

**THE PARLIAMENTARY
REMEMBRANCER, VOL. II,
SESSIONS I. AND II., 1859**

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The Parliamentary Remembrancer, Vol. II, Sessions I. and II., 1859 by Toulmin Smith

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TOULMIN SMITH

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Parliamentary Remembrancer.

VOLUME II.

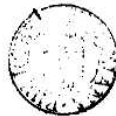
SESSIONS I. AND II., 1859.

(INCLUDING A DIGEST OF THE PARLIAMENTARY PAPERS ISSUED DURING BOTH SESSIONS.)

CONDUCTED BY

TOULMIN SMITH,

OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.



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1859.

N. 2288

THE PARLIAMENTARY REMEMBRANCER.

WHILE the plan of the first Volume has been carried out in the present, two additions have been made. One of these is, the giving special Historical Notices upon topics of the most prominent and permanent importance;—such as those connected with Parliamentary Representation (pp. 2-6; 56-59; etc.); the functions of Parliament in regard to Foreign Affairs (pp. 95-101; etc.); National Defence (pp. 108-113; etc.); Marriage and Divorce (pp. 115, 116); Weights and Measures (pp. 79-81), etc., etc. The other is, the statement, each week, of the Papers laid before, or printed by order of, the House of Commons during the week; and the making these Papers practically available, by a Digest of the whole of them, at the close of Parliament, in a systematic method (pp. 167-186):—the latter of which is a task so difficult and laborious that, though every one has long felt the want of its fulfilment, it has never before been attempted.

These additions obviously help to complete those means of a sure and clear-sighted understanding of what is done and attempted by Parliament,—and of what is left undone and unattempted there,—which it is the object of the *Parliamentary Remembrancer*, without any reference to Party purposes or manoeuvres, to furnish in a concise but thorough and authentic form.

These additions to the original plan of the Work, will also be carried out through future Volumes.

The Session of 1860 will begin on the 24th January. The *third* Volume of the *Parliamentary Remembrancer* will, accordingly, begin with the Number (53) which will be issued on 28th January, 1860.

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December, 1859.

一、点：点，即一个具体的位置或对象。

二、线：线，即由无数个点组成的连续轨迹。

三、面：面，即由无数条线组成的二维空间。

四、体：体，即由无数面组成的三维空间。

五、空间：空间，即由无数体组成的四维及以上空间。

六、时间：时间，即事件发生的先后顺序。

七、物质：物质，即具有质量和体积的物体。

八、能量：能量，即做功的能力。

九、信息：信息，即用于沟通、传递的数据。

十、意识：意识，即对客观世界的反映。

十一、思维：思维，即对客观事物的抽象和概括。

十二、情感：情感，即对客观事物的态度和评价。

十三、意志：意志，即对客观事物的控制和支配。

十四、行为：行为，即对客观事物的实际行动。

十五、社会：社会，即由许多人组成的共同体。

十六、文化：文化，即人类创造的物质和精神财富。

十七、科学：科学，即对自然界的规律进行探索的体系。

十八、艺术：艺术，即对客观世界进行审美创造的活动。

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The Parliamentary Remembrancer.

CONDUCTED BY TOULMIN SMITH, ESQ., BARRISTER-AT-LAW.

No. 27. [Issued every Saturday during the Session.]

SATURDAY, FEBRUARY 5, 1859.

[Supplied to Subscribers only (post-free).
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Thursday: 3rd February.

HOUSE OF LORDS.

The QUEEN, in person, delivered the SPEECH OF THE CROWN, from the Throne.

Law of Property and Trustees' Relief Amendment Bill,—"to further amend the Law of Property, and to relieve Trustees." Brought in by Lord ST. LEONARDS. Read *first time*.

Select Vestries Bill—Read *first time* [*pro forma*].

