THE

QUESTION CONSIDERED:

"HAS THE HOUSE OF COMMONS A RIGHT OF COMMITTAL TO PRISON?"

TOGETHER WITH

THE OUTLINES OF A PLAN

TO RESTORE HARMONY BETWEEN

That Illustrious Assembly

AND EVERY

TRUE PATRIOT.

By E. A. BURNABY, Esq.

AUDI ALTERAM PARTEM.

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To the Reader.

THE Author is well aware of the many imperfections, in point of style, in the following little Tract; and that much more might have been brought forward, to prove his hypothesis: but the short period of time he could devote to the consideration of the subject, so as to have it ready, in any reasonable time, for the press, precluded a more perfect correction. He believes, however, he can safely say, that he is not inaccurate. Intentionally so, he certainly is not. He has blindly followed none of those authors who have written systematically: he has considered them with great attention, and has compared them with the originals, as far as a very limited, but select, library, and a residence in the country, where access to many documents is impossible, would allow; and has rejected or adopted no opinion, except for reasons which have appeared to him well founded. Hence, on a reference to the authorities quoted,

in some instances it will be found that he has adduced facts in support of his ideas, which they have stated generally for contrary deductions. But wherever this has been done, the reasons have either been given, or they are so conclusive, from the facts themselves, as to require none. On the whole, he trusts it will not be found an uninteresting Treatise; and that however much it may be beneath the notice of the truly learned, it may be useful to many whose occupations have prevented them from acquiring a general knowledge of ancient times and customs; without which, it is scarcely possible accurately to form constitutional ideas.

May 1*st*, 1810.

THE

QUESTION CONSIDERED,

&c. &c. &c.

I CONSIDER the question---"Has the House "of Commons a right of committal to prison," one of the most important discussions which has taken place for many years, and great care should be taken to keep it perfectly distinct from the slightest reference to the propriety or impropriety of Sir Francis Burdett's conduct in other respects; for it would be very fatal to our liberties to allow any prejudice or indignation against him to have the least influence in the decision we may be induced to give on a subject of so much consequence to Englishmen. The question of the power of the Commons to commit, is by no means clear; and notwithstanding all that has been said in favour of it, I am far from being of opinion that such power

does, or ought to exist, except under restrictions. It is certainly contrary to the free spirit of our constitution, and is inconsistent with Magna Charta, because it might lay the seeds of an imprisonment to an almost despotic extent, without the authority of a verdict of our peers upon oath, which would thereby tend to render nugatory the Habeas Corpus Act. I hesitate, however, to allow the power of the House of Commons to commit, and for this reason--that it is neither founded on common or in statute law. The laws of England are divided into two parts --the Leges scriptæ and the Leges non scriptæ. The former are clear and defined, and cannot be mistaken; but the latter being originally merely oral, can alone be established by an invariable *immemorial usage*, the monuments and evidences of which are contained in records of courts of justice, books of reports, and legal treatises: but no lex non scripta can be good, which has not existed uninterruptedly ever since the first year of Richard I. The question respecting the antiquity of the House of Commons is involved in some difficulty; but I trust I shall be able to prove that it did not exist sufficiently early to justify the power of committal by common law; and I believe it has never yet been attempted to found that right on any positive statute. So that if such be the facts, I am

at a loss to discover what defence can be set up so much at present, respecting the antiquity, and consequent legality, of the custom. I shall now offer a few remarks on its reasonableness. The House of Commons has hitherto justly, and ever will, I hope, be considered as the great support of the people's rights; I would therefore wish to ask its members, whether they can deny that, was the Crown to exercise a similar power, that power would be opposed by themselves? To commit a person to prison for the length of time which the House asserts it has the authority to do, without giving him an opportunity to be brought to trial before his peers, is not consistent with my ideas of the principles of the British constitution, and savours too much of a recent decree of the French ruler, to be congenial to the feelings of Britons. With these preliminary remarks, I shall proceed to discuss the question temperately, and shall assert nothing, without noting my authority for doing so; by which means my readers will be best able, on reference, to form their own opinion how far I am borne out in my remarks; and as my object, in the arduous investigation which I have undertaken, is truth, and not the establishment of any favourite system, I shall boldly bring forward whatever militates against my hypothesis, as well as whatever may tend to establish it; leav-

ing it to my readers to draw their own conclusions. In furtherance of this plan, I shall devote a few pages to a very concise consideration of the legislative assemblies of the Anglo-Saxons, which were designated by the terms *Mycel-gemot* and *Wittena-gemot*. Some authors, among others, Blackstone, (vol. i. p. 148,) have considered these appellations to mean one and the same assembly; but Dr. Squire, in his Enquiry into the Foundation of the English Constitution, (p. 189,) considers them to have been distinct assemblies; and while he supposes the *former* to have consisted of *all the landed proprietors of the realm*, he assigns to the *latter*, for its constituent members, *the King's companions, or thanes, the governors of the several counties*, and (after the establishment of Christianity) *of the bishops and other dignified clergymen, with the King at their head.* The *functions* of these *two assemblies*, he also thinks, were *different*, and that no law *originated* in the *Mycel-gemot*, but was *drawn up* in the *Wittena-gemot*, (p. 193,) was signed by its members, and afterwards submitted to the approbation of the *Mycel-gemot*. "The Witan," says he, p. 194, "consulted and debated upon what was most "expedient for the public good, but it was the "voice of the community which confirmed and "ratified their councils. The former proposed,

"the latter commanded, what should be done." (See also St. Amand, p. 89, &c. on the Legislative Power of England.) To this opinion of Dr. Squire I am disposed partly to concede, because it is consistent with the polity of the ancient Germans, as related by Tacitus, who says, "*De minoribus rebus principes consultant;* "*de majoribus omnes; ita tamen, ut ea quoque,* "*quorum apud plebem arbitrium est, apud principes pertractentur.*" But I am persuaded that such continued not to be the system among any of the Saxon governments, beyond the union of the kingdoms; after which event, the *Wittena-gemot* is *alone* to be met with—and probably for this reason, that it had *then* become inconvenient, not to say impossible, for so large and dispersed a body as the landed proprietors were, to assemble together at one spot; and therefore, in the words of Lord Lyttleton, (Hist. Henry II. vol. iii. p. 217,) "this custom "had been disused, perhaps from the time that "the Saxon heptarchy was united into one "kingdom: nor do I find a single instance of "its being revived, till that extraordinary meeting, (at Runemeed,) in the reign of King "John."—I am, besides, the more induced to this opinion, because all the authorities which Lord Lyttleton has himself brought forward to support his favourite hypothesis, of the people's

