ARGUMENT

UPON THE

JURISDICTION

OF THE

HOUSE OF COMMONS

TO COMMIT,

IN CASES

OF

BREACH OF PRIVILEGE.

BY

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LONDON:

Printed by Cox, Son, and Baylis, Great Queen Street;

For J. BUDD, Bookseller to H. R. H. the Prince of Wales,
No. 100, Pall Mall.

1810.

AN

ARGUMENT,

&c. &c.

THE following argument contains the substance of what I had intended to have delivered in my place in Parliament, on the question, respecting the Legality of Commitment by the House of Commons, had I not been deterred, both by the lateness of the hour, and by the great ability with which the subject had already been treated, particularly in Mr. Adam's speech.

The question can only be considered in two lights:—what actually is the law upon the subject; and what it ought to be, according to the general principles of our constitution. The decision of the first question will be conclusive,

as to the legality of what has already been done but the consideration of the second is doubtless necessary, for the upright discharge of the duties of Parliament.

The laws of England are, as it is well known, divided into two kinds, the unwritten, or common law, and the written, or statute law. Within the first description, all our writers include the Law of Parliament. It is a branch of our common law, standing on the same grounds, and to be ascertained by the same rules as every other part of it.

"The only method of proving that this or "that maxim is a rule of the common law, is "by shewing, that it hath always been the "custom to observe it;* and it is laid down as "a general rule, that the decisions of courts of "justice are the evidence of what is common "law." † The evidence, therefore, of the law of Parliament must, in like manner, be learnt from the practice and decisions of that court, or as Sir Edward Coke expresses it, "out of the rolls "of Parliament and other records, and by prece-"dents and continued experience." ‡

Nothing

* Blackstone, I. 68. † Ibid. I. 71. ‡ 4th Inst. 50.

Nothing can be more deceitful, than the attempt to argue any part of this question by analogies, drawn from the powers or practice of inferior courts. The principles on which they rest are not the same; the necessity in which they originate, and the purposes for which they are exercised, are materially different.

It has long since * been declared by the judges, that they ought not to make answer to a question concerning privilege of Parliament; "for it hath not been used aforetime, that the "justices should, in any wise, determine the "privileges of the High Court of Parliament."

The authority of this high court is supreme, and paramount to that of every other within this kingdom, and the whole of that authority has, from time immemorial, been separately possessed and exercised by each of the Houses, in so far as is necessary for their own distinct functions. Each House is a Chamber of the King's High Court of Parliament: in each of them the King's person is, in the eye of the law, perpetually present; and it is expressly stated by Lord Coke, in his fourth Institute, that "the Lords, in their "House, have power of judicature, and that

 "the

* 31 Hen. VI.

"the Commons, in their House, have power "of judicature also."*

Appeals from the inferior courts are directed to the Parliament, yet the duty of deciding upon them is, by long usage, performed by the House of Lords only, which, for this purpose, uses the style and authority of the whole Parliament. Other functions of Parliament belong exclusively to the Commons; but the whole of the law and custom of Parliament proceed on this maxim, "that whatever matter "arises concerning either House, ought to be "examined, discussed, and adjudged, in that "House to which it relates, and not elsewhere."†

The House of Commons, therefore, possesses a complete and exclusive judicature in all matters of election; and both Houses, separately, possess the same, upon all subjects concerning their respective privileges; the violation of which has ever been considered as a distinct and substantive offence, cognizable only in the respective Houses of Parliament, and punishable by their sentene.

Of the same nature with the error of expounding the privileges of Parliament by analogy, is that of

* Coke, 4 Inst. 23.

† Blackstone, I. 163. Coke, 4 Inst. 15. 363.

of comparing the inquisitorial functions of the House of Commons to those of a grand jury. It is an inquest, but an inquest of a very different description. A grand jury is, in its nature, transitory, and limited in its powers. It has no means even of originating any enquiry; no power of summoning a witness, or of hearing a defence. The House of Commons is an original and permanent part of the highest judicature in the country, and, as a Chamber of Parliament, combines the magisterial and judicial functions with those of a permanent and universal inquest.

It has therefore the right of committing to custody for high treason or misdemeanors, which it may think fit to investigate, either by impeachment, or other criminal prosecution.

Many fallacies have arisen from the maxim first stated by Montesquieu, and since copied by other theoretical writers, that it is a principle of the constitution of England, to separate the legislative authority entirely from the judicial. On the contrary, it is of the very essence of Parliament, that this high court should unite the supreme power, both legislative and judicial, and that, as such, it should not only be a court of appeal, but should also, in both its chambers, exercise a constant superintendance and supremacy

macy over all other judges and courts whatever, instead of being in any manner subject, or subordinate to them. And this principle applies alike to both Houses in the exercise of their own functions, and particularly in the punishment of breaches of their privileges.

The House of Commons, in its celebrated apology of 1621, distinctly asserts its own claim to be a Court of Record.* To the records of that court we must, therefore, appeal for its practice.

This reference would, indeed, be superfluous, if any credit were due to some modern arguments on the subject. We have lately been told, "that "the acts of the House of Commons, be they ever "so numerous, can never be admitted as prece-"dents to establish their own claims;" and† "that the modern decisions of such men as De "Grey, Mansfield, or Kenyon, can hardly be "worth quoting, on either side of the question."‡

How then is the law to be learnt? The decisions of the Commons must either have been submitted to, as legal and regular, in which case they would only appear by the records of the House of Commons; or attempts must have been made

* "We avouch, also, that our House is a Court of Re-"cord, and so ever esteemed."

† Sir Francis Burdett's Letter, page 51. ‡ Ibid. p. 54.

made to question them in other courts, and the legality of such attempts must thus have been brought under the decision of "such men as De "Grey, Mansfield, or Kenyon;" men, whose names will be revered and honored, so long as that law subsists, with which their determinations are embodied.

It must, therefore, be sufficient, to decide this question, if we prove, that the power, now claimed, has been constantly exercised by the House of Commons from the earliest period, and that its exclusive jurisdiction in such matters has, whenever it has been disputed, been maintained and justified, by the most enlightened and upright judges who have sat in Westminster Hall.

The difficulty, in this case, consists rather in selecting, than in discovering authorities.

The number of instances, in which the House of Commons has directed the commitment, imprisonment, or custody of delinquents, from the year 1547 to the present time, amounts to little less than a thousand.

How many cases may have occurred, previous to that period, it is impossible to ascertain, as the journals of the House of Commons, in which alone they would be recorded, have not been preserved

served to us from any earlier date. As, however, the case of Ferrers, in 1543 (which survives by the relation of a contemporary historian), and those of Fludde and Crikestoste, in 1552, of Monington, in 1554, and of Trower, in 1559, appear to have passed without question, no one can doubt, that the power of commitment to custody, for breach of privilege, must have been familiar in those days, and exercised in former instancs

It is not a little singular, that Sir Francis Burdett, in quoting the case of Ferrers, from the publication of Mr. Hatsell, who copies the exact words of Holingshead, should have totally altered the most material fact in the case.

Sir Francis gives the following abstract.