This Bill is thus brought in, *pro forma*, to maintain the right and duty of the House to consider, in the first place, what they themselves deem that the Public Interests demand, before taking any message from the Crown into consideration. It is a Standing Order of the House, "That, at the beginning of the Session, after prayers said, some Bill, *pro forma*, is to be read; then His Majesty's speech is to be reported; etc." (See below, on the "Outlawries Bill," COMMONS.) In the present case, this mere *pro forma* Bill was unnecessary, as Lord St. Leonards' Bill had already been read.

An ADDRESS to the CROWN, in acknowledgment of the Speech from the Throne, was, after debate, but without opposition, *agreed to*.

Bankruptcy and Insolvency—A Bill for assimilating and amending the Laws relating hereto, was announced in the Speech from the Throne.

Crimes and Offences—The consolidation of the Laws relating hereto, was announced in like manner. This was promised in the Session before the last, and also in the last Session; but these promises came to nothing. See *Parl. Rem.* Vol. I. pp. 3, 14, 26, 35.

Landed Estates—A Bill for enabling the owners of land in England to obtain for themselves an indefeasible title to their estates and interests, and for registering such titles with simplicity and security, was announced in like manner.

Reform of Parliament—It was, in like manner, announced that attention would be called to the State of the Laws regulating the Representation of the People in Parliament.

See hereon, the Note, p. 2, on "Reform of Parliament."

HOUSE OF COMMONS.

THE HOUSE attended the QUEEN, to hear the SPEECH FROM THE THRONE.

Operations in India—Mr. SPEAKER laid before the House Letters from the Governor-General and others in India, acknowledging the Thanks of this House of 8th February and 25th March, 1858.

Public Income and Expenditure for the year ended 30th September, 1858; together with the balance in the Exchequer at the commencement and at the termination of the year, and the amount of funded or unfunded debt created or redeemed in the said year:—The like for the year ended 31st December, 1858. Accounts *ordered*, and *presented*.

Outlawries Bill—"For the more effectual preventing Clandestine Outlawries." Read *first time* [*pro forma*].

The reading a Bill, before taking the speech of the Crown into consideration, is as much a matter of right and duty in the House of Commons as in the House of Lords (see above, "Select Vestries Bill," LORDS). At the present moment, the coincidence is worth remarking, of the title of the Bill which happened, nearly two hundred years ago, to be thus read, on the occasion when the point as to thus reading a Bill in the first place was, perhaps, more fully considered than ever else.

The opening of the Session on the 15th February, 1676, was stormy in both Houses. It was strongly maintained that Parliament had become dissolved, by the act and operation of the Law itself, inasmuch as fifteen months had passed since their last meeting, while the Law of England required that a Parliament shall be held "every year once, and oftener if need be" (see after, p. 2, "Reform of Parliament"). The Duke of Buckingham, the Earls of Shaftesbury and Salisbury, and the Lord Wharton, made themselves very obnoxious to the Crown by the strength with which they maintained this ground in the House of Lords. In the House of Commons the same point was touched on; but, as the House was actually assembled, the question turned, in the end, upon whether the King's speech should be considered before a Bill had been read. The *Speaker* laid it clearly down that:—"The Session is not begun till a Bill be read. It is the ancient Order; and, if so, your question is, Whether you will break that Order or not." Sir Thomas Meres well remarked that "Though forms seem but little things, yet they are of great consequence." After long debate, a Bill was read; after which, the King's speech was read and considered. The title of the Bill thus read, on this memorable occasion, was "for regulating Elections of Members of Parliament."

Queen's Speech—Reported by Mr. SPEAKER and read to the House.

An Address to the CROWN, in acknowledgment of the Speech from the Throne, *resolved on*, after debate, without opposition. Committee named, to draw it up.

Friday: 4th February.

HOUSE OF LORDS.

Vexatious Indictments Bill—"to prevent vexatious Indictments for certain Misdemeanors." Brought in by Lord CAMPBELL. Read *first time*. *Second reading* on Friday next.

This appears to be one of the two Bills of which Lord Campbell gave notice at the close of the last Session (see *Parl. Rem.* Vol. I. p. 149).