influence in these legislative assemblies, relate *exclusively* to the proceedings when the kingdom was divided. Thus in his note, p. 443, to vol. ii. p. 233, Hist. Hen. II. there is a reference to one of Ina's laws, as translated by Wilkins--"*Ego Ina occiduorum Saxonum Rex, cum consilio et cum doctrinâ Cenredæ patris mei,* "&c.) et cum omnibus meis senatoribus, *et* senioribus sapientibus populi mei, *et* multa etiam societate ministrorum Dei," &c. Again, p. 444, Ethelwolph, King of the West-Saxons, gave to the church the tythe of his kingdom, "cum consilio episcoporum et principum, "*præsentibus et subscribentibus archiepiscopis et* "*episcopis Angliæ universis, nec-non et Beorredo* "*R. Merciæ, et Edmundo Estanglorum R. abbatum, et abbatissarum, ducum, comitum,* "*procerumque totius terræ,* aliorumque fidelium "infinita multitudine, qui omnes regium chirographum landaverunt, dignitates vero subscripserunt." So again, page 445, "*Sigebertus Rex,* (West-Saxons,) *in principio secundi anni regni sui, cum incorrigibilis superbiæ et nequitiæ esset, congregati sunt proceres et* populus *totius regni,* et provida deliberatione, et unanimi consensu omnium, expulsus est a regno." Now every one of these quotations relate either to what passed before the union of the heptarchy, or immediately after

it, and when it was, as it were, again dismembered; and no doubt they accurately prove, that up to that time the people had very great influence, and at least assented to all new laws, in some of the kingdoms of the heptarchy; for on a careful reference to the Saxon laws, I find, even in these kingdoms, so considerable a variation in the manner of enacting them, (as will in fact appear, from the laws just before quoted, some being enacted by the authority of the wise men only, (see Spelman on Parliament-Law, Alured, p. 61,) without the least reference to the people,) that I do not think it can accurately be laid down, that the people were by any means universally consulted in all the kingdoms. I am therefore inclined to conclude, that during the heptarchy, the people, by which is only meant the landed proprietors--for the burgesses and citizens (see Squire, p. 182, 267, &c. Spelman on Parliaments, p. 64) were in the scale of society merely on a level with the ceorls or churls--were frequently, at least in some of the kingdoms, called together, and consulted on affairs of consequence: but that after England became governed by one king, the case was materially altered; and these meetings were then discontinued as inconvenient, and gave way to what ought properly to be called the Wittena-gemot: for on a reference to the Saxon

laws, (see Spelman on Parliaments, and Dr. Wilkins's Latin translation of Anglo-Saxon Laws,) we shall find no mention of the people, but that Ethelstan made his laws "*ex prudenti "Ulfhelmæ archiepiscopi, aliorumque episcopo- "rum suorum consilio, nec non omnium optima- "tum et sapientum mandato suo congregato- "rum.*"---Edgar, "*In frequenti sapientum se- "natu.*"---Ethelred, "*In sapientum concilio.*" And Canute says, "*Sapientum adhibito consilio "per omnem Angliam observari præcipio;*" which was perhaps partly done because it was consistent with the original sentiments of the Germans, who, as before observed, consulted with the people only on very momentous occasions; for was any material alteration to be made in the fundamental laws of the kingdom, or in the succession to the crown, it is rendered highly probable that the landed proprietors must still have been consulted in a Mycel-gemot, from the celebrated answer of Harold, as cited in William of Malmsbury, to the Duke of Normandy's charge of his having broken his promise, which he had bound by an oath, to assist that prince in procuring the crown of England. The words are, "*De regno addebat præsumptu- "osum fuisse, quod absque generali senatus et "populi conventu et edicto alienam illi hæredita- "tem juraverit.*" These considerations, therefore, induce me to believe that the Mycel-gemot was not altogether annulled, but that it had been rather suffered to fall into disuse. I have observed that the terms Mycel-gemot and Wittena-gemot have been applied indiscriminately, by many authors, to the latter meeting. This is a consideration which ought never to be lost sight of, because no one circumstance has tended so much to create confusion and difficulty in comprehending the subject; nor have the distinct functions of these two meetings been sufficiently attended to. Those of the Mycel-gemot, when convened, being purely legislative; while those of the Wittena-gemot were legislative and judicial also. So extensive a power as that of making laws required a powerful protection; and therefore, as a safeguard to the Mycel-gemot, a law was enacted by Ethelbert, King of Kent, that *no man should be molested in his way to that assembly, or whilst he attended the business of the public; and that whoever broke the peace, at that time, by his unruly behaviour, should be severely punished with a heavier fine than ordinary.* The words in Dr. Wilkins's Translation of Saxon Laws are, (p. 2,) "*Si "Rex populum suum ad si vocaverit, et ipsis "quis ibi malefecerit, dupliciter compensetur, & "regi L solidi solvantur.*" Now this law is most important, and requires very pointed ob-

servation; because it is evident, from the law being made, that the Mycel-gemot did not consider itself authorised, or able, to punish offences against its members, without the authority of a positive law; for otherwise the law was useless and unnecessary. The very law being enacted, is proof sufficient of this hopothesis. Again, it is evident from this law, that *no other offences* were punishable than *those* denounced *in it*, which amount *only to offences against the peace*; and that it furnishes not the slightest reason to suppose, that to *discuss* the measures pursued in these meetings, or *peaceably* to *censure* the conduct of its *constituent members*, was illegal. It is also no less certain, that the punishments were not arbitary, but *clear* and *defined*; and that imprisonment, in the first instance at least, was not thought of. A *fixed fine* was imposed, which it was usual to levy on the goods and chattels of the offender. But supposing, merely for the sake of argument, for I can find no proof that the fact ever was so, that the punishment was to amount in its consequences to some individuals, from their inability to pay the fine, to perpetual imprisonment; or, as was sometimes the case among the Anglo-Saxons, to slavery; still, as these dreadful consequences resulted to the offender from a sentence pronounced agreeably to a *positive law*, and not to an *implied one*, he could

have no just cause of complaint. The distinction here made is evident; and however persons may condemn a law, yet they surely can never justly complain of those who carry such law into effect, provided they do not exceed their authority. The tyranny of a law is not in the agents, but in the law itself; and instead of censuring those who execute the law, the only sensible plan is to procure the repeal of it. Had the Anglo-Saxon assembly inflicted a fine without a *positive law*, or only by an *implied one*, it would have acted illegally; but so long as it only carried a positive law into effect, its conduct was highly constitutional.