" In 1543, in the case of George Ferrers, who
" was arrested, and who, as well as being a
" Member of Parliament was servant to the
" King, on *which account* the Commons seem to
" have proceeded in a different manner, by
" sending their Serjeant at Arms, *for the first*
" *time*, to relieve their member. This was re-
" sisted by the Sheriffs with violence: the Ser-
" jeant had his mace broke, and returned with-
" out the member; whereupon the Sheriffs WERE
" SUMMONED

SUMMONED BEFORE KING, LORDS, AND COMMONS, who referred their punishment to the latter who sent them to jail." *

It is unnecessary here to remark, that there is no evidence whatever, that this was the first time that the House of Commons sent their Serjeant to relieve a Member under arrest, or that it was done on account of his being the King's servant, as Sir Francis has been led into these errors by Mr. Hatsell's remarks; but the assertion, that the Sheriffs were summoned before *King, Lords, and Commons*, is exclusively his own.

No trace appears of this fact, but, on the contrary, this part of the case is thus related in the book, from which Sir Francis professes to have taken it:

" The Serjeant, having then further in com-
" mandment from those of the Neather House,
" charged the said Sheriffs to appear personally,
" on the morrow, by eight of the clock, before
" the Speaker of the Neather House."†

It is also to be observed, that, in this case, the Commons alone took cognizance of the breach of their privileges, committing the two Sheriffs, and

* Sir F. Burdett, p. 21.

† 1 Hatsell, 53.

and White, who occasioned the arrest, to the Tower, and the five officers, who executed it, to Newgate; and that they refused the writ which the Lord Chancellor offered to grant for the delivery of their Member, upon the express ground, that all commands of the Lower House were to be executed by their own authority.

To enter fully into the particulars, or even to insert the names of all the other cases of commitment by the House of Commons, would be tedious and unnecessary. I shall, therefore, only state a few, which relate to libel, or to scandalous words, or which, upon other accounts, may be considered more immediately to apply; and it will be found, that, for the last two hundred and fifty years, there has never been any considerable interval, during which offences of this nature have not in this manner been proceeded against and punished by the House.

On the 15th April 1559, William Thrower, charged with having spoken evil words against the state of the House, is committed to the Serjeant's keeping.

On the 29th February 1575, Walter Williams, is charged with unfitting speeches, in mislike of the present state and government of

of this realm, as also for threatening and assaulting a Member, is committed to the custody of the Serjeant.

On the 4th February 1580, occurs the case of Arthur Hall, who is complained of for "a book, not only reproaching some particular good Members of the House, but "also very much slanderous, and derogatory "to the general authority, power, and state "of this House, and prejudicial to the validity "of its proceedings, in making and establishing "of laws." The result is, a sentence of imprisonment in the Tower, a fine of five hundred marks, and expulsion from the House.

It is perfectly true, that from the entries in the journals it appears, that his offence was aggravated by subsequent misconduct; but still, the original and substantial offence was, undoubtedly, the slander upon the general authority of the House; and this seems clear, from the account of this case, which is reported by Heywood Townsend,* to have been given in a debate upon the 28th of November 1601, when upon the question, whether Holland, who had

 assaulted

* Page 260.

assaulted Fleetwood, a member, and used contemptuous words, should be committed to the Tower, or to the Serjeant at Arms? Mr. Bacon* is said to have thus expressed himself:—

"I have been a member of this House "these seven Parliaments, yet never knew of "above two that were committed to the Tower. "The first was Arthur Hall, for saying the "Lower House was a new person in the Trinity; "which, because these words tended to the "derogation of the state of this House, and "giving absolute power to the other, he was "committed. The other was Parry, that for "a seditious and contemptuous speech, made "even here, was likewise committed, &c. &c."

Some observations have been made upon the accumulated punishment of fine, imprisonment, and expulsion, inflicted on Mr. Hall, as taking away all authority from this case, and proving it to have been wholly illegal. This proceeds upon

* Query—Was this Lord Verulam?

The fact of his having then already been a Member in seven Parliaments seems to throw a doubt upon it; yet I do not find any other Francis Bacon in the list of the Parliament of 1601.

upon the discontinuance of the practice of imposing fines by the Commons, who are therefore, supposed to have abandoned this power, as one, to which they were not entitled. It was, however, exercised by the House, before Mr Hall's case, and in various instances for near a hundred years after it. The last of these occurred on the 6th February 1669, when a fine of £1000 was set upon Thomas White, who having been ordered into custody for arresting a Member, had absconded.

Since that time, no instance has occurred; but whatever might be urged against the expediency of reviving this dormant power, it would be difficult to disprove the existence of a right, so long exercised by the Commons, and still practised in cases of contempt by the House of Lords, as well as by inferior courts.

16th November 1601, complaint was made of a libel, entitled the "*Assembly of Fools.*" Henry Davies and another, are sent for in custody, but the book appearing to be harmless, they are discharged.*

19th March 1603, Bryan Tashe, a yeoman of the guard, is complained against, for contemptuous

* Townsend, 216.

temptuous terms, and committed to the Serjeant at Arms.

16th June 1604, Thomas Rogers, for abusing a Member in slanderous and unseemly words, touching a bill then depending in Parliament, is sent for in custody.

15th May 1604, William Jones, a printer, for putting into the hands of the Speaker a bill, entitled "an act for treasons practiced "by A. B.," concealing the name, is ordered into the custody of the Serjeant by the Speaker. The House avow the commitment. The King afterwards sends for the bill, (which the Speaker, without having obtained the consent of the House, delivers to him), and assumes to himself the examination.

17th May, it is resolved, that it may not be drawn into precedent, for the Speaker to inform the King of any bill, before the House is acquainted with it; and that some of the House may be present at the examination of Jones.

23d May, That Jones the prisoner be sent for hither, and do attend his discharge from the House.

That the prisoner committed by us, cannot be taken from us and committed by any other.

4th

4th July 1625, Foreman is charged by the Speaker with words concerning the bill against swearing, the words are proved by two witnesses, Foreman to remain with the Serjeant till further debate.

7th July 1625, Mr. Montague is charged with having written a book, which is referred to a Committee. They report the book factious and seditious, and it is resolved, that, "under the "names of articlers and informers, Yates and "Ward, he hath stricken at this House."

Sir Edward Coke particularizes his traducing Yates and Ward for petitioning this House as a contempt. Upon question, the House resolves, that "Mr. Montague, *super totam materiam*, hath "committed a great contempt against this House," and commit him to the custody of the Serjeant.

30th Jan. and 7th Feb. 1628, Aleyne, for a book, petition, and articles preferred to the King, is ordered into custody of the Serjeant, and to answer his contempt to the Commons House of Parliament. In the same year, Sir Thomas Horwood, Lewes, Pemberton, and Burgess, are, at different times sent for, in custody, to answer for offensive words charged against them.

Many other cases might be quoted of commitments, prior to the commencement of the

Long

Long Parliament, for assaults upon Members, for misdemeanors at elections, and for other breaches of privilege, equally distinct from actual obstructions, to which alone some persons have, by a doctrine equally novel and groundless, supposed that the right of the House of Commons to commit, should be limited.

It has been said, that Hall's is the only case of slanderous or offensive *writings* punished by the House, previous to the Long Parliament; Montague's and Aleyne's are, undoubtedly, other instances, and the case of the 16th November 1601, above stated, equally proves the practice of the House to take cognizance of libellous publications against its Members or proceedings; but if Hall's case did stand alone, it surely will not be contended, that a power to take cognizance of words *spoken*, does not also extend to the case, where the same words are embodied in a more permanent shape, and committed to more extensive circulation, by *writing* or *printing*.