Juries in Civil Causes Bill.—"to amend the Law concerning Jury Trial in Civil Causes." Brought in by Lord CAMPBELL. Read *first* time. *Second* reading on Friday next.

This is a new shape given to the other of the two Bills of which Lord Campbell gave notice at the close of last Session, and to which particular attention was called in the Notes to *Parl. Rem.* Vol. I. p. 149. Attention is again called to the remarks and quotations there made. The truth and force of these is acknowledged by Lord Campbell himself; for he has so far altered the intention then announced, as to confine this Bill to *Civil* causes. The distinction cannot, however, be either soundly or safely made; and it is thoroughly certain that, if the inroad thus sought to be made,—in order (as is admitted) to give to the Judges greater authority and power over the independence of Jurymen,—be once allowed, criminal causes will soon follow. When the Bill is printed, the points arising out of it, and illustrating it, will be fully treated of.

Queen's Speech.—An *Answer* to the *Address* was brought up. *Address* and *Answer* ordered to be printed and published.

Private Bills.—Two technical Orders, as to Certificates of Examiners, and Deposit of Bills, were agreed to.

These arise out of the alterations made in the Standing Orders of the House of Commons in the last Session (see *Parl. Rem.* Vol. I. p. 145, 150). It is a matter that much concerns all who are engaged in the conduct of Private Bills, as many can now be begun in the House of Lords that could not be so begun before.

HOUSE OF COMMONS.

Private Bills.—A large number of Private Bills were, on *Petition* from those concerned, ordered to be brought in.

The distinction between *Private* Bills and *Public* Bills is shown in *Parl. Rem.* Vol. I. p. 14. See, further, as to Private Bills, *ib.* p. 145.

As no Private Bill can be deemed fairly before the House until it has been read a second time, it is needless to give the names of each at the stage of *Petition* and *Order* thereon.

Queen's Speech.—*Address* in acknowledgment, agreed to.

Occasional Forms of Prayer.—Acts Read. *Committee. Resolved*, That the Chairman be directed to move the House, That Leave be given to bring in a Bill "to repeal certain Acts and parts of Acts which relate to the observance of the 30th of January and other days." *Resolution reported. Bill ordered* accordingly. Whereupon,—

Occasional Forms of Prayer Bill.—Brought in. Read *first* time. *Second* reading on Monday.

This is one of those Bills which implies a good deal more than meets the eye. In point of fact, the whole question of the Act of Uniformity is raised by it. It ought to be shown to the House, under what authority any Forms of Prayer can be commanded or annulled by an Order in Council. There are, moreover, some large questions, involving heavy expenses to Local Bodies, that arise out of the considerations which this Bill raises. Some of these will be touched on when the Bill is printed.

For the Standing Orders which require that this matter should begin in *Committee*, see *Parl. Rem.* Vol. I. p. 75, *Note*.

Highways.—Notice was given that a Bill would be brought in, on Monday next, for altering the Law as to the management of Highways.

A similar notice was given last year. See *Parl. Rem.* Vol. I. p. 2, and the *Note* thereto. There is every reason to believe that this is the same Bill as has, for some years, been lying in the pigeon-holes of the Home Office, seeking an opportunity when it might be quietly slipped through Parliament. Hitherto, the attempt has been stopped, through individual watchfulness. But the Bill ought to have general and marked attention called to it. The control over the taxation for and repair of the Highways, is the only part of Parish management that remains undrawn within the grasp of bureaucratic interference, which has, of late years, made such rapid strides in England. It is sought to destroy an exception which reminds Parishes of the rights and powers which the Common Law acknowledges to belong to them; and which, before the interference of modern legislation, they so actively and usefully exercised.

The subject will be more fully considered when the Bill is printed. In the meantime, reference may be made, on the general Principles involved, to the *Note* to *Parl. Rem.* Vol. I. p. 147.

REFORM OF PARLIAMENT.