It should however here be remarked, that this law was made for a distinct kingdom; but it was probably afterwards adopted by the same Anglo-Saxon legal authority which consolidated, as it were, into one mass, the scattered fragments of Saxon law; and, after the union of the kingdom, was extended to the Wittena-gemot. I consider this law of high importance, by analogy, to a fair consideration of the question which now agitates us; because it shews the sense which our Anglo-Saxon ancestors entertained of the *absolute necessity* for a *positive law*, before the assembly could be authorised to inflict punishment. Lest, however, it should be thought that this law, like many other of the

Anglo-Saxon laws, has become interwoven into our common law, and that it has thereby given a sanction to the power assumed by the House of Commons, which, by the bye, would merely sanction a fine for a breach of the peace, I shall here remind my readers, that *both* these Anglo-Saxon assemblies were distinct in their duties from our present parliaments; and that their members were different, they being not elective, but partly being appointed by the crown, though principally in their Mycel-gemots, before they fell into disuse, consisting of *all* the landholders of those different kingdoms where the assembly was known. But were there even a greater affinity between the assemblies of the Anglo-Saxons and our parliaments, it will be seen, presently, that this similarity would be of no effect; because, to establish a custom, there must be an uninterrupted continuance of it; whereas at the Conquest, a totally new system was introduced, which changed the tenure of property through the kingdom, and introduced a legislative body, as distinct from the Mycel-gemot and the Wittena-gemot as the present parliament of the empire is from every one that preceded it till the reign of Henry III. The result, then, of these remarks is, that however in some kingdoms of the heptarchy the landed proprietors might have been consulted in making laws, this privilege was partial, and was discontinued altogether after the union of the kingdom under our king; and therefore it is in vain to look for any traces of the House of Commons from the accession of Egbert to the Norman conquest, whatever similarity some may fancy they can discover to have existed before that æra. Besides, even if it were the reverse, still the only law as yet dicovered, on which the Commons could found any precedent for the punishment of offenders, gives a power to punish those only who are guilty of a breach of the peace; and to punish them, not by *an arbitrary imprisonment*, but by a fixed fine.

I shall now take a short view of the tenures by which the Anglo-Saxons and the Normans respectively held their lands; because, as it is clear that all the landed proprietors among the former nation had a right to attend the Mycel-gemot, and as it has been allowed that the assembly was rather permitted to fall into *disuse*, than that it was *annulled* altogether, if it should appear, on enquiry, that the Anglo-Saxons held their possessions by a tenure similar to that among the Normans, it would go a great way to establish that the meetings, or parliaments, as they were afterwards called, of the Normans, were in fact revivals of the ancient Mycel-gemots. This is an enquiry which might extend itself to volumes, and there is great difficulty to compress it so as

to render it intelligible. I shall, however, attempt to do so, and will suppress nothing that is absolutely necessary to be known. The ancient Germans, our common ancestors, were of migratory habits, and held their lands rather nationally than individually. A German tribe having, at last, fixed upon a spot of ground convenient for the purpose, took possession of it, in the name of their nation; and their chiefs having marked out a certain portion of it for agriculture and pasturage, distributed it among one half the members of the tribe, whose duty it was to cultivate it, while the remainder of their brethren were employed in war. As soon as the cattle were fat, and the harvest got in ready for consumption, these chiefs again divided it among their followers, for their subsistence. But as the Germans had not as yet renounced their wandering mode of life, property could be but of short continuance: for as they annually removed to another territory, there was annually a fresh division of land; and those who, during the last year, were employed in war, were now engaged in the more peaceful occupations of husbandry, while the former shepherds now wielded the sword. (See Tacitus de Moribus Germanorum.) It was to this state of society that the Anglo-Saxons were arrived when they first settled in this island; and it was to the fertile plains of

Britain that individuals among them first acquired a right of property: for as soon as the Anglo-Saxons had taken possession of England, with a cruelty for which more than any other German tribe they were conspicuous, they set about extirpating the natives by murdering them, and seized on their possessions; which those among them, who were most conspicuous for valour, took to themselves, free from all services whatsoever, excepting what were absolutely necessary for the preservation of their property; such as those which were distinguished by the term "Trinoda necessitas," one of which was military service; secondly, arcis constructio; thirdly, pontes constructio. (Reeves's Hist. Law, vol. i. p. 9.--Spelman's Remains, p. 22.--Selden's Ja. Angl. p. 43.) These lands, thus taken, were perfectly allodial, and were afterwards called boc-lands, from their being most commonly held by deed or charter. They were descendable to all the male children of the possessor, and not restrained to the eldest son, if the possessor died intestate: but if he chose it, he had full liberty to devise it from his own family, and give it, either during his own life, or to bequeath it by will, to whomsoever he pleased. This privilege, however, being much abused, to the ruin of many old families, Alfred, in order to restrain the abuse, made a law of entails. (See

Alfred's Law, c. 37, Ap. Wilkins.) But as this original estate was too large to be occupied entirely by the possessor himself, he usually divided it into two parts, since termed inland and outland. The inland, as it was situated around the lord's mansion, was most convenient for their use; he therefore cultivated it himself with his own slaves, while, having subdivided the other, he distributed one part, called folc-land, gafol-land, or *terra vulgi*, among his ceorls or churls, (Squire, p. 107.—Spelman's Remains, p. 12.—Henry's Hist. England, vol. iii. p. 330.—Hume, vol. i. Ap. i. p. 162,) who paid him an annual *feorme*, or rent, (Squire, p. 111.—Lambard's Kent, p. 214,) which was paid in kind till the days of Henry I. who changed such as was due on the royal domains into a sum of money, and gave the other among his free serviteurs, or thanes, as a reward for their services. This portion was at first granted for a term of years only, but was afterwards given during life, then for lives, and at last in perpetuity, to the thane and his heirs for ever. The land thus distributed was usually called thane-land, and frequently, by the Anglo-Saxons, feos, or feohs, which term means land where one man is the usufruct, and the other the proprietor. These lands, with the consent of the proprietor, might by the usufruct be demised by will, or even given away by him during life, and

were *free from all service whatever*, except the three necessary services before mentioned, which were equally common to every land-holder of the kingdom. These lands, moreover, had no more to do with war than with peace, and were very different from those which were afterwards called knights'-fees; for we must remember that the lands which were seized on by the Anglo-Saxon princes and great men, on the conquest of the kingdom by them, must of course have been allodial; for of whom could they have held it? Not of the king, because it is universally agreed that he was considered little more, at that period, than as a general, or leader; and therefore there can be no doubt that the lands thus first divided were purely allodial.