The probable reason, why there were not more instances of printed libels, or misrepresentations of the proceedings of the House, is, that the order for excluding strangers was, at that time, rigorously enforced;* and the votes of the House

* There are, in the above period, several instances of the commitment of persons who had entered the House, not being Members, and of detaining them for some time in custody; vide 5th April 1571, 13th February 1575, 23d January 1580, 31st March 1610, and 2d April 1628.

House were not made public, so that none but Members could remark upon what passed.

The restraints then imposed on the press, must also be considered. The extreme severity of the times, and the oppressive judicature of the Star Chamber, almost entirely prevented the printing of libels in England. The few which were printed abroad, related chiefly to the person of the Sovereign, or to religious disputes, in which the people took more interest than in the proceedings of the House of Commons.*

The Statute (1. Jac. I. cap. 13. sec. 3) distinctly recognizes the right to commit breakers of privilege. After regulating the discharge of privileged persons, who may have been arrested, it provides, "That this act, or any thing "herein contained, shall not extend to the di-"minishing of any punishment, to be hereafter, "by censure in Parliament, inflicted upon any "person, which hereafter shall make, or procure "to be made, any such arrest, as aforesaid."

* Among the numerous collections which have been made, of books and tracts, relating to the history of Parliament, I am not aware, that a single libel upon Parliament published at this period, can be found.

From the commencement of the Long Parliament, the precedents of commitment for libels on the House of Commons became very numerous; and their authority is greater, because the House reckoned among its members, at the beginning of that Parliament, persons of more deep research, of more acknowledged legal and historical learning than at any former period. Soon afterwards indeed, the times became more turbulent, and it might not be fair, to quote, as authorities to define the legitimate power of the House of Commons, any of those cases which occurred after the separation of the King from the Parliament, unless they had been recognised and acted upon as precedents after the Restoration.

At that memorable æra, all the usurpations of the House of Commons were renounced, and the power of the King and Lords re-asserted; but the right of the Commons to commit for breach of privilege was retained, and one of the strongest cases of its exercise will be found to have taken place within a few months after that event.

Mr. Maurice Tompson, having violated the privilege of the House, by suing a Member, was ordered into custody of the Serjeant at Arms.

The Serjeant reported,* that he was denied

* 23d December, 1660.

admittance at Mr. Tompson's house, and that slighting and contemptuous words were given, touching the warrant; upon which the House immediately resolved, that Mr. Maurice Tompson be sent for in custody as a delinquent, and that the Serjeant at Arms be empowered *to break open* Mr. Tompson's *house*, in case of resistance, and also to bring in custody all such as shall make opposition therein; and he is directed to call to his assistance the Sheriff of Middlesex, and all other officers, as he shall see cause, who are required to assist him accordingly.

24th January 1670, it being reported to the House, that the Under Sheriff of Gloucestershire, and others, had assaulted the Deputy Serjeant, and rescued from him a person committed for a contempt, it is resolved, that the Serjeant at Arms, or such Deputy or Deputies as he shall appoint shall apprehend the Under Sheriff, and other persons concerned; "and the High Sheriff "of the county of Gloucester, and other officers "concerned, are to be required, by warrant "from the Speaker, to be aiding and assisting in "the execution of such warrant."

The same doctrine may be learnt from the cases of

Sir George Ratcliffe..... 14 November 1640,

and Sir Basil Brooke.... 11 January 1641, previous to the civil war.

A general order of the same kind was made on the 6th of April 1679, and on the succeeding day a Constable of the name of Blyth is sent for in custody for refusing to aid and assist the Serjeant at Arms.

The last-mentioned cases are, at the present moment, worthy of particular attention, as striking illustrations of that power which belongs to the warrant of the Speaker, issued by command of the House of Commons. But even without the authority of direct precedent to this point, it would be evident, that the right of breaking doors, and of requiring the aid of all persons, whether civil or military, must be an incident to that warrant.

The paramount and controuling supremacy of Parliament is the grand foundation of our constitution: all, therefore, that is necessary, for the effectual exercise of those functions with which the law of Parliament invests its respective chambers, must incontestibly form a part of that law. Power, in such cases, supposes a correspondent duty, and for the discharge of that duty, all adequate means must be provided, by the authority of the same law by which the duty itself

itself is imposed. This is the universal rule, not of the English law alone, but of every rational code of jurisprudence: it originates in the very nature of law itself.

It has been truly said, that the Speaker's warrant is a thing *sui generis*. It was issued, in its present form above two hundred years ago; and if analogies were to be resorted to, to interpret that which rests on its own grounds, the only instrument to which it could be assimilated is an order of the House of Lords; these being the only two Courts, between whose proceedings any common principle can be traced. By the custom of the House of Lords, their order is authenticated by the signature of the Clerk of Parliament: by the practice of the House of Commons, their warrant is issued under that of the Speaker, who, for this, as for many other purposes, represents the whole authority of the House. Neither of them is authenticated by any official seal; but both carry with them the full evidence of the authority under which they issue: the authority of the King's highest court, superior to every other within this realm.

But, even to those who argue from the mistaken ground of analogies in inferior courts, it should

should seem, that this question, as to the power of breaking doors, must be equally clear. It is a point generally understood, that this power is incident to every attachment for a criminal contempt, from any of the courts of Westminster Hall.

But the commitment of the House of Commons, in such cases as these, is of much higher authority. It is the consequence of a regular sentence, passed after conviction of a legal offence; it is, as is stated by Sir William Jones and Serjeant Maynard, in Sheridan's case, and by Chief Justice De Grey, in Brass Crosby's, of the nature of a judgment and execution, to which the power of breaking doors indisputably appertains.

4th February 1661, Thomas Radcliff is ordered to be apprehended for a scandalous paper against a Member, in breach of privilege.

24th March 1661, George Withers (the poet) for a scandalous and seditious pamphlet, to enrage the people, and to vilify and defame the members, and to blemish the honor and justice of the House, and their proceedings, is committed to the Tower.

See also the cases of

Hill and Field	24	August	1661
Drake	17	November	do.
Gregory	19	February	do.
Green	7	March	1662

Thorp	5	March	1667
Howard	26	October	1675
Dr. Nalson	26	March	1679
Janeway	9	November	1680

Within this reign, and after the Revolution, those of

Baldwin	9	November	1691
Dyer	17	February	1696
Dover and Hoskyne	30	November	do.
Rye	11	January	do.
Salusbury	1	April	1697
Tutchin and others	3	January	1703
Buckley	11	April	1712
Berrington	1	July	1715
Bishop	19	December	1718
Parker	24	February	1722
Cooley and Meres	2	December	1740
Shade and Thornton	9 and 10	December	1768
Stuart	26	April	1805

and several others, who are all committed, for publishing or dispersing papers reflecting upon, or misrepresenting the conduct of the House and its Members.

In the year 1675 arose the great dispute between the two Houses, relative to the appellant jurisdiction of the Lords, and the exemption of Members of the House of Commons from appearing to appeals.

In the course of this dispute,* the House of Commons voted a resolution, "That whoso-"ever should appear at the bar of the House of "Lords, to prosecute any suit against any Mem-"ber of this House, shall be deemed an in-"fringer of the rights and privileges of this "House."

Serjeant Pemberton, and three other lawyers, notwithstanding this resolution, in obedience to an order of the House of Lords, appeared as counsel at their bar, in the appeal of Crispe *versus* Dalmahoy, and the House of Commons ordered them into custody of the Serjeant at Arms.†

Upon this occasion, for the first time, the right of the Commons to commit appears to have been questioned. The House of Lords, at a conference, asserted this proceeding to be a transcendent invasion on the right and liberty of the subject, and against Magna Charta, the Petition of Right, and many other laws, and directed the Usher of the Black Rod, to set the persons committed at liberty.