It is not possible for an Englishman to deal with a matter needing graver thought than whatsoever touches the Institutions that embody the very being and action of the State. Whoever pretends to deal with such a subject, is bound to have thoroughly mastered the History of those Institutions. Formerly, no Englishman was deemed to have had the education befitting a gentleman, still less the education befitting a member of Parliament, who was not familiar with the Institutions and Laws of his country. In our own day, however, this knowledge is unheeded. It is neither taught nor sought. The historical method of inquiry is even treated commonly with disdain; and it is often made a sort of boast that "The Constitution" is not seen, and cannot be handled.

There is not, however, a more real thing than "The Constitution" of England. And it happens that "The Constitution," as regards Parliament, has been, for ages, so clearly set forth, and has been so easy to see and to handle, that none but the wilfully blind can have helped finding it. Mischief and misrepresentation are only encouraged by the waste of theoretical arguments in such a case.

When it is proposed to make or alter Laws affecting this Constitution, it becomes necessary to give, however shortly, the outline of an Historical Review, which will show that Things, and not Forms and Words, or the mere breath of a momentary popular cry, are what are here concerned.

Parliament is often described as consisting of King, Lords, and Commons, as the three Estates of the Realm. This is, however, untrue. The King is the head of the State: but the three Estates of the Realm are, The Lords Spiritual, The Lords Temporal, and The Commons. (See Lord Coke's Fourth Institute, p. 1; Lord Chief Justice Hale on 'The Institution, etc., of Parliaments,' p. 2; the same on 'The Jurisdiction of the Lords,' p. 10; Rolls of Parliament, 17th May, 8 Ed. IV. A.D. 1468; etc., etc.)

In our own day, the Lords Spiritual are almost forgotten, their numbers having become so small as hardly to bend the scale either way. Before the Statute 31 Henry VIII. c. 13, however, the Lords Spiritual often outnumbered the Lords Temporal.

"The House of Commons" does not mean (as is often supposed) the House of the Common People. It means, the House of the *Communes* (Communitates); that is, the Representatives of the many Bodies of men who are associated together, with an identity of interests or habits among those of the same Body. The word Borough, indeed, itself means "Pledge"—mutual pledge—the association together of those who have common interests, and are bound together in mutual obligations. The old Seals of boroughs bear the words "*Sigillum commune* [or *communitatis*] de, etc.;" and the Rolls of Parliament use the same words. The same is the case with regard to Shires. Each is a "*Communitas*." Without a clear understanding of the meaning and force of what is thus expressed, the subject of the Constitution of Parliament cannot be understood; and therefore no "Reform" of it, which time may have made necessary, can be rightly dealt with.

Representation can never consist, in a free country, of a mere tale of numbers. True Representation consists in the assemblage of those who are chosen by as many as possible of the different Bodies [communitates] in the Empire that have, each of them, their own separate interests, or habits, or associations,—those shades of difference which lead to different ways of looking at things and modes of choice. The very end of a Representative Assembly is, to ensure that as many different points of view shall be taken as possible, in the discussion of every question. The only possible aim of Representation is, to ensure thorough Discussion, instead of Government being carried on at the caprice of one or of a clique. The more extended the interests represented—the wider the basis of Representation, the more real will be the discussion. It is a logical necessity, that whatever lessens the number of different interests that are represented, lessens the reality of the discussion; and thus the very essence of "Representation" is departed from, by any alteration which lessens the number of separate places that choose Representatives, or which gives Representatives to places that have no interests, habits, or associations in common,—that are not, in fact, "*Communitates*."