These lands, as has been remarked, were again divided into thane-lands, which were distributed among the favourites of the king, or those of his chief nobility; and into folc-land, which was allotted by them, for the payment of a certain rent in kind, to the ceorls or churls. Therefore if the feudal system, which afterwards was so general among the Normans, can be discovered at all among the Saxons, it must be as attaching itself to one or other of these lands. Now that the folc-land could not be subject to the feudal incidents, is clear. Our laws took no notice of feuds till they were hereditary, which

was not till after the Conquest; and as the lands occupied by the ceorls never were hereditary, but were merely held at the will of the lord, it is *impossible* that they could be feudal; because the feudal incidents of wardship, marriage, and relief could not attach to them. (Spelman, p. 6.) Besides, by the feudal law, a ceorl was not permitted to possess land holden by military service; and as for the five hides of land which raised the ceorl who possessed them to the rank of a thane, they could *not* be feudal, because they were descendable to his posterity, which was not the case of feuds, at that time. Again, homage and an oath of fealty were to be taken for lands held by feudal service: but from all that can be discovered, no such oath was taken for the folc-lands by the ceorls; and as for those which they had purchased, they were so perfectly allodial, that it would be absurd to suppose homage or fealty necessary. If, therefore, neither the lands rented by the ceorls, nor those which they possessed in their own right, were feudal; if any lands among the Anglo-Saxons were subject to knights' service; it must be the thane-land. Let us see, then, whether any relationship to feuds can be found in the latter famous distinction or not. Now in order to consider this question clearly, I must observe that feuds are distinguished by Sir William Spel-

man into three different kinds, which may, properly enough, be called their three ages; that is, into those which were precarious, and held at the will of the lord; into such as were granted for life; and into such as were hereditary. The first kind were called Munera, the second Beneficia, and the last Feuda. But our law takes no notice of feuds till they had become hereditary; nor if it did, would it at all alter my opinion, because till they became so, they were not subject to military service, or to those incidents under which land held by military tenure groaned. It is these incidents alone which can authorise our applying the word feudal to lands; and therefore if I can shew that the lands were free from them, I clearly evince that the feudal system was unknown to the Anglo-Saxons. Now it is evident that these feudal incidents must necessarily be unknown during the two first ages, because from the very nature of the tenure, they could not exist. These thane-lands were at first held merely at will; and in the second period the possession was extended only to the life of the occupier; and therefore as the son of the occupier could have merely a chance of succeeding on his father's death, it is absurd to suppose the lord would interfere either about his wardship or his marriage. The principal reason why the lord interfered, in after ages, could here

be of no consequence. When feuds became hereditary, it was very material whom the heir married, and the lord maintained great pecuniary emoluments both during the wardship and on the marriage of the heir: but it could not signify to the Saxon lord to whom the son was contracted, because the succession of the latter to the lands was completely optional in the former; nor can it be supposod that the son would submit to be under the direction of a guardian with whom he had so precarious a relationship. Neither could livery or primer-seisin, reliefs or heriots, fines for licence of alienation or escnage, possibly be found, when possession in the land was so extremely uncertain; and as for homage and fealty, on the authority of that great oracle, Sir Henry Spelman, I will assert they are not to be met with among the Anglo-Saxons. So that, on the whole, I trust I have proved, as far as this very concise disquisition will allow, that in these two stages the Anglo-Saxon thane-lands were free from all feudal service whatsoever. I trust, also, I shall be equally fortunate in proving the same, when they had become hereditary.

The first service exacted from the tenant, by knight-service, was *homagium feodale*, or *prædiale*, that is, homage, and was instituted (says Spelman, p. 35,) when feuds became hereditary,

that every new tenant, at his entry, might recognise the interest of his lord; lest that the feud, being now hereditary, and new heirs continually succeeding into it, they might, by little and little, forget their duty; and subtracting their services, deny, at last, the feud itself. But there appears no such shew of fealty or homage among the Anglo-Saxons; and as for the heir making it, on succeeding to his father's land, nothing like it has yet been discovered. (Spelman, pp. 34, 35, 36;) nor have the advocates for the antiquity of the feudal system had better success in discovering livery or primer-seisin, since in every grant of Anglo-Saxon thane-lands there is a clause inserted which expressly exempts them. (See Charter Edward Conf. in Spelman, p. 20;) "*ab omni seculari gravedine, "tam in magnis quam in modicis rebus;*" that is, from every burthensome incident, of which primer-seisin was afterwards nearly the most troublesome, and most heavily felt. As for wardship, (Spelman, p. 25,) it is manifest this burthen was not known among the Anglo-Saxons, since it is evident, from a manuscript of Saxon laws in the King's library, which is quoted by Sir Henry Spelman, (p. 17,) that the thane had full power to dispose of his lands, by will, to whomsoever he pleased. "*Thani lex "est, ut sit dignus rectitudine testamenti sui.*"

Now as this was the case, can we suppose wardship to have existed at this time? For suppose the deceased thane chose to leave his lands to an adult in preference to his own son, who was a minor; or suppose he devised the profits of his estate to a distant relation, or to a friend, during the minority of his son: by so doing, in either case the lord would clearly be deprived of the benefit of wardship, since his land would pass into the hands of a major. But can it be supposed, if the lord had a right to the wardship, he would allow the thane to possess a right of depriving him of it at pleasure? On the contrary, he would prohibit him from disposing of his land by will, as was afterwards the case among the Normans. So that as no such prohibition in the disposal of landed property ever took place in the period under review, I think I may venture to declare, that the Anglo-Saxons were ignorant of wardship.

Fines for licence of alienation (Spelman, p. 34) were also equally unknown to the Anglo-Saxons, nor are they even to be found in England before the reign of Edward I.; nor were they established till 1 Edward III.

I will now say a word or two about Marriage. The first law respecting marriages, says Spelman, is in Magna Charta Libertatum Hen. I. a period very remote from the Saxon times; and

indeed it appears that the advocates for a similarity of tenure between the lands of the Anglo-Saxons and Normans are so conscious of the difficulty, that they scarcely endeavour to prove the existence of it among the former people. I shall therefore very briefly observe, that there is no doubt that this, as well as the feudal incidents, escuage and escheat, were introduced by the Normans.