The House of Commons, in reply, declare: "That it is, according to the known laws and "customs

* May 15.

† June 1.

"customs of Parliament, for the House of "Commons TO PUNISH, BY IMPRISONMENT, A "COMMONER, THAT IS GUILTY OF VIOLATING "THEIR PRIVILEGES; and that neither the Great "Charter, Petition of Right, or any other laws, "do take away the law and custom of Parliament "or of either House of Parliament."

The Persons committed, and set at liberty by the Black Rod, were immediately afterwards retaken by the Serjeant, and ordered by the House of Commons to be sent to the Tower.—The House also resolved: "That no person "committed by order or warrant of the House, "for breach of the privileges, or contempt of "the authority of the House, ought to be dis-"charged during the session of Parliament, "without the warrant or order of the House."

Upon the result of this contest, the Commons completely succeeded in establishing the power which they claimed.

The persons committed were, notwithstanding the resolutions of the Lords, retaken and detained in custody; nor did they, who were themselves lawyers of some eminence, presume to question the legality of their imprisonment, by any proceeding after the prorogation.

In 1680, Mr. Sheridan, having been previously committed upon a charge of being connected with the Popish Plot, applied for a *habeas corpus* to Baron Weston.

The subject was brought forward in the House of Commons by Mr. Boscawen, on the 30th of December 1680,* when a debate occurred, which as it states the opinions of some of the first legal and parliamentary authorities of that age, in the session immediately following the passing of the Habeas Corpus Act, is particularly worthy of attention.

Sir William Jones, who is said by Temple to have been considered as the first lawyer in England, thus expresses his opinion.

"The privileges of both Houses are concerned in this business, and in that, the very "being of Parliaments, and therefore we must "be careful what we do in it. I have perused "the Habeas Corpus Bill, and do find, that "there is not any thing in it that doth reach, or "can be intended to reach, to any commitment "made by either House of Parliament, during "session. The preamble of the Act, and all the

* Cobbett's Debates, Vol. iv. p. 1262.

"the parts of it do confine the extent of the Act "to cases bailable, and directs such courses for "the execution of the Act, as cannot be under-"stood should relate to any commitment made "by either House. This House is a court of "itself, and part of the highest court in the "nation, superior to those in Westminster Hall; "and what laws this House joins in making, "are to bind inferior courts, but cannot be un-"derstood to bind themselves, as a court. That "would prove not only dangerous, but destruc-"tive to the dignity of Parliaments, and level "them with the courts in Westminster Hall. "Great care ought to be taken, how you allow "of restraints and limitations to the proceedings "of both Houses, being so great a part of the "legislative power of the nation, lest thereby "you should, by degrees, render them useless. "A commitment of this House is always in na-"ture of a judgment, and the act is only for "cases bailable, which commitments upon "judgments are not; at least commitments by "this House were never yet allowed to be bail-"able: and I suppose you will never grant "them so to be. Can it be imagined, that this "House, who represent all the Commons of

 "England,

" England, should not be entrusted with so " much power, for the preservation of their " constitution, upon which the support of the " government so much depends, as ordinary " courts and offices are entrusted with, which " are only designed for the welfare of particular " persons. I am of opinion, that no act can de- " prive this House of that power which they " have always exercised, of committing persons " without bail, unless in express words it be so " declared; nor of discharging upon bail, after " committed. The same reasons which may be " given for discharging such as are not commit- " ted for breach of privilege, if it be grounded " on the Act for the Habeas Corpus, will hold " as strong for the discharging of persons com- " mitted for breach of privilege, and so, con- " sequently, deprive this House of all its power " and dignity, and make it insignificant. This " is so plain and obvious, that all judges ought to " know it; and I think it below you, to make " any resolve therein, but rather leave the judges " to do otherwise, at their peril, and let the " debate fall without any question."

In these opinions, the then Speaker (Mr. Williams,) Serjeant Maynard, Serjeant Stringer, and Sir F. Winnington concur.

The case being again mentioned on the next day, * Sergeant Maynard says: " I am clearly " of opinion, that this is a cause out of the " statute of Habeas Corpus † and a commitment " is not only a judgment of this House, but an " execution, and though the statute does not " mention the Parliament, other Courts shall " not grant it in *(case of)* judgment and execu- " tion. There can be no trial of one committed " from this House, but in this place, and this " act is not intended for commitments from " hence. Suppose Sheridan should bring an " action against the judge *(for refusing a Habeas Corpus)* " if your commitment be for breach of " privilege, no inferior Court will judge of it." ‡

Mr. Powle. (who was afterwards Speaker) " Anciently, the judicial power of Parliament was " exercised by King, Lords, and Commons, but, " for some ages past, we and the Lords, by tacit " consent, have had a separate jurisdiction in " that point, and they punish for their breaches " of privilege, and we for ours." §

On

* Grey's Debates, vol. viii. p. 229.

† In conformity to this opinion of Serj. Maynard, it will be found that the writ of Habeas Corpus issued in the cases of Crosby, &c. is at common law and not at Statute.

‡ Grey's Debates, vol. viii. p. 231.

§ Ibid. 232.

On the 7th of January the House is informed, that a writ of Habeas Corpus had been directed to the Serjeant of the House, to bring the body of Mr. Sheridan to Mr. Baron Weston's house. The debate upon the subject is adjourned till the next day, and Parliament being prorogued on the 10th, it does not appear whether Sheridan was discharged or remanded, or whether he was brought to the judge's house till after the prorogation. Probably, however, there was no decision upon the subject, or it would have been mentioned in the subsequent debates of 1697 and 1704, on Duncombe and the Aylesbury men, as the case is there repeatedly alluded to.

After the dissolution of the Oxford Parliament, Charles II. took the resolution of governing without Parliaments, and of resorting to to every means to lower their credit and authority. With this view, in the year 1683, an information was filed against the late Speaker, Mr. Williams, for having, by order of the House of Commons, directed the printing of Dangerfield's information, many parts of which reflected on the Duke of York, and actions were commenced by Jay, and eight other persons, who had been committed by the House of Commons,

mons, against Topham, the Serjeant for false imprisonment.* In both instances, the Defendants pleaded to the jurisdiction of the Court, that what they had done by command of the House of Commons was not cognizable elsewhere. This plea was, in both cases, over-ruled.

Immediately after the Revolution, † the House of Commons took these cases into consideration, and summoned before them the two surviving judges, Pemberton and Jones, who had given judgment for over-ruling Topham's plea. Upon being questioned, as to the grounds of their judgment, they distinctly stated, "that they "*did not doubt* the authority of the House *to* "*commit*, and that they should have held Top-"ham's plea perfectly good, if pleaded as a "justification; but that they thought it bad, as "a plea to jurisdiction, because, if it had been "allowed, there would have been no place "where it could have been enquired, whether "the Serjeant had exceeded his authority." How far

* It appears from Roger North, that one of these actions, *viz.* that brought by Verden, rested upon different grounds. Parliament was prorogued, while he was on his way to town, in custody of the Serjeant. And the action was founded on the subsequent imprisonment.