The "*Cinque-Ports*" were never the most populous towns in England. But, while our Institutions were historically regarded, the *Cinque-Ports* were always held in particular esteem, because they embodied, in fact, the Naval interests of England; and, while they were thus esteemed, her Naval supremacy was both understood and maintained. Manchester may have a larger mere population than Birmingham; but much of the population of Manchester is made up of vast numbers of workers in a comparatively few factories, while Birmingham is distinguished by its manufactures being carried on, chiefly, by an immense number of "small masters," each independent. A larger amount of sturdy self-reliance is thus certain to exist in Birmingham than in Manchester, though the mere population of the former may be greater. Again, the manufacture of broad-cloth may be one employing more actual capital and hands than that of cannons or rifles: but the maintenance of England's position among nations, and even her freedom, may be largely dependent on her skill in the manufacture of cannons and rifles; and thus it will plainly be for the advantage of the whole nation that the interests of the place or places where cannons and rifles are made, shall be as fully represented in Parliament as those of any other place.

These illustrations might be indefinitely extended. It is enough, here, thus shortly to show that mere numbers never can be the ground of real "Representation." The English Parliament has always rested on closer realities. Whether 500 or 5000 choose Representatives, can make no difference in the Principle. What have to be alone regarded are, actual independence of choice, and freedom in its exercise.

In the "*Memorial*" addressed to the Prince of Orange (A.D. 1688), inviting him to come to England, and stating the grievances complained of by the People of England, and the rights asserted—and on the statements contained in which, therefore, the Revolution of 1688 rests—it is said:—"The truly noble monarchy was founded on equal freedom; and the civil government of England was always of right truly free, because no laws or authorities ever bound the persons and properties of the kingdom, save only those wherein the Kings and all the subjects freely agreed; every subject's free consent being deemed by our laws to be given personally, as by his deputies, to the enacting and repealing of every law." And the main grievance stated in this important document is, the "infinite endeavours and artifices openly used, to destroy the customs, privileges, charters, and governments of all the Cities and Boroughs, by whom four parts in five of the members of the Commons in Parliament are to be chosen, by the custom of England." It is demanded, in the same document, as the thing of foremost importance, "That the freedom of elections, which is the foundation of the Government, be duly vindicated."

This was no fresh view. "The Constitution," as regards Parliament, had, in all former ages, been well understood in England. The proof of this is unquestionable, and as instructive as it is unquestionable.

There is a very old Latin document, entitled, "*Modus tenendi Parliamentum*," of which manuscript copies still exist as old as the time of Richard II. A copy of this, with a few alterations to adapt it to Ireland, was attested, under the Great Seal, in the reign of Henry IV.; which is proof enough that it was acknowledged, more than four hundred and fifty years ago, by the highest powers in England, as the true statement of "The Constitution."

But while we have thus old MSS. of this document in the Latin, it is much more worth notice that copies of it, in English, have been put forth from very old times, and very often. The first volume of Lord Somers' Tracts contains two such English versions, though neither the learned original publisher of those Tracts, nor their later learned editor, knew what he was printing. The first of these (p. 7) is entitled:—"The manner of holding Parliaments in the Reign of Richard the Second. Copied from an Ancient Manuscript." The other, which professes to be copied from a printed tract of the time of Queen Elizabeth, published in 1572, is entitled:—"The olde and ancient order of keeping the Parlemt in England, etc.," and is ascribed to one John Vowell as its author,—neither the collector nor later editor of Somers' Tracts perceiving that these two are, in fact, the same document, with mere variations of language. Both are identical with the "*Modus tenendi Parliamentum*," which is itself certainly of not later date (probably much earlier) than A.D. 1327. It is not less worthy of remark, and it is a mere dealing of equal justice to say, that the last editor of the "*Modus tenendi Parliamentum*,"—which was published, at the expense of the Nation, by the Record Commission, in 1846,—is quite innocent of any knowledge of the two documents just referred to, though the edition of Somers' Tracts above cited was published in 1809. This is a fair sample of the depth of historical knowledge in our day in England.

The very old document thus referred to, treats of the whole Constitution and Business of Parliament; and no one is competent to speak on the "Reform" of Parliament who has not read and well considered it. It is not hidden lore. It is written in the plainest language, and is very short. Many English editions of it have been published, besides those put forth in Somers' Tracts. One or other of the editions,