the House of Lords, porterage, and other incidental expenses, amounting, between March, 1787, and 28th August, 1794, in all, for other payments (whereof is surcharged 582*l.* 15*s.*)	9,460	16	2
" *Drawing Briefs.*—Charges for drawing briefs in the several matters proceeded on in the trial, between March, 1787, and 28th August, 1794. In all, for drawing briefs (whereof is surcharged 3,826*l.* 0*s.* 12*d.*) -	6,765	17	2
" *Copies of Briefs.*—Charges for making copies of briefs, between March, 1787, and 28th August, 1794. In all, for making copies of briefs (whereof is surcharged 4,411*l.* 15*s.* 8*d.*) - - - - -	11,985	4	8
" *Drawing other Papers.*—Charges for drawing other papers, between March, 1787, and 28th August, 1794. In all, for drawing other papers (whereof is surcharged 41*l.* 16*s.* 4*d.*) - - - -	1,192	6	8
" *Copies of other Papers.*—Charges for making copies, between March, 1787, and 28th August, 1790. In all, for making copies of the last-mentioned papers, (whereof is surcharged 3,706*l.* 7*s.* 7*d.*) - -	5,443	16	2
" *Contingencies.*—Money claimed for examining, revising and correcting, the Accountant's own work; for examining short-hand writer's minutes of evidence; for perusing and examining minutes of the sessions; perusing and examining Parliamentary records, and making extracts thereof; perusing Reports of the Committee of the House of Commons, and herein surcharged, amounting, between March, 1787, and and 21st August, 1794, in all, for contingencies (whereof is surcharged 1,239*l.* 7*s.*) - - -	1,562	17	8

1795. heavy, it may be easily inferred that those on the part of the Defendant were not trifling. And if they had fallen on Mr. Hastings' unaided resources, the object of his prosecutors would have been gained, in so far as his ruin would have been effected. But the East India Company, who

				£	s.	d.
" In all, the sums charged by this Accountant, the sum of (including 16,242*l.* 0*s.* 1*d.* surcharged) - -				55,802	2	1
" The Accountant is allowed the following sums, viz :—						
" For compensation for articles undercharged, and in lieu of a sum of 75*l. per annum*, charged for coach hire and incidental expenses, the sum of - - -				327	2	0
" Deducted by mistake - - - - -				52	10	0
" For his attendances; for fees paid; for sundry payments; for drawing briefs; also for his extraordinary trouble in drawing the briefs in the Benares Charge, the Charge for Presents and the Charge for Contracts, over and above the usual trouble required in drawing briefs, 350*l.*; also for copies of the briefs; for drawing other papers; for making copies of the same; in examining and correcting the chronological list of documents (including 32*l.* 11*s.* surcharged) - -				2,585	4	5
" For fees paid by the Accountant on the sum of 1,824*l.* 11*s.* 6*d.*, impressed to him from His Majesty's Exchequer, between Michaelmas, 1787, and Michaelmas, 1788, but for which he has not taken credit in his account current - - - - -				99	7	6
" Allowance, at the rate of 362*l.* a year, for rent of house and furniture, and wages for servants, for 6 years and 257 days, provided for the use of the Managers of the Impeachment -	2,426	17	9			
" An allowance for coals, at the rate of 12 chaldrons a year, at 2*l.* 10*s.* per chaldron, for the same period -	201	2	5½			
" An allowance for incidental expenses, viz., candles and other small articles, during the same period, at 30*l. per annum* - - - -	201	2	5½			
" In all, for the above allowances of house rent, wages of servants, coals, and incidental expenses, appears the sum of - - - -				2,829	2	8
" Total discharge (including surcharges) -				£61,695	8	8"

could not be insensible at least to the promotion of their material prosperity, effected by Mr. Hastings in his long and arduous labours in their service as Governor General of India, showed no backwardness to relieve him from the effects produced by the struggle he had passed through on the fortune he had secured for himself during his tenure of office. Immediately on the close of the trial, a general court of the proprietors was assembled, to take into consideration his services, and to award him suitable recompence. It was resolved that he should be indemnified for the legal expenses incurred by him in his defence, estimated at 71,080*l.*, and that an annuity of 5,000*l.* should be granted to him. The first part of the resolution was referred to the decision of a ballot, on the 2d of June, 1795, and was affirmed by 554 votes against 254; and the latter, on the following day, by 508 votes against 220. Objections raised by the Board of Control as to the legality of these grants occasioned a slight modification of them, as well as a delay of some months in carrying them into execution: but on the 2d of March, 1796, the Chairman announced to the general court that a resolution of the court of Directors granting to Mr. Hastings an annuity of 4,000*l.* for the period of twenty-eight years and a half, to commence from

1795.

the East India Company.

Grant of annuity to him.

	£	s.	d.
"The Accountant is allowed the following sum in consideration of the long period the Account has been depending, and that there was a balance due to the Accountant, on the 20th May, 1795, of the sum of 3,265*l.* 12*s.* 2*d.*, and that no issue was made to him in reduction of this balance till the 3d June, 1812, and that no allowance for interest thereon has been made to the Accountant, pursuant to Warrant of Declaration of the Lords Commissioners of His Majesty's Treasury, bearing date the 12th January, 1814 - - - -	1,858	3	9¾

"Public Record Office,
"Exchequer, No. 273, General Accounts.
"Pipe Office, Miscellanea."

1795. June 24th, 1785, and payable for that period to his heirs and executors, had been confirmed by the Board of Control. The liquidation of the debt incurred by the costs of his defence was effected by a loan from the Company, free of interest, of fifty thousand pounds, assisted by the first payment of forty-two thousand pounds, on account of his pension.*

The speeches contained in the present volume have been printed from Gurney's reports, in their unrevised form. Mr. Burke's general reply has had the additional advantage of collation with the revised edition of it, printed with his collected works. The differences between the two texts are considerable, though not so numerous or important as in the case of his first speech, in opening the prosecution.

* A few words respecting Mr. Hastings' history, subsequent to his trial, will not, I trust, be considered out of place. Though never called from his retirement at Daylesford, to fill any public office, he may be said to have outlived the odium which the censure of the Commons by a vote of impeachment had brought upon him. He records, in his diary, the failure of an attempt to obtain the honour of the Peerage, which he had solicited from the Prince Regent, in a personal interview, on the 14th of March 1806. In the year 1813, on occasion of discussions in Parliament on the renewal of the East India Company's charter, Mr. Hastings was summoned to give information to either House on Indian affairs. Thus, at the age of eighty-one, he again appeared in the presence of those assemblies before which he had once knelt in the character of a prisoner accused of crimes against the State. But he was now received with unusual marks of respect. He was listened to with marked attention; and the Members of the House of Commons rose spontaneously and stood uncovered and in silence while he retired from their chamber. Shortly after this event, the honorary degree of Doctor of Laws was conferred on him by the University of Oxford. On the 5th of May, in the following year, he was appointed a Privy Councillor. When the Allied Sovereigns were in England, Mr. Hastings was specially invited to meet them at Oxford, and was subsequently presented to the Emperor of Russia and the the King of Prussia by the Prince Regent, at the public banquet in Guildhall. He died on the 22d of August 1818, in the eighty-ninth year of his age.

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