† July 10 and 19, 1689.

far the obvious answer to this difficulty, *viz.* that any abuse of the process of the High Court of Parliament was cognizable in the Court from which the process issued, ought not to have been sufficient, I will not presume to decide,—so unsatisfactory, however, did the House of Commons consider this explanation of the Judges that they resolved,

"That the orders and proceedings of this "House being pleaded to the jurisdiction of the "Court of King's-Bench ought not to be over-"ruled;" and committed the two judges into custody, where they remained above three months, till the end of the session.

In reference to these cases, also, the Bill of Rights, after enumerating, among the invasions of the constitution, "the prosecutions in the "Court of King's-Bench, for matters and causes "cognizable only in Parliament," declares "that the freedom of speech and debates, or "*proceedings* in Parliament, ought not to be im-"peached or questioned, in any Court or place "out of Parliament."

That this declaration applies specifically to the cases of the prosecutions of the Speaker and Serjeant will be evident, when it is observed, that no other cases had occurred in the reigns of Charles II.

Charles II. or James II, where it had been attempted to question, in any other Court or place, the freedom of proceedings in Parliament.

25th January 1697, Mr. Duncomb, a Member, for contriving and making false indorsements on Exchequer Bills, is committed to the Tower; and on the 1st of February is expelled, and a bill of pains and penalties ordered against him. The bill is afterwards rejected by the Lords, who thereupon order him to be discharged from his imprisonment.

The House of Commons, after examining the journals for precedents, on the 22d March resolve as follows:—

"That no person committed by this House "can, during the same session, be discharged "by any other authority whatsoever.

"Charles Duncomb, Esq. having been "committed by order of this House, and after-"wards discharged by order of the House of "Lords, without the consent of this House; "Resolved,

"That the said Charles Duncomb, Esq. be "taken into the custody of the Serjeant at Arms "attending this house."

He

He was accordingly apprehended, and kept in custody till the end of the session.

22d April 1699, Woodgate, for printing a false, scandalous, and malicious paper, reflecting on Members of the House, is committed; and on the same day, in consequence of a complaint against Mr. Chivers, it is resolved: "That the publishing the names of the Mem-" bers of this House, and reflecting on them, " and misrepresenting their proceedings in Par-" liament, is a breach of the privilege of this " House, and destructive of the freedom of Par-" liament." *

8th May 1701, Mr. W. Colpepper, T. Colpepper, and three others, are committed, first to the Serjeant, and then to the Gatehouse, for presenting the celebrated Kentish Petition, which the House declared to be "scandalous, insolent, " and seditious, tending to destroy the constitu-" tion of Parliaments, and to subvert the go-" vernment of these realms."

On the 7th of February following, a dissolution having intervened, the new Parliament took

* The same resolution had been voted on the 28th of October 1696.

took Mr. T. Colpepper's subsequent conduct into consideration, and after voting him guilty of "promoting scandalous, villainous, " and groundless reflections on the late House of " Commons" committed him to Newgate, and also directed the Attorney General to prosecute him for that offence, and for his corrupt practices at the Maidstone election.

The following resolutions, asserting the privileges of the House, were afterwards, among others, agreed to:

"That to assert the House of Commons " have no power of commitment but of their " own Members, tends to the subversion of the " House of Commons.

"That to print or publish any books or li-" bels, reflecting upon the proceedings of the " House of Commons, or any Member thereof, " for or relating to his service therein, is a high " violation of the rights and privileges of the " House of Commons."

The next material case is that of the Aylesbury men, who having commenced actions against the returning officer of that borough, for refusing their votes, were committed by the House of Commons for a breach of the privileges of the House.

After some length of imprisonment they were brought up to the Court of King's-Bench by Habeas Corpus, and their discharge being moved, Lord Holt was of opinion, that it ought to be granted, because the offence stated in the warrant was no breach of privilege.

In stating this opinion, however, he expressly admits, "that he makes no question of "the right of the House of Commons to commit, they may commit any man for offering an "affront to a Member, or for a breach of "privilege; nay, they may commit for a crime, "because they may impeach."

Every one of the other eleven judges, however, differed from the opinion which he had delivered for the discharge of the prisoners, and held, that the House of Commons was the only judge of its privileges, and that no other Court could, during the session, discharge a person committed by its authority, or examine into the grounds of such committal.

In the long and able discussion which afterwards took place upon this subject, between the two Houses, the House of Lords allow, in terms equally clear with those of Lord Holt, "that "both Houses may commit for breach of pri-

"vilege, but cannot declare any thing to be "privilege without good grounds, nor, conse"quently, make any thing a contempt that is "not known to be so."

Illustrious as the name of Lord Holt * is, it will be recollected, that among the judges who, on this occasion, differed from him, there were such men as Powell and Price, not less distinguished by their learning and abilities, than by their independence and attachment to the constitution. The judgment of the former, as given in the State Trials, is particularly worthy of attention.

The next case I shall mention is that of the Hon. Alexander Murray, who was committed to Newgate by the House of Commons, on the 7th February 1751, "for an high and dangerous "contempt

* It may be worth remarking, in justice to the memory of this great man, that there does not appear to be any foundation in history for the story sometimes told of the Speaker going in person into the King's-Bench to demand the prisoners in question, and receiving a coarse and indecent answer from the Chief Justice.

To those, indeed, who are acquainted with parliamentary proceedings, the absurdity of such a story carries its own refutation.

"contempt of the privileges of the House." He having been brought up by Habeas Corpus to the Court of King's Bench, a motion was made for his discharge, but the Court unanimously refused it.

On this occasion, Mr. Justice Foster, whose writings have long been considered as the soundest exposition of our criminal law, declared: "that the law of Parliament was part of the "law of the land, and there would be an end of "all law, if the House could not commit for a "contempt; all courts of record (even the lowest) may commit for a contempt."

Wright and Dennison, the two other Judges present also stated, "that it need not appear on "the Speaker's warrant what the contempt was; "for it did appear the Court could not judge "thereof;" and "that no Court can admit to "bail a person committed for a contempt, in "any other court in Westminster Hall."*

The last instance in which the right in question was litigated was in the case of Mr. Crosby, in 1771.

Complaint

* 1 Wils, 200.

Complaint having been made against several printers, for publications misrepresenting and reflecting on the proceedings of the House, they were ordered to attend, on the 14th March.

John Miller not attending, was, for his contempt in disobeying the order of the House, ordered to be taken into custody.

In pursuance of this warrant, a messenger of the House apprehended Miller, who immediately charged a constable with the messenger; and the consequence was, that both parties were carried before the Lord Mayor, Alderman Oliver, (both Members of the House of Commons) and Alderman Wilkes, then sitting at the Mansion House. The Magistrates thought fit, upon an assumed exemption of the city from all other jurisdiction but its own, to discharge Miller, and sign a warrant for the commitment of the messenger.

The case was debated in the House of Commons on the 25th of March, when Alderman Oliver was adjudged to be guilty of a breach of privilege, and committed to the Tower. On the 27th a similar order was made, with regard to the Lord Mayor, Mr. Brass Crosby.

Alderman

Alderman Wilkes was ordered to attend on the 8th of April, but he claiming to be a Member of the House, and to attend in his place, the House, with the same weakness which marked at that period all its proceedings upon this subject, adjourned over that day, and let the question drop.

In the Easter term following, Mr. Crosby was brought up by Habeas Corpus before the Court of Common Pleas, and his discharge was moved. This application the Court unanimously, and without hesitation, rejected.

