HOUSE OF ASSEMBLY, JAMAICA.

SPEECH OF BRYAN EDWARDS, ESQ.

November 19, 1790,

On the CASE of MR. KEMEYS *,

MR. SPEAKER,

I FLATTERED myself, on entering the House this morning, that we were come together with the honourable and unanimous determination, to investigate the great constitutional question before us, with a temper, calmness, and impartiality, suited to its importance, and becoming the character and dignity of the representatives of a free people. The declaration made last night by an Hon. Gentleman of great weight, that, "provided the Provost-Marshal was securely indemnified against all consequences which might result from his obedience to the orders of this House, he had no wish but to give the case of the unfortunate petitioner the fullest and fairest discussion," afforded me infinite satisfaction. There is not one of us who hesitates a moment to admit, that every security must, and ought to, be given to that officer acting under our authority. I will sever my right arm from my body before I will contribute, in the smallest degree, to make the Provost-Marshal a sacrifice on this occasion; but now, that *his* security is no longer in question (for it is not, I think, in the power

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* *John Gardner Kemeys, Esq. on the 15th Feb.* 1785, *was committed to the custody of the Provost-Marshal on a writ of* Ne exeat Insulâ, *issued by the court of Chancery. He was detained in prison by sundry writs of execution lodged in Feb.* 1786. *On the 27th of Jan.* 1790, *being still in prison, he was put up as a candidate at the Portland election; but Mr. Jordan and Mr. Thomson being returned, he petitioned the House, and on the* 18*th of this inst. (Nov.) the Select Committee reported,* That he was duly elected, and ought to have been returned instead of Mr. Thomson. *The House immediately amended the writ, and, it appearing that Mr. Kemeys was still in confinement, directed the Provost-Marshal to make a return in writing, the next morning, of the cause of his caption and detention. On this return being read, Mr. Whitehorne, Barrister at Law, moved,* that a Committee should be appointed to search for precedents. *Mr. Bourke, on the other hand, signified, that he should press for an immediate decision, and read sundry Resolutions to this effect:*

That Mr. Kemeys is entitled to privilege;
That the privileges of the House do not extend to an extinction of the rights of creditors;
That the Provost-Marshal should be fully indemnified, and saved harmless from all consequences, for obeying the orders of the House;
That the Sergeant at Arms should go with the mace and discharge Mr. Kemeys from confinement, that he might be admitted to take the oaths and his seat.

As it was necessary to dispose of Mr. Whitehorne's motion before the others could be argued, Mr. Edwards (after many Gentlemen had spoke) delivered his sentiments, as they are now stated, for giving it a negative.

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of language to make a ſtronger proviſion for his ſafety, than the third reſolution propoſed by my honourable friend) I ſay, Sir, now that we are ready to indemnify the Provoſt-Marſhal againſt all poſſible riſque, to hear a motion offered to the Houſe, and pertinaciouſly inſiſted on, for creating further delay, is a circumſtance which, I confeſs, I did not expect. I am now perſuaded, that the great aim of *ſome* Gentlemen who ſupport the motion (I will not ſay *all*) is—*not* to promote a fair and impartial enquiry, but—to perplex and confound the buſineſs by a pretended inveſtigation which will never be concluded, or even ſeriouſly entered upon; and thus the unfortunate petitioner will be made to linger in his dungeon, perhaps, until death, his only refuge, ſhall cloſe his expectations and his ſufferings together.