But it is Relief on which the principal reliance is placed; and it is strenuously argued by some, that this feudal burthen is to be met with among the Anglo-Saxons; erroneously confounding the Danish, or later Saxon heriots, with the reliefs of the Normans. In forming this opinion, they have chiefly given credit to two laws---the one, of Canute the Dane; the other, of Edward the Confessor. In the first of these, *Jornalensis Monachus* makes the king, who is speaking, in his laws, of one slain in battle, to say, *in his Latin translation*, "*Sint ei relevationes condo-*"*natæ.*" In the second, which is alledged to be a law of Edward the Confessor, the translation runs thus: "*Qui in bello ante dominum suum ce-*"*ciderit, (sic hoc in terra sit alibi) sint ei rele-*"*vationes condonatæ.*" But let us pause a little, before we decide, and consider each of these laws separately. With respect to the law of King Canute, it cannot be denied but it is a law

of his promulgating: but then it is evident that it is improperly translated. This misinterpretation arose from the ignorance of the translator, who living after the Conquest, was but little versed in Saxon, and used the word *relief* when that of *heriot* would have been more proper; and therefore Sir Henry Spelman translates the passage thus, (p. 32): "The man that in a mi-"litary voyage is slain, before or in the pre-"sence of his lord, be it upon land or off of "land, let the *heriots* be forgiven him;" in which interpretation he is followed by Wilkins, who translates the same Saxon expression, (Wilkins Leges Ang. Saxon. p. 145. U. 75,) "*Sint armamenta remissa.*"

As for the latter law, it clearly belongs not to Edward the Confessor, but, as I believe is now generally admitted, was the production of a much later period. So that I am clear that neither of these laws make at all in favour of the Saxon origin of Reliefs. But says Bishop Nicholson, in his Preface to Wilkins, speaking of Spelman, "*Vult præterea eques illustrissimus* "Canutum *primo* herioti *tributum adinvenisse,* "*quo sibi in regni nuper acquisiti suffulorum,* "*armamentarium instrueret. Miror hunc in* "*monumentis* Anglo-Saxonicum *callentissimum,* "*testamentum* Birthrici *neutiquam in mente ha-*"*buisse; quod tamen secundo edidisset Lambar-*

"*dus suus, diu antequam ille (A. D.* 1639) "*tractatulum de feudis scripserat. Hoc inter* "*testes habet* Ælfstanum *episcopum* Roffensem, "*qui diem priùs obiit quàm coronam* Angliæ "*adeptus est Rex* Canutus, *atque hunc in mo-*"*dum legata enumerat.*" Here it follows in Saxon, "*Quæ sic vertit* Textus *ipse* Roffensis, *e* "*quo* Lambardus *totum excripsit.* Primo, na-"turali suo domino *regi* armillam lauream quæ "habebat octaginta mancas auri et unum hand-"seax tantum auri habentem, et quatuor equos, "duos ex eis optimè faleratos, et duos gladeos "optimè adornatos, et duos accipitres et omnes "canes suos venaticos. *Hæc si quis conferet* "*cum iis quæ jam ex libro censuali, et de lege* "Canuti, *dicta sunt, facilè dignoscet morem* "*hunc apud* Saxones *nostros citiùs invaluisse,* "*quàm eques ille literatissimus epocham fixerat.* "*Constat itaque* heriotum *antiquioris esse seculi* "*quàm putârat* Spelmannus." From this, it appears that Bishop Nicholson wishes to give a greater antiquity to the custom of heriots than Sir Henry Spelman does. But on a little consideration, I am persuaded the latter will be found nearer the mark. That not only the testator, in this case, but that other great men, might also choose to leave their arms, &c. in the nature of a legacy to the King, may be true, but but then it was very different in its operation to

the Danish heriot. In the one case, it was a *voluntary* bequest; in the other, a *compulsory* demand. In the former, the king could leave no claim to the arms, except by will; in the latter, he might insist on having them as a right. Had the legacy alluded to been in the nature of a heriot, it would have been absurd to have it by will: for what occasion had the testator to leave by will, to the king, that which, being his right, could not be withheld? and therefore the very bequest is *primâ facie* evidence it was not a heriot; for which reason, the custom of bequeathing arms by will ceased in the *Danish* period; and it is enacted by positive law, what heriot should be the property of the sovereign, on the deaths of his respective subjects. Sir H. Spelman, then, is accurate; and to Canute, the chief of this warlike people, must be attributed this innovation in the free tenure of landed property, who, as he very justly observes, "for "the assurance of his throne used this politic "device, to have all the armour of the king-"dom at his disposal, in this manner, when he "dismissed the Danish army."

Heriots, then, were first introduced by the Danes, and were distinct in their operations from the Norman Reliefs, as may be seen, on a reference to Spelman's learned Treatise on Wends and Tenures, p. 32; and to the Note to

the 60th page, line 39, of the English translation of Selden's Janus Anglorum, where there will be found a full and most satisfactory explanation of them.

Thus, then, it appears that neither fealty or homage, livery or primer-seisin, wardship or marriage, fines for licence of alienation, escnage or escheats, were in use among the Anglo-Saxons. I trust I have also proved, that although at the Danish period heriots had existence, they will be found, on a reference to the most learned legal authorities, perfectly distinct from reliefs, which were not known till a much later period.

But that I may omit no argument in proof of this opinion, I must inform my readers, that the thanes were the only nobility in the Anglo-Saxon government, and that from this body all the chief magistrates, both civil and military, were taken. So that the earls were not a distinct body of nobility, but the title of Earl was merely a distinction of magistracy. Besides, the earls were originally appointed by the king, (see Squire---Spelman---Henry Hist. England, *&c. &c.*) and held not their dignities for life, but only during the king's pleasure, and their own good behaviour; so that the earl might be deposed from his office, and sink into a simple thane. How was it possible, then, the feudal law

could exist? or, is it probable that one thane held his land, by military tenure, of another thane, agreeably with the custom of the feudal law, or, consistent with the high spirit of a Saxon, of his equal? Nor indeed can it be supposed that a free nobility would condescend to hold their lands, burthened with feudal services, even of their sovereigns, who were limited in their authority. It may therefore be safely asserted, that the thanes held their lands with no other duties annexed to them than those which were called the *trinoda necessitas*, one of which was a military service on foot, *in defence* of the kingdom; and the two others, the *arcis* and *pontis constructio*. But let it not be supposed that the former service was at all similar to that of the Normans. The vassals of the Normans were obliged to attend their lords for forty days, even on a *foreign service*; while the Anglo-Saxons were only required to arm for the *defence of* their *own* state. Again, the burthen of military attendance, among the Normans, was *peculiarly attached to those who held by knight-service*; whereas *every Anglo-Saxon landholder* was *obliged* to arm in defence of *his state*, *no land in the kingdom being exempt* from this necessary service. As, therefore, the Anglo-Saxon tenures were different from those of the Normans, it follows that the constituent mem-