Lord Chief Justice de Grey, in giving his opinion, after quoting the passages already cited from Lord Coke, says:—"the power of committing must be inherent in the House of Commons, from the very nature of its institution, and therefore is part of the law of the land. All contempts are either punishable in the court contemned, or in some higher court. Now the Parliament has no superior court, therefore the contempts against either House can only be punished by themselves. When the House of Commons adjudge any thing to be a contempt, or a breach of privilege, their adjudication is a conviction, and their commitment,

"ment, in consequence, is execution; and no "court can discharge or bail a person that is in "execution by the judgment of any other Court. "In the case of a commitment by this Court, or "the King's Bench, there is no appeal. Suppose the Court of King's Bench sets an excessive fine upon a man for a misdemeanor, there "is no remedy, no appeal to any other court. "We must depend upon the discretion of some "courts. A man, not long ago, was sentenced "to stand in the pillory, by this court of Common Pleas, for a contempt. Some may think "this very hard, to be done without a trial by "jury; but it is necessary. Suppose the courts "should abuse their jurisdiction, there can be "no remedy for this: it would be a public "grievance, and redress must be sought from "the legislature. The laws can never be a "prohibition to the Houses of Parliament, because, by law, there is nothing superior to "them. Suppose they also, as well as the courts "of law, should abuse the powers which the "constitution has given them, there is no redress."

Mr. Justice Blackstone:—"The sole adjudication

"dication of contempts, and the punishment "thereof, in any manner, belongs exclusively, "and without interfering, to each respective "court. Infinite confusion and disorder would "follow, if courts could, by writ of Habeas "Corpus, examine and determine the contempts "of others. The judgment and commitment of "each respective court, as to contempts, must "be final, and without controul. It is a confi-"dence that may, with perfect safety and secu-"rity, be reposed in the judges and the Houses "of Parliament. The House of Commons have "this power, only, in common with all the "courts of Westminster Hall; and if any per-"sons may be safely trusted with this power, "they must surely be the Commons, who are "chosen by the people, for their privileges and "powers are the privileges and powers of the "people. The House of Commons is the only "judge of its own proceedings. Holt differed "from the other judges in this point; but we "must be governed by the eleven, and not by "the single one."

In this opinion Gould and Nares, the other two judges, agreed.

The same application was afterwards made to

to the Court of Exchequer, which also unanimously rejected it.

The Court of King's Bench has likewise twice unanimously rejected similar motions, on behalf of persons committed for contempts by the House of Lords, *viz.* in the case of the Earl of Shaftesbury, in 1667,* and in that of Flower, in 1799.†

The supreme authority of that Chamber of Parliament, and its power to make and enforce regulations, necessary for the dignity of its own tribunal, is also fully recognized in the case of the printer, against whom Lord Erskine granted an injunction in chancery, to prevent his publishing proceedings in a trial before the House of Lords, a publication which would, in any other case, have been legal; but was restrained by a special order of that House, in exercise of its own peculiar privilege.

This detail of cases might have been greatly extended.

To those who understand the true grounds of legal decision, it must appear to have been already

* 2 State Trials, 615.

† 8 Term Reports.

already carried much further than was necessary. The question to which these cases are applied is simply, whether the House of Commons does, at this hour, possess the power of imprisoning those, who either insult its members for their parliamentary conduct, or degrade and vilify the character and proceedings of the House itself, and whether that power, if it be known to the laws, shall be enforced, by such methods as are necessary for its legal exercise. Until the whole foundations of our law be subverted, there is but one issue by which such a question can be tried. If such a power be now first claimed and exercised, its origin must be shewn in some legislative act, expressly introducing the innovation: if, on the contrary, its exercise has been uninterrupted for centuries, and the instances of its exertion are coeval with the records of Parliament itself, it is for those who contend against it to shew, by what act it has been abrogated. As well might a man be admitted to dispute the power of Parliament to make laws, as the privilege by which alone it is enabled to execute that function with dignity and independence.

The sovereignty of the Crown, the legislative authority of Parliament, have, themselves, no

no higher origin, no firmer foundation in law, than the privileges of the House of Commons.

I proceed, therefore, to the second part of the argument; and shall consider, whether the power of the House of Commons, being thus part of the law of the land, ought to be permitted so to continue, or whether it would be more expedient that this privilege should be surrendered, and, like that of the protection of members from suits at law, be abolished by statute, as prejudicial or unnecessay.

For this purpose, it may, in the first place, be proper to establish, that such a power is not repugnant to the general system and practice of the constitution, but, on the contrary, it has been constantly exercised by the inferior courts; and, secondly, that, even if it were reasonable on such an occasion to divest the mind of all reverence for the authority of uninterrupted precedent, and the concurring wisdom of ages, to consider what the parliamentary constitution of England ought to be, and not what it is: even then, it is not less clear that the possession of such a power is necessary to the existence of the House of Commons, and to the efficiency, purity, and independence of its proceedings.

The original of the commitment for contempt, appears to be coeval with the common law itself, nor is it easy to conceive the existence of a Court of Justice, without an inherent power of vindicating by summary process its own authority, not only from actual resistance, but also from insult or degradation.

Lord Gilbert in his History of the Common Pleas, does indeed, derive this power from the statute of Westminster, passed in the 13th year of King Edward the first; but he afterwards more correctly adds: "notwithstanding the "statute of Magna Charta, that none are to be "imprisoned *nisi per legale judicium parium* "*suorum vel per legem terræ*, this is one part of "the law of the land to commit for contempt, "and *confirmed* by this statute."

The contempts which are so punishable by commitment, are defined by Blackstone * to be such, "as either openly insult or resist the "powers of the courts, or the persons of the "judges who preside there, or (without such "gross insolence or direct opposition) *plainly* "*tend to create an universal disregard of their* "*authority*."

* Vol. iv, p. 283.

He afterwards proceeds to specify among the different kinds of contempt, "the speaking "or writing contemptuously of the Court or "Judges, acting in their judicial capacity, and "in short any thing that demonstrates a gross "want of that regard and respect, which when "once Courts of Justice are deprived of, their "authority is lost among the people."

Lord Hardwicke also, in the case of Roach and Garvan, * where he granted an attachment against the printers of two newspapers, for accusing a party to a suit in Chancery of perjury, states as the first of the three different sorts of contempt which he enumerates, "the scandali-"zing the Court itself," and adds that "there "cannot be any thing of greater consequence "than to keep the streams of justice clear and "pure, that parties may proceed with safety to "themselves and character."

The best illustration of this doctrine, is to be found perhaps, in a case which occurred in the year 1746.

Lieutenant Frye considering himself aggrieved by the sentence of a Naval Court Martial,

* 2 Atkins, p. 471.

Martial, commenced an action against two of its members, and taking out a capias from the Court of Common Pleas, arrested them both while serving on another Court Martial of great importance.

The members of the Court Martial, thus interrupted, resented this proceeding as an outrage upon them, and passed some resolutions, characterizing in the most offensive terms the conduct of the Chief Justice, Sir John Willes, in whose name the capias had necessarily issued, and who had likewise publicly recommended that this action should be instituted.

To call these resolutions an obstruction of the process of the Court of Common Pleas would be absurd, for that had already taken its course and met with no resistance: but the judges felt that it was as much their duty to punish an insult against the dignity of the court, as it would have been to have enforced obedience to its authority.

Their tipstaff was therefore directed to take into custody all the members of the Court Martial, nor was their offence pardoned until they had personally delivered in Westminter Hall, a full and complete written submission, which was entered among the Records of the Court of Common

mon Pleas, and published in the London Gazette.