Sir, were I induced, as evidently many perſons are, to gratify private reſentment againſt this unhappy man, I have, perhaps, as much cauſe ſo to do as many of thoſe who are now active againſt him. In the whole courſe of my life, I never did Mr. Kemeys the ſmalleſt injury. Without having had any kind of intercourſe or acquaintance with him, I was aſtoniſhed to find myſelf the object of his violent invectives. Scarce a day paſſed, for months together, in which I was not aſſailed by the moſt outrageous and unmerited obloquy. Libels, traducing not only myſelf, but my anceſtors in the grave, were affixed every night on my door. Theſe, Sir, were the indignities I received; but I regarded them only as the deſperate effuſions of an unfortunate man whom oppreſſion had driven into madneſs. They awakened my compaſſion, not my reſentment; I conſidered him the miſerable victim of a prejudiced Chancellor, who, by an attachment univerſally allowed to have been arbitrary and illegal, firſt ſent him to priſon. I beheld him bent down by infirmity, and waſted by confinement; I ſympathiſed in his misfortunes; I pitied, and I forgave. Judging of the majority of this Houſe by my own ſenſations, I will therefore ſtill hope, Sir, we ſhall manifeſt to the world, that we are far too generous, too dignified, to ſuffer ſuch ignoble motives as thoſe of pique, prejudice, and paſſion, to influence our deliberations. I will ſtill rely, that a calm and temperate diſcuſſion, will lead us ſo to act and think, this night, as to fix our ultimate deciſion on the ſolid baſis of juſtice tempered by humanity.

Sir, the cauſes which the Provoſt-Marſhal aſſigns for the impriſonment and detention of Mr. Kemeys, are theſe:—attachments, or contempt proceſs iſſuing out of the Court of Chancery; executions for debt, *previous to the teſte of the writ of election*; and executions iſſued ſince the election. His caſe, therefore, comprehends two diſtinct queſtions, *eligibility* and *privilege*. Attachments from the Courts of law and equity, and executions iſſued againſt Mr. Kemeys *ſince* he was choſen a member of this Houſe, are all clearly and indiſputably matters of privilege; but the circumſtance of his having been in execution *before*, and remaining in actual impriſonment for debt *at the time of* his election, gives riſe to a queſtion of a very different nature. It is this: *Whether, in ſuch circumſtances, Mr. Kemeys was not under a legal diſability or incapacity of being returned a Member of Aſſembly*, and, *of courſe, whether the votes given to him at the Portland election, were not thrown away?* Due attention to the diſtinction which I have pointed out, will, I hope, ſave us a great deal of trouble; for, moſt aſſuredly, on this queſtion of eligibility, the Houſe is bound and concluded already.

Sir, I take it to be a doctrine clearly and decidedly eſtabliſhed in Great-Britain, that, by the act for trying controverted elections (commonly called Mr. Grenville's law) the Houſe of Commons has delegated its whole authority in all election controverſies, to a Select Committee choſen by ballot, and ſworn to determine juſtly between the contending parties. It is very true that the Select Committee, like other juries, may, if they think proper, report *ſpecially*; leaving any point of a doubtful nature to the conſideration and ultimate deciſion of the whole Houſe; but this is merely optional and at their own diſcretion. They have full authority, if they think proper, to determine abſolutely; and having ſo determined, their deciſion is final and concluſive, to all intents and purpoſes. Having, for inſtance, reported that the ſitting Member, or the Petitioner (as the caſe may be) *is duly elected and ought to have been returned*, the verdict is deciſive, nor does the Speaker, as in the caſe of reports from other committees, ever put the queſtion, *whether the Houſe chooſes to agree or diſagree?* Such a proceeding would be very repugnant to the intention and ſpirit of the law.