bers of the legislative assemblies of the two people were also different, and that therefore the *Norman parliament* was *not* a revival of the *Anglo-Saxon Mycel-Gemot*. Of what persons, then, was the Norman parliament composed? To this question I trust I shall be able to give a tolerably satisfactory answer. But previously thereto, I must observe, that much controversy has arisen on the word *Conquest*; the advocates for the rights of the Commons always asserting that it is improperly applied, and that the term *Acquest* should have been used. They deny that William had his crown by right of conquest, but by title; and that he did not wage war against the people of England, but against Harold only. This point of dispute may, I think, be very easily settled, if indeed it is of so much importance as some are apt to imagine. William's conquest was certainly over Harold, in the first instance: but it was also, secondly, a conquest, in its effects, over the English; for no sooner had he obtained quiet possession of the kingdom, than he began to reward his followers by a distribution of the lands among them; and tho' some of the English certainly were taken into favour, and allowed to retain their possessions, the chief number groaned under every species of oppression. (Hume, vol. i.) But suppose it was a conquest, in the full extent of the word,

over the English, it is clear that it was not a conquest over his Norman followers; and as these now became principally the proprietors of the soil, nay, as even their language became generally used, we are henceforward to date our liberties as resulting from our Norman ancestors: for the people of England are of a mixed breed, and our rights are a continuation of those which indisputably belonged to them, and over which, William had clearly no right or pretext to tyrannise. Unless, therefore, it is intended to continue the system of Norman tyranny, and to divide the present race of Englishmen into the descendants of Anglo-Saxons and Danes, on one hand, and of Normans on the other, I conceive it is perfectly immaterial by what right William acquired the crown; since by whatever right he acquired it, it was by the aid and assistance of his followers, who never did accede to him any part of their liberties, but bequeathed them to their children, from whom we are all more or less descended, as their birthright, and bequeathed to them also a spirit and courage to defend them. I shall therefore take leave of this subject, and proceed to state, that the feudal system, the outlines of which the Normans had brought over with them, was firmly established in England at the Council of Sarum, the law for which is supposed to be still

extant, and is couched in these remarkable words, (see Blackstone, vol. ii. p. 50): "*Statuimus, ut omnes liberi homines fœdere et sacramento affirment, quod intra et extra universum regnum Angliæ Wilhelmo regi domino suo fidelis esse volunt, terras est honores illius omni fidelitate ubique servare cum eo, et contra inimicos et alienigenas defendere;*" and by another law, which exacts the performance of the military fœdal services, as ordained by the General Council as follows—"*Omnes comites, et barones, et milites, et servientes, et universi liberi homines totius regni nostri prædicti, habeant et teneant se semper bene in armis et in equis, ut decet et oportet; et sint semper prompti et bene parati, ad servitium suum integrum nobis explendum et peragendum, cum opus fuerit; secundum quod nobis debent de fœdis et tenementi suis de jure facere, et sicut illis statuimus per commune consilium totius regni nostri prædicti.*"

Thus, then, was the feudal system for the first time firmly established in England; and if any argument were wanting, to prove it did not exist there before, I would willingly rest it on this circumstance—that in establishing it, the Normans only followed the recent example of the French nation, with whom the system chiefly originated; and with which people, till the

Norman Conquest, the English were scarcely at all acquainted. From this moment, then, tenants *in capite* were first heard of; and of these only, we shall now find, was the Norman parliament composed.

That the tenants *in capite* were constituent members of the Norman parliaments, need not be proved, because it is universally admitted: but whether the allodial proprietors, of which some few remained, together with those who held lands by other tenures, and the burgesses or citizens, were admitted to the Grand Council, is a question now to be discussed. My opinion is, that they were not—an hypothesis which I shall now endeavour to establish, but shall proceed first to discuss the rights of the landed proprietors.

Without going into an unnecessary detail, I shall here state, that besides allodial proprietors, there were many persons who held their landed properties by other tenures, some of which only it will be necessary to name—such as the tenures of free socage, frank-allmoigne, &c. &c. Now these, I mean to say, were not members of the Great Council; and to prove the assertion, by shewing that there is no reference made to them in any of the parliamentary records extant.

Lord Lyttleton (p. 421, vol. iii. Hist. Hen.

III.) considers the promotion of Lanfranc to the Archbishopric of Canterbury, however, as a proof to the contrary, and contends that the church of Canterbury was committed to him in a parliament *consensu et auxilio omnium baronum suorum de* totiusque populi Anglicani." This, however, it is certain, was not a parliament, but a meeting expressly for the appointment of an archbishop; and in consulting with the people on this occasion, William did no more than what was usual in the first ages of Christianity, in all countries; and as for the Rockingham Parliament, in the time of William Rufus, called in consequence of the dispute between the King and Archbishop Anselm, it is clear, from the account itself, that the *laicorum numerosum multitudinem*, referred only to the standers-by; though it is clear that the artful Archbishop was extremely anxious to intimidate the King, by making him suppose that the mob were his advocates—an artifice, which those who are conversant with Ecclesiastical History well know was frequently made use of by priests, in the more early ages. But if this multitude were to mean any thing beyond a mob of spectators, it would in fact go to establish a universal parliament.

Again, in Lord Lyttleton's statement of a parliament held in the year 1100, by Henry I.,

the "*tota reghi nobilitas cum populi numerosis*" "*tate*," meant no more than all the nobility, with a numerous body of retainers, with which they regularly attended business, and particularly at the Christian solemnities, of which the period when this parliament, as it is called, was held, (being Pentecost,) was one. In the parliament held at London in the reign of King Stephen, the words "*cum primis populi*" are evidently put in contradistinction to the "*sem*" "*mos ecclesiarum ductores*," and means only the leaders of the people, that is, the tenants *in capite*. And that I may omit nothing that is material, I will remark, that to distort the "*antiquiores regni*," who attended at Clarendon, in the reign of Henry II., into the representatives of boroughs, is contrary to all sense, and is neither supported by facts or reason. Thus, then, it appears clear that the proofs brought forward by the advocates for the antiquity of the Commons are perfectly insufficient to establish the hypothesis. On this, therefore, I might safely take my stand. I shall, however, in my support, bring forward two names, among many others, on whose authority I may ground my opinion, that no other than the king's tenants *in capite* had a right to attend the Norman parliaments—I mean Sir Henry Spelman and Dalrymple, on Feudal Law. To the latter author,

p. 261, I wish particularly to refer my readers, for a most clear and admirable account of the constitution of parliament.