This practice has continued uninterruptedly down to our own times. I believe the last case reported, is, that exparte Jones* where Lord Erskine granted an attachment for a libel published against the committee of a lunatic, and committed the authors and the printer to the Fleet prison; stating, at the same time, "it never has "or can be denied, that a publication not only "withan obvious tendency, but with a design to "obstruct the ordinary course of justice is a very "high contempt..... The book could be pub-"lished with no other intention than to obstruct "the duties cast upon the petitioner, and to bring "into contempt the orders that had been made."

But the clearest and fullest discussion of the whole doctrine of attachment is to be found in the ‡ argument which Sir Eardley Wilmot had prepared to deliver in the case of the King and Almon; with some extracts from which I shall conclude this part of the subject.

H "The

* 13 Vesey, 239.

‡ Published in the Appendix to the Life of Sir Eardley Wilmot.

" The power which the courts in Westmin-
" ster Hall have, of vindicating their own au-
" thority, is coeval with their first foundation
" and institution: it is a necessary incident to
" every court of justice, whether of record or
" not, to fine and imprison for a contempt to
" the court, acted in the face of it. 1. Vent 1.
" And the issuing of attachments by the supreme
" courts of justice in Westminster Hall, for con-
" tempts out of court, stands upon the same im-
" memorial usage as supports the whole fabric of
" the common law: it is as much the "*lex*
" *terræ*," and within the exception of Magna
" Charta, as the issuing any other legal process
" whatsoever.

" I have examined very carefully, to see if
" I could find out any vestiges or traces of its in-
" troduction, but can find none. It is as ancient
" as any other part of the common law: there is
" no priority or posteriority to be discovered
" about it, and therefore cannot be said to in-
" vade the common law, but to act in an alliance
" and friendly conjunction with every other pro-
" vision, which the wisdom of our ancestors has
" established for the general good of society. And
" though I do not mean to compare and contrast
" attach-

" attachments with trials by jury, yet truth com-
" pels me to say, that the mode of proceeding by
" attachment stands upon the very same founda-
" tion and basis as trials by jury do,—immemorial
" usage and practice: it is a constitutional re-
" medy in particular cases, and the judges, in
" those cases, are as much bound to give an acti-
" vity to this part of the law, as to any other
" part of it. Indeed it is admitted, that attach-
" ments are very properly granted for resistance
" of process, or a contumelious treatment of it
" or any violence or abuse of the ministers, or
" others, employed to execute it. But it is said,
" that the course of justice, in those cases, is ob-
" structed, and the obstruction must be instantly
" removed: that there is no such necessity in the
" case of libels upon courts or judges, which may
" wait for the ordinary method of prosecution,
" without any inconvenience whatsoever. But
" when the nature of the offence of libelling
" judges, for what they do in their judicial capa-
" cities, either in court or out of court, comes to
" be considered, it does, in my opinion, become
" more proper for an attachment, than any other
" case whatsoever.

" In the moral estimation of the offence, and

" in every public consequence arising from it,
" what an infinite disproportion is there between
" speaking contumelious words of the rules of
" the court, for which attachments are granted
" constantly, and coolly and deliberately printing
" the most virulent and malignant scandal which
" fancy could suggest, upon the judges themselves.
" As to leaving such libels to be prosecuted
" by indictment or information, that juries may
" judge, " *quo animo* " they were written or pub-
" lished, I am as great a friend to trials of facts by
" a jury, and would step as far to support them, as
" any judge who ever did, or now does, sit in
" Westminster Hall, but if to deter men from
" offering any indignities to courts of justice, and
" to preserve their lustre and dignity, it is a part
" of the legal system of justice in this kingdom,
" that the court should call upon the delinquents
" to answer for such indignities in a summary
" manner, by attachment, we are as much bound
" to execute this part of the system as any other;
" for we must take the whole system together,
" and consider all the several parts, as supporting
" one another, and as acting in combination to-
" gether, to attain the only end and object of all
" laws, the safety and security of the people.

" The

" The trial by jury is one part of that system;
" the punishing contempts of the court by attach-
" ment is another. We must not confound the
" modes of proceeding, and try contempts by
" juries, and murders by attachments. We must
" give that energy to each, which the constitution
" prescribes. In many cases, we may not see the
" correspondence and dependence which one
" part of the system has and bears to another; but
" we must pay that deference to the wisdom of
" many ages, as to presume it: and I am sure it
" wants no great intuition to see, that trials by
" juries will be buried in the same grave with the
" authority of the courts who are to preside over
" them.

" The constitution has provided very apt and
" proper remedies for correcting and rectifying the
" involuntary mistakes of judges, and for punish-
" ing and removing them for any voluntary per-
" versions of justice: but if their authority is to
" be trampled upon by pamphleteers and news-
" writers, and the people are to be told, that the
" power given to the judges for their protection,
" is prostituted to their destruction, the court
" may retain its power some little time, but, I
" am sure, it will instantly lose all its authority,
" and the power of the court will not long sur-
" vive the authority of it."

In

In addition to the above authorities, we fortunately possess the recorded sentiments of one of our greatest statesmen, not only as to the legality, but the propriety of the exercise of such a power.

Whatever difference may prevail, with respect to any part of Mr. Fox's political opinions, his constitutional and parliamentary knowledge must be considered as unrivalled.

No man was more distinguished by zeal for the liberty of the subject, and detestation for every species of tyranny, whether exercised by one or by many; no man was more tolerant, either in principle or practice: yet Mr. Fox was, throughout his life, the asserter and defender of this, among other privileges of the House of Commons.

His opinions, in 1771, were those of a very young man, and might therefore be considered as entitled to less weight; but when we find that he continued to entertain them in 1788, in 1796, and in 1805, at times when his judgment was matured, and when he could not be suspected of any undue partiality to the majority of the House of Commons, they will possess that high authority, which results from his wisdom, and experience.

Upon

Upon the cases of the Morning Herald,* of Stockdale,† of Reeves, and of Stuart,‡ he in those years distinctly stated, "that in cases of "public libel, or of a libel on the government "at large, or legislature collectively, a prosecu-"tion by the Attorney General might be the "most proper mode of proceeding to punish; "but that, in a libel on the House of Commons, "the person who had written it ought more pro-"perly to be punished by the House. . . . . .

"The House possessed an inherent constitu-"tional right of punishing those who incurred a "contempt, or were guilty of a breach of its "privileges . . . . . .

"He did not hold the opinion, that because "Members, in the House, may not only with "propriety, but with strict regard to their duty, "hold certain language, and declare certain sen-"timents upon any topic under their consider-"ation, the public prints were warranted in "giving those to the world at large. The free-"dom of speech he considered as the first and "most essential privilege of Parliament, insepa-"rable

* 8 February 1788, Debrett's Debates, xxiii, 167, 172.

† 14 and 15 February 1788, ibid. 194, 201, 204.

‡ 26 April 1805, Cobbett's Debates, iv. 438.

" rable from its dignity and well being; and he
" could easily imagine many cases, in which it
" would be a gross libel, and breach of privilege
" in a newspaper, to publish such words as he
" would find it necessary to make use of in his
" place.

" He thought that, if an article was such as
" could be punishable only in as much as it was
" a contempt of the House, no other tribunal
" could take any cognizance of it; no court of
" justice ever, or at least very seldom, adopted
" the plan of prosecution in a case of contempt
" of court, but almost invariably proceeded by
" taking the punishment into its own hands.

" He also reminded the House, that when
" once they committed the prosecution to the
" law courts, they had no further command of
" it; and however inclined they might be to
" show lenity, they would not have it in their
" power."