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On the contrary, the moment the Chairman of the Select Committee has made his report, the return (if the petitioning candidate is declared duly elected) is ordered to be amended as of courſe, and it is amended accordingly, without any queſtion being ſuffered to be put and debated thereon. That this is the law of Great-Britain, and the practice in the Britiſh Houſe of Commons, a reference to the act itſelf, and to the reports of election caſes by Mr. Douglas, will ſufficiently demonſtrate. In truth, a moment's reflection concerning the origin of the *Grenville* act, will put the matter out of all poſſible doubt. It is well known, Sir, though painful to relate, that, before the paſſing of that act, the deciſions of the Houſe of Commons in caſes of elections and returns, were ſo notoriouſly partial and corrupt as to excite the ſhame and indignation of every honeſt man in the kingdom. No matter how many legal votes a candidate poſſeſſed over his adverſary, if he poſſeſſed not, at the ſame time, the favour of the Miniſter. The Court phalanx, hardened by practice, and triumphant in their numbers, made no kind of ſcruple to vote a candidate in, or out, as they were directed to do, not only without the ſmalleſt regard to the juſtice of the caſe, but even without ſhame or decency. To remedy this groſs and monſtrous evil, was the plain and avowed deſign of Mr. Grenville; but what remedy has he applied, if a majority in the Houſe of Commons, after a Select ſworn Committee has decided in the firſt inſtance, ſhall take upon them to reverſe the deciſion? Might they not as well have proceeded after the old method, without giving the Select Committee any trouble? It is impoſſible I think to deny, that if ſuch a practice be allowed, the Grenville act is mere mockery and deluſion.

Sir, the ſame, or nearly the ſame motives, which induced Mr. Grenville to frame this celebrated law, occaſioned the legiſlature of this iſland, in the year 1779, to adopt its principles; and, as far as our local ſituation and circumſtances would admit, to apply its proviſions to caſes of controverted elections, ariſing within our own ſmall circle. Here, as in England, the Select Committee is choſen by ballot, and ſworn to determine according to evidence. Their powers are preciſely the ſame as are granted to Select Committees, under the Engliſh ſtatute. They are at once judges and jury as far as their juriſdiction extends, and their final adjudications are as compleat as the judgment of any other Court.

Sir, I beg permiſſion to read to you at length, the 10th clauſe of our own election act, in confirmation of what I have advanced: If words have meaning, you will find that (except in the caſe of ſpecial reports, for which the law has provided) the Houſe is totally precluded from the right of inveſtigating the merits of any election or return whatever:

"And be it further enacted, that the ſaid Select Committee ſhall have power to ſend for perſons, papers, and records, and ſhall examine all the witneſſes who come before them upon oath, and ſhall try *the merits of the return, or election, or both*; and ſhall determine by a majority of voices of the ſaid Select Committee, whether the Petitioners or the ſitting Members, or either of them, be duly returned or elected, *or whether the election be void*; which determination ſhall be final between the parties, to all intents and purpoſes: *and the Houſe on being informed thereof by the Chairman of the ſaid Select Committee, ſhall order the ſame to be entered on the Journals of the Houſe, and give the neceſſary directions for confirming or altering the return, or the iſſuing a new writ for a new election*, or for carrying the ſaid determination into execution, as the caſe may require."

From this recital, Mr. Speaker, it is manifeſt, beyond the power of contradiction, that we cannot at this time enter into any kind of inveſtigation whether Mr. Kemeys was eligible or not. The firſt motion before you therefore is not only improper, *but illegal*. How does it appear that the Select Committee to whom Mr. Kemeys's petition was referred, have not already inveſtigated and determined this very point? They have given the ſanction of their oaths to a declaration, *that he was duly elected, and ought to have been returned*: of courſe, they have ſworn that he was not, to their knowledge, under any legal diſability or incapacity of being elected. An Hon. Gentleman indeed, who appeared as nominee to his opponent, tells us, that "the Select Committee did *not* determine this queſtion; Mr. Kemeys, (ſays he) was the petitioner, and certainly would not ſtate his own ineligibility. The queſtion never came before them." I beg to know, in reply to this objection, whoſe fault it was that the queſtion

queſtion did not come before them?—Mr. Kemeys it is true did not raiſe a queſtion on his own eligibility, but the ſitting Member, if he had thought fit, might have given notice in writing to Mr. Kemeys, ſeven days previous to the ballot, that ſuch an objection would be made *by him*; or the freeholders in the intereſt of the ſitting Member might have ſtated by petition their reaſons for believing that Mr. Kemeys was under a legal diſability of being returned to the Aſſembly. Either way, the queſtion would of courſe have been referred to the Select Committee, who would have decided upon it in the firſt inſtance. They muſt have determined on their oaths whether Mr. Kemeys was eligible or not, unleſs indeed they had choſen *to report ſpecially on the caſe*. Had they reported ſpecially, it is poſſible that the motion before you might have been proper; but not having done ſo, the queſtion of eligibility is now totally precluded from our deliberations; for the report of the Select Committee being final, we do not, and cannot, formally and conſtitutionally know, that they did not fully conſider and decide on its merits.