Another question of importance is, whether, though it be proved, perhaps, that no landed proprietors except those who held of the king *in capite*, attended the Norman parliaments, the burgesses were not constituent members of that assembly. To state all the arguments for and against the question, whether they were or were not constituent members of that grand Council of the kingdom, which met regularly at the three great Christian festivals, would require more time than I can now conveniently devote to the question; nor do I indeed think it necessary, because even allowing that some burgesses did attend those meetings, it by no means proves that they bore any affinity to the burgesses of the present day. It has been observed that this Great Council consisted of those who held of the king *in capite*, who had, by such tenure, a right to be present. Now many of the different boroughs were actually so held, either by original tenure or by subsequent infranchisement, (St. Amand, p. 139,) by the chief lord, which infranchisement instantly made them tenants *in capite*, and therefore these burgesses had as good a right to attend the meetings of the Great Council as any the most powerful te-

nants *in capite* in the kingdom; and as it was impossible for *all* the burgesses to attend personally, and though it was esteemed a highly honourable, was nevertheless frequently considered a very inconvenient and burthensome service, there is great reason to suppose that, on application, the personal attendance of *all* was dispensed with; and that they were permitted, as an indulgence, to send deputies. But whether these burgesses attended the Great Council individually, or by representation, they in no case attended as allodial proprietors, or in any other capacity than as tenants *in capite* of the Crown. Those, therefore, who argue against the origin of the British parliament before the days of Henry III., need not be so anxious to prove that burgesses never did sit in the ancient Great Council of the kingdom. Let them admit that they sometimes did attend it: but what then? It proves not that they sat there by the same tenure that the burgesses now do, but merely as representatives of the large body of tenants *in capite* of which their borough was composed; and that the representative system was granted them as an indulgence, or assumed by them, through the inattention of the Crown, because it was a most burthensome service for every individual burgess to have attended in person. Long arguments have been held, on

the celebrated petition of the burgesses of St. Albans, in the reign of Edward II.; and great pains have been taken to prove that the petition completely settles the question, and establishes the representative system. But surely the reverse is the most probable, as will appear from this. The petition was presented in consequence of the Abbot denying that they had the power to send representatives to the Grand Council of the kingdom. Now what do the burgesses state in their petition? "*Ad petitionem burgensium "villæ suggerentium regi, quod licet ipsi teneant "villam prædictam de rege in capite, et ipsi, "sicut cæteri burgenses regni, ad parliamenta "regis, cum ea summoniri contigerit, per duos "comburgenses suos venire debeant, prout totis "retroactis temporibus venire consueverunt, pro "omni modis servitiis regi faciendis.*" They claim then, clearly, as from a town that held in chief of the king, and according to long usage; that is, according to the usage of other towns that held in chief. The question therefore at issue, between the burgesses and the Abbot, was, whether they held *in capite* of the Crown or of him. Nor is it possible fairly to have a different view of it. The dispute was afterwards settled, and the Abbot acknowledged their claim to send two burgesses to parliament—by which name the Great Council began about this time

to be called—"*Puissent d'eux-memes elire deux "burgois d'aler au chacun parlement.*" Nor does it make against this being the question, that no proof can be found that the burgesses were tenants *in capite* of the Crown. The cause was not settled so much judicially as amicably, by indenture. The Abbot gave up his claim, tho' even this was not thought sufficient; and therefore before the burgesses could positively and firmly establish their right in so doubtful a question, as whether they were really tenants *in capite* or not, letters patent were deemed requisite, and were accordingly issued by Edward III, in the first year of his reign, confirming an indenture entered into between the contending parties. With respect to the petition from Barnstaple, that claim, founded on a pretended charter of Athelstan, was disallowed; and though their claim to send burgesses was admitted, notwithstanding that it was proved they held of John de Audley, and not of the king *in capite*, yet this allowance was expressly made, because they had enjoyed the privilege for a long time, in consequence of a mistake in their tenure, and from a disinclination to give the burgesses dissatisfaction, by depriving them of a privilege which they had for so long a time enjoyed. Be this as it may, however, it is clear that the burgesses founded their claim on the presumption

that they really did hold of the king *in capite*, which is a full corroboration of the doctrine, that it was then the universally received opinion, that tenants *in capite* of the king could alone claim seats in the parliament of the kingdom. Thus, then, I think it is evident, that up to the time of Richard I. we can find no traces of the House of Commons; and therefore whether that illustrious assembly originated in the reign of King John, or not till that of Henry III, is immaterial to the question of the power of the House of Commons to commit. They can produce no statute giving them such a power, and they have not had a sufficiently long existence to establish it by common law. I therefore boldly assert, that the House of Commons has not the right of imprisonment. Some, however, think that this right may be derived to it by analogy, from what is customary in Courts of Justice; I shall therefore say a word or two on this subject.

In every country the supreme judicial authority resides in the Sovereign, and all authority of that nature necessarily emanates from him. In order to conduct the process of justice with dignity and effect, extensive powers are necessary; and the power of life and death, of fine and imprisonment, restrained indeed by positive laws, in proportion as the inhabitants of the state possess a greater or less degree of civil liberty, must

belong, of course, to the Sovereign. Agreeably to this maxim, the Courts of Justice in every country are formed; and without unnecessarily going beyond the Norman period, it will suffice to say, that on such principles was the *Curia* or *Aula Regis* founded, which was always considered to be holden *coram rege*. From this most ancient Court afterwards sprang the Bancum or Bench, the Chancery, Exchequer, and Common Pleas. The *Curia* or *Aula Regis* was in the first instance also the name by which the parliament was known, the latter term not being applied to it till the reign of Edward I, long before which period the Courts of Law had branched out from it; and it is as a branch of that Court that the judicial authority of the House of Lords is derived. (Reeves's Hist. Law, vol. i. p. 48.) The Courts of Law have therefore a clear right to commit offenders to prison, because they derive that right from the King himself; it being constantly understood, that all proceedings in these Courts are *coram rege*, notwithstanding that the King has ceased long since to be personally present. From the same source also the House of Lords, when exercising its judicial functions, derives its power to commit; because, as a Court of Justice, the King must be presumed present. But though that assembly may exert such a power in this instance, it

cannot, when it is merely legislatively employed, because it has become a maxim of the constitution that the King cannot then be present. Now the House of Commons has no judicial power, nor is the King ever supposed to be present; to mention even his name is unconstitutional. As, therefore, the power of committal, since it neither exists by Common or Statute Law, can alone arise from the actual or implied presence of the King, which is never the case in the Commons, that House cannot commit. But when the parliament is perfect, which it is, when the King, Lords, and Commons assemble together, as is the case on the opening of a Sessions, then the parliament can commit, because, as two parts of its constituent members are derived from the ancient *Aula Regis*, the other part partakes for the time of its dignity, and the parliament can commit for such time as it remains so perfect, but no longer. The power of committal begins and ends here; I therefore do not at all derogate from the dignity and power of parliament, when I say that the House of Commons cannot commit, because the House of Commons is not parliament, but merely a branch of it. It, in fact, can do nothing, or at most has no power of itself, except to impeach;—it can neither make laws nor enforce them;—and no act of the House of Commons is perfect, till that act