In all the above cases, Mr. Pitt also distinctly recognized the existence of this right, and admitted, that there might be many instances where the House would act more wisely in exercising it, than by calling in the assistance of the law officers of the Crown.

In

In addition to these arguments, there are others, which arise from the superior efficacy of a summary punishment for defending the dignity and independence of the House.

There have been many instances already, and many more will probably occur, when the publication of a libel on an individual Member may subject him to popular insult, or where that apprehension will deter him from the discharge of his duty.

The attainder of Lord Strafford, the most unjust and disgraceful act that ever received the sanction of the Legislature, was carried simply by the terror which resulted from posting up the names of its principal opponents, as enemies of their country.

By these means, even the bold spirit of Lord Capel was intimidated, into what, in the last moments of his life, he repented, as a coward consent to what his conscience disapproved.

In all such instances, speedy and summary punishment is requisite; or before an example can be made, the mischief, which it is wished to prevent, will have attained its utmost degree.

If offences of this nature are to be proceeded against before other tribunals, the long delay

which

which must intervene before they are brought to trial, render a severer punishment necessary, than would have been sufficient in the first instance.

If we look back at the precedents we shall perceive, that the imprisonment by order of the House, has, with very few exceptions, been of much shorter duration than would have been inflicted for like offences by the courts in Westminster Hall.

There are also many offences which it is highly necessary to notice, but of which those courts cannot take cognizance. The proceedings of the House or Parliamentary conduct of individuals, may be not only misrepresented, but falsified, without being so libelled as to be the subject of an indictment.

That which violates the privileges of the House, may also happen to fall within the legal definition of libel; but this is not necessarily the case. Such an instance occurred, but a few days since, the speech of one of the most respectable Members, and ablest constitutional lawyers, was misrepresented and ridiculed in a daily paper, and the House itself was described as receiving with derision the arguments of a person,

son, to whom it always listens with merited attention.

For this offence a suitable apology was made: had it been otherwise, this insult could not have been punished, but by the authority of the House. No indictment could have been drawn, no declaration framed, to meet this case. It struck at the privileges of the House, and by the House only could have been noticed.

It is, indeed, only under the existence of such a privilege, that the practice of publishing the debates could subsist. Were this controul removed, the language of all public men would be continually misrepresented, not as now too frequently happens, by error or inadvertence, but by wilful perversion, according to the violence of party, or malevolence of personal hostility.

This must lead, of necessity, to a great public evil, to the closing the gallery of the House, and debarring the people from all means of learning through the press, the conduct of their representatives, and of correcting any misconceived opinions of public affairs, by the superior information and judgment of those by whom they are discussed in Parliament.

It is further to be remarked, that without this power, every inquisitorial function of the House must be nugatory. No witness could be compelled to attend; or if he attended to answer questions which might be asked him, unfettered by the restraint of an oath, he might relate any falsehood which he chose, secure, even if detected, from the possibility of punishment.

It is difficult to imagine, what reason can be urged, why the House of Commons should not be entrusted with a power, which it has been found necessary to grant to every court of record in the kingdom.

The importance of its functions, the dignity which it is necessary should belong to it, and the relation in which it stands, both to the King and the people, seem at least equally to call for its being surrounded with all those means, which are necessary to maintain its independence, from whatever quarter it may be assailed.

Recourse has been had, indeed, in this case, to the trite argument drawn from the possibility of abuse, an argument which would be of equal validity to disprove the expediency of any other possible

possible power entrusted to any human authority.

The acts of all governments, the sentences of all tribunals, must at last be referred to the judgment of fallible men. Checks may be provided; references to other courts may be established; but, their ultimate decision must rest upon some human power of unappealable authority, and that power is, in our constitution, committed to the High Court of Parliament. Unquestionably, this, like every other supreme authority, may abuse its powers.

The Lords may give false judgment in civil cases; nay, in impeachments, acquit notorious offenders. The Commons may so exercise their inquisitorial functions, as to produce vexation to innocence, and impunity to guilt; and the whole Legislature may grossly abuse all the powers with which it is entrusted for the public benefit.

If it be asked, whether the Court of King's Bench must not grant relief, if the House were to vote any action, perfectly innocent, to be a breach of privilege, and on those grounds to imprison, we would enquire, in return, whether, in the other cases, also, of abuse, above stated,

a power of controul over Parliament is to be exercised by a bench of judges. Evils must arise from every abuse of power; but, these evils, if proceeding from the conduct of Parliament, the Court of King's Bench cannot remedy, any more than its own judgments could be reversed by the courts of quarter sessions. That court cannot, even in the opinion of the eminent judges above cited, interfere with the adjudication of a contempt by any other court of competent jurisdiction. If its judges were to take cognizance of what either House of Parliament have voted to be a contempt, they would immediately subject themselves to an impeachment, for a breach of that law, which they are sworn to administer, and for a manifest infringement of the Bill of Rights.

It is to a sense of the constant superintendance and controul, which is not only the right, but the duty of Parliament to exercise over all Courts of justice, that the purity of those courts is principally to be attributed. Will it now be said, that the system of the constitution is to be reversed, that Parliament is to be subjected to the controul of judges appointed by the Crown, its dignity and freedom to rest upon their decisions?

sions? Are the Commons to become merely prosecutors, even of offences against their own privileges? They can prosecute only through the King's law officers, unless they can resort to impeachment, a proceeding wholly inapplicable to smaller delinquents. What security can they possess, that in case of a libel, which tends to degrade the House of Commons and exalt the prerogative of the King, possibly during a subsisting contest on that very subject, the King's officer will duly execute their directions?

The Attorney General may be biassed against them by his own sincere opinion, or he may corruptly betray their cause.

The House may, on the other hand, be lowered for a time in public estimation; perhaps by the errors of its own conduct; perhaps by a course of systematic libels, vilifying all its proceedings, and misrepresenting the character and motives of all who take part in its deliberations. To what protection, in this unhappy situation of public affairs, shall it look, against premeditated insult, outrage, and even the excess of personal violence, if it have not the means of enforcing its own decisions, and causing its own authority to be respected? How shall it assert the laws, maintain

maintain the stability of regular government, and perform functions, which, in periods of public discontent, can be expected only from a representative and popular assembly? If, in such times, the House of Commons should itself be too weak to assert its own independence, what support can it hope to receive from the Crown, on what assistance can it rely from the inferior tribunals of the country?

The result of all the above considerations appears to be,—

That the House of Commons has, at all times, claimed, exercised, and maintained the right of committing to custody, those who have, in any way, infringed its privileges; especially the publishers of papers, reflecting upon the House itself, or any of its members for their parliamentary conduct.

That this right has been uniformly admitted, to its fullest extent, by the courts of Westminster Hall, and is recognised by statute, as early as the reign of James I.

That the propriety of its exercise, in cases of sufficient magnitude, has been at all times justified, by our greatest statesmen and highest legal authorities, and that it derives its origin from

from the same principles on which our government is founded.

That the most effectual means, not merely of removing actual obstruction, but of upholding, by its own inherent authority, the character of its members, the dignity of its proceedings, and the independence of its deliberations, must necessarily be incident to an assembly, controuling the Ministers of the Crown, superintending the integrity of the Courts of Justice, and exercising all its powers in the name and on the behalf of the whole community.

THE END.

LONDON:
Printed by Cox, Son, and Baylis,
75, Gt. Queen Street.