Sir, it is laid down in Douglas, and the reaſon of the thing juſtifies the rule, that the Houſe of Commons can receive no information from any individual Member of a Select Committee of what paſſed in the courſe of their proceedings, or of the motives which influenced this Gentleman, or that: ſuch a converſation (ſays Douglas) is highly improper, and it is the Speaker's duty to interpoſe his authority in preventing it; but this I will ſay on behalf of the Select Committee that tried the merits of Mr. Kemeys's petition, that, to the beſt of my judgment and obſervation (for I conſtantly attended their meetings) they acted in every inſtance like men who duly conſidered the ſolemn ſanction by which their determinations were to be guided. — More patient inveſtigation, more judicious, careful enquiry, or greater impartiality, was never diſplayed; but it is a clear principle of parliamentary uſage, that, in trials of this kind, no objection can be noticed by the Select Committee that is not regularly and formally ſubmitted to their conſideration.—I beg the indulgence of the Houſe, Mr. Speaker, while I prove this doctrine, by a caſe, exactly in point, from Douglas's reports.—It is the caſe of the Petersfield election in 1774, on the petition of a friend of mine, the Hon. John Luttrell. This Gentleman was a candidate againſt Sir Abraham Hume, High Sheriff of the county of Hertford, and the circumſtance of his being High Sheriff was ſuppoſed to render him ineligible; but it unluckily happened that the petitioner did not in *expreſs* words alledge, that Sir Abraham Hume *being Sheriff, was thereby ineligible*. He had indeed, in the opening of his petition, ſtated, that he was a candidate againſt Sir A. Hume, *High Sheriff for the county of Hertford*; but this, it was contended, was merely an addition, or *deſcriptio perſonæ*. There ought to have been ſuch an allegation as would have let Sir Abraham Hume know on what particular ground he was to be attacked. This was certainly carrying the objection to a great length;—but the Committee adopted the reaſoning, and reſolved, "that Counſel be not permitted to argue the point of the ineligibility of Sir A. Hume, *it not being an allegation in the petition*." The concluſion which Mr. Douglas draws from the preceding caſe is this, that "a perſon incapacitated by poſitive ſtatute will retain his ſeat, merely, becauſe the individual or individuals who petitioned againſt him, *either by neglect, or deſign*, did not alledge the incapacity in their petition."

After all, Mr. Speaker, the plain truth of the matter I believe to be this, that the ſitting Member (Mr. Thomſon) or his friends, did not chuſe to ſubmit the queſtion of the eligibility of Mr. Kemeys to the judgment of a ſworn Committee. They were ſufficiently apprized that, on this point, the law of Parliament was in favour of the petitioner. Mr. Hatſell, the Clerk of the Houſe of Commons, who muſt certainly be ſuppoſed to underſtand the ſubject as well as any *of us*, declares repeatedly and decidedly, that the circumſtance of a candidate's being in execution for debt *at the time of his election*, creates no legal diſability. Mr. Thomſon's friends, therefore, I preſume, thought it moſt prudent to reſort to the preſent project. By ſtating to this Houſe (after the Committee had made their report) that the queſtion of eligibility had not been inveſtigated, they had hopes of prevailing on the Houſe to take it up; and they wiſhed rather to truſt to a majority *here*, than to a majority of twelve Gentlemen on their oaths. Sir, I am warranted in ſuppoſing this, from the clear and decided caſes on this very queſtion in the Journals