has been sanctioned by the other two Estates. Till then its laws are waste paper, and its decrees nugatory. When, therefore, we read of the omnipotence of parliament, a word in fact which ought not to be applied to it at all, this omnipotence refers to the Three Estates united, and not to any one distinctly. It is absurd, then, to talk so much of the power of the House of Commons, or to attempt to vindicate its right to imprisonment. Having, I trust, established this, I shall now proceed to say, however, that I by no means intend to deny that that illustrious assembly ought to be protected in the legal and constitutional discharge of its duties by considerable power and privilege, but then that power and privilege ought to be defined as accurately as possible. I will, indeed, go so far as to say, that I can see no reasonable objections to a very general definition of privilege, if that general definition be restrained from becoming oppressive by wholesome restrictions; and therefore I beg leave to submit the following outlines of a plan to that effect: Let all the personal privileges of the members of the House of Commons be as large as they are understood to be now---let a declaration of the House to that effect be made, and let it receive the approbation of the other two branches of the legislature, by an act which shall also sanction the

claim of the House to prohibit the printing of its debates, if it thinks fit, provided it be no offence to publish them, unless an order by the House to that effect has been previously made within *seven days* preceding the so publishing them; after which period, if such order be not renewed, it shall, of itself, expire. Let it also be declared a high offence to misrepresent proceedings in parliament, or to comment libellously on its members, in their legislative capacities.--- This is, in fact, essential to the liberties of the people. So much for the privileges of the House of Commons. Now for the mode of its proceedings to vindicate them, and its power to punish offenders. On a complaint being made by any member of a breach of privilege, let the facts be stated by him to the House, and let the majority of the House decide, and proceed to inflict, at its pleasure, the punishment of imprisonment, provided that, in no case, such imprisonment should exceed six calendar months. Let not, however, this proceeding of the House be legal till it be signed by the Speaker, whom I would make personally responsible for the act of the House, in the same manner as a minister is answerable for that of the King;---for in this case I would extend the celebrated maxim, that the King can do no wrong, to the House of Commons also. These steps being previously taken,

and the offender being committed to prison, if he thought himself aggrieved, and that the proceedings were illegal, let him signify the same to the Lord High Chancellor of England, who should be obliged immediately to issue summonses to three Judges of the King's Bench to assemble within three days, in a certain place to be fixed on, (except during the circuits, when it should be deferred till the return of the Judges) of which notice should be given to the prisoner, who should then and there state, by his counsel, his legal objections against the committal, to the Court; which sitting now as a Grand Jury, should hear the prisoner's statement only. When these objections were heard, the Judges should retire to consider the question, which having done, they should return into Court and declare openly, one by one, but without comment, whether there was sufficient reason for an appeal or not. If they unanimously decided in the negative, the prisoner must, of course, remain in prison; but if one Judge only thought in the affirmative, the Judges having, without loss of time, made a report to the Lord Chancellor, that there was a doubt whether the proceedings were legal, he should summon the twelve Judges, over whom he should preside, to assemble within six days as a Court of Justice, before whom counsel on both sides should be heard; for it would be un-

necessary for the Speaker to appear personally; and the decision of this Court should be final, provided only it was understood, that unless *eight* of its members were in favour of the Speaker, the verdict, which should be merely in the words, "A legal or illegal commitment," as the case required, should be considered for the prisoner; and as a further security to the subject, the prisoner having procured such verdict in his favour, should have a right to require of the Court, a writ directed to the Sheriff, commanding him to summon a Jury to assess such *reasonable* damages against the Speaker as should be proper to compensate him for false imprisonment. It being moreover positively enacted, that in every such case, the House of Commons should have no power to remunerate the Speaker his expences, where the verdict was against him. This, I think, would completely satisfy every reasonable and real Patriot; nor can I conceive that the House of Commons could have any solid objection to the measure. The individual and the Commons would be equally guarded by the Judges of the land; and if they could not mutually confide in them, in whom can they confide? The Speaker could not be put upon his trial, (if I may use that term) where he would not be personally obliged to be present, except a Judge was of opinion that there was cause for

it; and the Judges, both when sitting as a Grand Jury and as a Court of Justice, would be obliged to act openly before the world, and to stand or fall in the opinion of the Public by the integrity of their conduct. Thus would the privileges of the House of Commons and the liberty of its constituents be equally protected; and no one would have *just* cause of complaint, because the decision would be according to the then law of the land; would result from Judges who are independent of the Crown and of all parties, (for they can be removed only on the address of both Houses) and who have hitherto been most justly considered the pride and glory of Britons, from that high and exalted character they have possessed for integrity and honour. Let, then, neither party be afraid to submit those questions which might arise to a Tribunal so constituted. If justice could not safely be expected here, it could nowhere be found; and then, and then only, will I confess that England is really declining in her glory. Let us have no puerile objections, that this plan would be an infringement of the Bill of Rights. That noble record was intended as a safeguard only to the liberties of parliament against Royal Power, and not as a barrier to protect it in the exercise of arbitrary and almost indefinite imprisonment; nor let it be thought that there would be a difficulty in

procuring a Speaker. His situation would thus be of infinitely greater consequence and dignity, and in proportion as he acted conscientiously, he would be revered and adored by true Patriots. Did it, however, ever happen that a Speaker should so far forget his high situation, his independence, and his duty, as to be anxious to obtain a fleeting popularity, by flattering the passions of the people improperly; should he be so basely mean, so contemptibly cowardly, as to refuse to sign a warrant constitutionally awarded, the case need occur but once, as the House of Commons, around which every real Briton would rally, could remove him from the chair; and let that illustrious assembly never forget the celebrated maxim---that it is better for ten guilty persons to escape punishment, than for one innocent man to suffer unjustly. Should, therefore, even that number of guilty individuals be saved by the obstinacy or treason of a Speaker, the House of Commons would still have the glorious satisfaction to reflect, that it had given to the people a security against despotism, and had thereby raised an additional bulwark round itself, in the love and affection of all good men; in a love and affection which would not be evinced by outward professions only, but would be testified by the freest offers of their lives and properties in defence of its

rights, should those rights ever be invaded. Thus, then, have I calmly and dispassionately discussed this most important question. I have endeavoured to draw *from acknowledged documents*, that the House of Commons has *not at present* the power of committal; but while I have advocated the Rights of the People, I have also admitted that that illustrious assembly *ought* to be powerfully protected. To reconcile *both* parties, I have proposed the outlines of a plan, to be perfected by wiser heads. I trust that it will be allowed that my intentions are good, whatever may be thought of the execution of this little Treatise, which I now, with respect, deference, and diffidence, submit to the judgement of the World.

FINIS.

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