journals of the Houſe of Commons. There is no principle in the law of Parliament better eſtabliſhed, or more poſitively laid down, than this, that neither executions nor even outlawries, for debt, incapacitate a man from ſerving his country in Parliament; notwithſtanding that ſuch proceſs was iſſued previous to the writ of election. The freedom of election is the foundation of all our rights, and muſt, therefore, neceſſarily be ſecure from all manner of civil proceſs. If Gentlemen will take the trouble to read the report of Sir Francis Goodwin's caſe, in the fifth volume of the Parliamentary Hiſtory, they will be perfectly ſatisfied on this head. They will find that a gentleman of the name of Killegrew, having fifty-two outlawries againſt him, was admitted to his ſeat in the Houſe. Sir William Harecourt was found eighteen times outlawed, yet was allowed to ſerve in Parliament. It is even aſſerted (p. 66) that there is not a precedent to be found, that any man was put out of the Houſe for outlawry. "A Chancellor (ſays the report) may call a Parliament of what perſons he will, by this courſe. Any ſuggeſtion, by any perſon, may be the cauſe of ſending out a new writ." Mr. Huddleſtone's caſe in 1624, reported in Hatſell's Precedents, is a confirmation of this doctrine. It was reſolved on the queſtion, that he might ſerve as Knight of the Shire for Cumberland, *notwithſtanding he be outlawed*. Sir Robert Holt's caſe is ſtill ſtronger, and, in one reſpect, preciſely analogous to the caſe of Mr. Kemeys. It is reported by Hatſell in the following words: (v. II. p. 29.)

"On the 16th of February, 1676, information being given to the Houſe, that Sir Robert Holt, a Member, was detained priſoner in the Fleet, the matter is referred to the Committee of Elections; who report, on the 2d of April, "That Sir Robert Holt, *being taken in execution out of privilege of Parliament*, be not diſcharged from his impriſonment." And, "That the outlawry, after judgment, is another good cauſe why he ought not to be diſcharged." TO BOTH WHICH RESOLUTIONS THE HOUSE DISAGREE, AND ORDER HIM TO BE DELIVERED OUT OF CUSTODY."

There is, I admit, *one* caſe in Hatſell, in the year 1625, where it appearing, that a Member was in *execution before, and at the time of, his election*, the Houſe ordered a writ for a new election. This perſon was Sir Thomas Monk, the creature of the Duke of Buckingham, who was at that time under a parliamentary impeachment; and Monk himſelf being univerſally odious to the nation, it is not wonderful that the Houſe treated him with unuſual indignity.

In oppoſition to the caſe of Sir Thomas Monk, there are, in the Journals of the Houſe of Commons, (beſides the inſtance of Sir Robert Holt) the caſes of Sir Trevor Williams, and at leaſt twenty other perſons*, who were allowed to ſerve as Members of Parliament, notwithſtanding they were in execution, *before the date of the writ of ſummons, and in actual confinement at the time of their election*. I admit that Mr. Hatſell is ſomewhat inaccurate reſpecting the caſe of Mr. Aſgill; it appearing by the Journals, that he was returned to Parliament not *after*, but *before*, he was charged in execution: but if we apply Mr. Hatſell's concluſion to the *whole* of the caſes he has cited, he is undoubtedly right in obſerving (—I give you his own words, Sir—) that, "with reſpect to Members *in actual execution at the time of their election*, IT IS CLEAR THIS IS NO DISABILITY; and that they are entitled by law, "that is, by the privilege of Parliament, *to their releaſe*."

If this then is not deciſive, we muſt admit Mr. Hatſell to be no ſufficient authority; but I will add, that if, inſtead of *one* ſolitary precedent, as many can be produced *againſt* Mr. Kemeys, as I can produce in his *favour*, they would avail nothing; not only becauſe where authorities are equal, the ſcale ought to preponderate in favour of liberty; but alſo, becauſe there is not a ſingle inſtance to be produced, ſince the eſtabliſhment of the *Grenville* act, to ſhew that the Houſe of Commons has ever preſumed to interfere with the complete and final determination of a Select Committee. If ſuch an inſtance can be produced, I will give up the whole of my argument.

Having now, Mr. Speaker, ſufficiently diſcuſſed, and I think fairly diſpoſed of, the queſtion of *eligibility*, I ſhall proceed to conſider whether, admitting Mr. Kemeys to have been eligible at the time he was elected, he is enti-

* *Many of theſe caſes Mr. Edwards read at length from the Journals.*

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tled to the privileges of this Houſe as clearly and fully as any other Member?—the only queſtion on which, in my opinion, we have any authority to deliberate, in the caſe of this unfortunate Gentleman. Sir, it is certainly true, that inſtances may be adduced where the privileges of Parliament do not attach to the perſon of an acknowledged Member of the Parliament of Great-Britain, or of the Aſſembly of this iſland. Caſes undoubtedly there are wherein we claim no greater exemption from the proceſs of law than the reſt of the King's ſubjects. A Member of Parliament charged with treaſon, felony, or breach of the peace, cannot, and ought not, to ſhield himſelf from the juſtice of his country, by the plea of privilege. Under charges of ſuch a nature, his privilege is ſuſpended; on his acquittal, they are reſtored. It has been determined alſo, by the Britiſh Houſe of Commons, that parliamentary privilege does not extend to the caſe of ſeditious libels; but to maintain with the learned Gentleman who ſpoke laſt,† that parliamentary privilege has no force in the caſe of execution for debt *previous to the writ of election*, or, *at any time*, in the caſe of attachments on contempt proceſs from the courts of law and equity, is to leave us no privilege whatever; for as to a candidate's being in execution for debt at the time of his election, it is of little avail to ſay that he may be lawfully returned *to*, if liberty to ſit *in*, Parliament be denied him. I would aſk the learned Gentleman what poſſible difference there is, in reaſon and common ſenſe, between electing a candidate purpoſely and avowedly to prevent his being ſent to a gaol, or electing an unhappy Gentleman already in confinement, purpoſely and avowedly to reſtore him to liberty? We all admit and inſiſt, that we are not ſubject to *arreſts*. Now the law makes no diſtinction between an *arreſt* and a *detainer*; for what is *detention* but a continued *arreſt*? Surely what juſtifies confinement in one caſe, muſt juſtify it in the other. If any difference there is in the reaſon of the thing, it is a difference that ſhould turn the ſcale in favour of a candidate of Mr. Kemeys's deſcription. A perſon not in actual execution, may, by obtaining a ſeat in this Houſe, contrive to ſhield not only his perſon, but his property, from his creditors;--but where a man's property is already delivered up, and the confinement of his perſon continued, (as in the caſe of Mr. Kemeys) for no other purpoſe than that of puniſhment, it is an act of humanity and mercy to elect and releaſe him.—It were to be wiſhed undoubtedly, that candidates of both deſcriptions could be excluded altogether; but if their excluſion cannot be effected without ſurrendering the outworks and fences which the conſtitution has built and planted, to give ſecurity and independency to the repreſentatives of the people, the evil muſt be tolerated,—becauſe the remedy would be productive of infinitely greater miſchief than the circumſtance complained of. Sir, when ſome men talk, as is commonly done in mercantile ſocieties, of impriſonment for debt as hardly any puniſhment in itſelf, conſidering any alleviation of it by the interpoſition of the legiſlature, as infringing the rights of creditors, they ſhould be told that creditors have *no* rights in the caſe, but ſuch as the legiſlature has aſſigned to them. No man, by the laws of nature and the principles of morals, has any authority to ſhut up the body of his fellow creature in a caſe of property; more eſpecially after *all* the property which the debtor poſſeſſes, is ſurrendered to the uſe of his creditors. For fraud and robbery, the law has aſſigned its proper puniſhment; but in caſes of mercantile failure, and misfortunes ariſing from natural calamities, to inflict a greater puniſhment than is preſcribed by the laws of the land for felony, is to violate both reaſon and conſcience. How mournful is it to contemplate ſuch a creature as man (at once arrogant and weak) preſumptuouſly aiming to ſnatch the ſceptre from the hand of Omnipotence;—to behold him, in the pride of power and the luſt of revenge, trampling on ſome unfortunate fellow creature, and, impiouſly arraigning Divine Providence for remembering mercy in judgment, adding ruin to the devaſtations of the elements, and exerting his puny malice, to exceed in vengeance the wrath of the Almighty!

Sir, I have ſaid, and I repeat the aſſertion, that creditors have no rights, but ſuch as the legiſlature has allotted to them; to which therefore the rights of the legiſlature itſelf, are infinitely paramount and ſuperior. Theſe laſt, are coeval with the conſtitution; whereas im-

† *Mr. Whitehorne.*

priſonment for debt may be reckoned, comparatively ſpeaking, a modern inſtitution, and was never meant to ſuperſede thoſe pre-exiſtent privileges, on which depend the dignity, the freedom, the independency, and efficacy of Parliament; the ſource and fountain of all ſecurity and credit both public and private. From Magna Charta to the ſtatute of *Marlbridge*, the proceſs againſt debtors was by *diſtringas*, that is, *iſſues of diſtreſs*, which were continued until the defendant was ſtripped of his property, or appeared to the action. After judgment his perſonal property was reached by *fieri facias*—the produce of his land by *levari facias*, and the land itſelf by *elegit*; but his perſon was unmoleſted, and if he had no property, the law, ſays Blackſtone, held him incapable of making ſatisfaction, and therefore looked upon all further proceſs as nugatory. By the ſtatute I have mentioned (the 52d Henry IIId) and that of Weſtminſter (25th Edward IIId) a *capias* was allowed to arreſt the perſon, in actions of *account*. This was afterwards extended to actions of *debt and detinue*; but it was not until the ſtatute 19th Henry VII. that a *capias* was allowed in actions *on the caſe*. During theſe ſeveral periods, a debtor was equally eligible to Parliament with his creditor, and privilege was neceſſarily incident to the parliamentary conſtitution, as well for the ſupport of its authority, as to protect the Members in their attendance. Can it then be ſuppoſed, that the laws, which cautiouſly allowed a *capias* againſt the perſon of debtors, was ever meant to narrow the ſubſiſting privileges of the legiſlature itſelf? Did Parliament mean that its juriſdiction ſhould be ouſted by implication? For, Sir, I deny that there are any words, or ſhadow of words, in the laws I have referred to, by which its then-exiſting privileges are ſurrendered. If there are, let the learned Gentleman point them out. From theſe laws, however, and from theſe laws only, originated the power which is now exerciſed (and in many caſes, I am ſorry to ſay, with moſt outrageous and unmerciful ſeverity) over the perſons of unfortunate debtors. Sir, I ſhudder to relate to you, that a Committee of this Houſe, not a fortnight ago, found fourteen white debtors in the gaol of Kingſton, the ſum total of whoſe debts amounted to no more than 33l. 12s. 11d. currency. For this paltry ſum were fourteen able perſons ſhut up, in this climate, the miſerable victims of filth, inactivity, diſeaſe, and deſpair. When I conſider, Mr. Speaker, the age in which I live (poliſhed and refined as we are told it is) I confeſs to you, that I cannot relate this circumſtance without ſhame and confuſion. I feel for the honour of human nature, and almoſt bluſh to think myſelf a man!

To the ſame authority to which I have reſorted on the ſubject of impriſonment in civil actions, let us again recur for the origin of parliamentary privilege. "It was eſtabliſhed, ſays the learned Judge, to protect the Members not only from being moleſted by their fellow ſubjects, but alſo from being oppreſſed by the power of the Crown.—They are immunities as ancient as Edward the Confeſſor." I admit that parliamentary privilege was originally much too extenſive; for it exempted Members not only from illegal violence, but alſo from all proceſs by the courts of law in the ordinary courſe of juſtice. The wiſdom of the legiſlature has ſince reſtrained, and juſtly reſtrained, pretenſions ſo exorbitant; but as to the freedom of a Member's perſon in caſes of civil proceſs, if *that* privilege is to be aboliſhed, there is an end of Parliament itſelf.

Concerning attachments for contempts, whether iſſuing from the courts of law or equity, ſo much was ſaid on a former occaſion, when an honourable Member of this Houſe demanded, and was allowed, his privilege againſt a *capias pro fine* iſſued by the Grand Court, that it is wholly unneceſſary to dwell long on the ſubject. If privilege was allowed to Mr. Murphy, with what pretence can it be denied to Mr. Kemeys? The Court of Chancery exerciſes no greater power over the perſon of a Member of Parliament, in matters of contempt, than the King's Bench. The argument which applies in caſes of debt, applies equally to attachments from the courts of law and equity. Except to ſuch as are neceſſary to protect the court from inſult, and ſuch as are in the nature of criminal proceſs, privilege of Parliament is always allowed in Great-Britain. I ſhall be told, perhaps, that all attachments partake of the nature of criminal proceſs. I deny the aſſertion. I inſiſt, that an attachment out of the Court of Chancery for the non-performance of a decree, is conſidered only as an *equitable execution*; and was never placed above an *execution at common law*.

law. The privilege which is extended to the one, extends *a fortiori* to the other.

On the whole, Sir, the queſtion is brought to a ſhort iſſue; and it is nothing leſs than, *whether we have an Engliſh conſtitution or not?* If the law of Parliament, as it has ſubſiſted for ages, in the mother country, is no part of *our* inheritance, we certainly have no right either to give Mr. Kemeys a ſeat in this Houſe, or to ſit here ourſelves. To ſay that we are PERMITTED to deliberate,—that we are ALLOWED, for the ſake of conveniency, to paſs laws adapted to our local ſituation and circumſtances, is to aſſert in other words, that we have no rights but ſuch as it pleaſes the King to allow us:—an aſſertion, which, I believe, no Gentleman in this Houſe will venture to make.—If ſuch a man there is, be his learning and abilities what they may, I am ready, on that ground, to meet him.

I have now, Sir, gone through the caſe before us; but cannot conclude without obſerving on the ſtrong appeal which an honourable Friend near me has made in behalf of widows and orphans, againſt the claims of debtors to protection. I want no protection myſelf, Sir; and could I believe that wealth would not abuſe its influence;—that an opulent man would never aim, by undue means, to bias and direct the deliberations and conſcience of his leſs affluent neighbour;—were it certain that power would never attempt the perverſion of juſtice;—could I reſt aſſured that impartial enquiry would be ſuffered to exert and diſplay itſelf uncontrouled in this Houſe;—I ſhould certainly vote for the total abolition of parliamentary privilege; but I fear that ſuch expectations are fruitleſs, and we muſt content ourſelves with human nature as we find it. On the preſent occaſion, however, I am happy to ſay, that neither orphans or widows will have cauſe to lament our deciſion; for as Mr. Kemeys has already ſurrendered *his all*, his creditors would gain nothing by his confinement, were they even to add the remainder of his life to the ſix years of impriſonment which he has already ſuffered.

Sir, to conclude, if Mr. Kemeys, in conſequence of our proceedings this night, ſhall be denied the privilege of ſitting and voting in this Houſe, as freely as any other Member, I ſhall give it as my opinion, that the law and privileges of Parliament, the rights of men, and the dictates of humanity, are all ſurrendered and ſacrificed to the baſe and ignoble purpoſes of wounded pride, and the gratification of ſelfiſhneſs and revenge!

On the queſtion being put, after a debate of eight hours, Mr. Whiteborne's motion was negatived, by a majority of 20 *to* 16. *After which Mr. Bourke's motions were carried, and Mr. Kemeys took his ſeat the ſame night, amidſt the acclamations of a great concourſe of people.*