125-7

CIVIS's

LETTER TO

SIR FRANCIS BURDETT, Bt.

Price Two Shillings.

0002

PRINTED BY G. HAZARD, BEECH-STREET.

A SHORT EXAMINATION

INTO THE

POWER

OF THE

HOUSE OF COMMONS

To Commit,

IN A LETTER TO

SIR FRANCIS BURDETT, Bt.

"Jus civile est quod quisque sibi populus constituit."

JUS. INST. 1. 2. 1.

LONDON:

PUBLISHED BY EFFINGHAM WILSON,

88, CORNHILL, AND 51, PATERNOSTER-ROW.

A LETTER

To Sir FRANCIS BURDETT, Bt.

SIR,

In discussing questions respecting the civil and political rights, either of individuals or societies, appeals are more frequently made to the passions, than to the reason of the parties; if mankind could be induced never to act but upon deliberation, few questions would arise, in civilized life, that could possibly lead to any fatal consequence; but as it is, I for one am of opinion that questions of this sort should not be avoided, merely because they sometimes produce events which humanity must wish had not happened; I can lament the intemperance that occasions the immediate mischief, but in the ardour and spirit from whence that

intemperance proceeds I can trace a sure bulwark of our liberties, such as we have inherited them from our ancestors.

These reflections have arisen out of the dispute now subsisting between you and the House of Commons, and have led me to consider by what authority YOU are now a Prisoner in the Tower; also, what is the foundation of the power that has committed GALE JONES to Newgate;—and in what instance, and for what offences the House of Commons have the power of depriving ME, one of their constituents, of my personal liberty by their own immediate act.

In considering these questions, the mind finds no satisfactory resting-place at which to begin its meditations, till it has travelled back to the primæval state of mankind, and contemplated man in his abstract character of a mere animal. In this state each individual of the species subsists on the spontaneous productions of the earth, or on the victims of his own skill, activity and strength among the brute creation; when arrived at manhood, he is independant of his fellow-

man, and he neither bestows upon, nor receives from his fellow creatures any other benefit than what is common with the rest of the animal world.

In this state all men are equal; each pursues his own inclinations, unrestrained by any principle, but that which is common to almost all animals, i. e. that of not destroying the other individuals of his own species: man cannot long remain in this separate and independant state, being by nature a social animal, accordingly, societies are soon formed, though certainly in a very rude and imperfect way. His first association leaves man possessed of almost as much liberty as he enjoyed before he became attached to any particular horde; he still gathers his own fruits, where and when he pleases, and he pursues and kills his own game: the only social obligation he contracts is a defensive one, which engages him, for a similar aid, to assist in the defence of the persons, women, and children, of the other members of his own, against the attacks of any neighbouring horde: this principle, purely

defensive in the first instance, arising from a consciousness of individual weakness, which operates on the reason of mankind in this respect, as instinct does on some of the brute tribes, becomes in time aggressive; this produces war, and war produces superiority, first, as between the conqueror and conquered, secondly, as between the leader and the follower.

In this state men cannot subsist themselves in large societies, and if several hordes, either in consequence of conquest or mutual convenience, unite, the increasing wants of this enlarged community, will naturally suggest to them the expediency of pastoral pursuits, which first introduce the idea of individual property: we have various instances of associations of shepherds becoming very numerous, rich in flocks and herds, and of their making various arrangements, contracts, and agreements, among themselves, for the better preservation of their several nations, and their individual property, and of their chusing captains and kings to command in time of war, and to govern and

administer justice among themselves in time of peace. Agriculture, the next stage of civilization, introduces a new species of property, and requires new regulations for the protection and encouragement of it; Commerce greatly adds to the list; and these regulations among mankind are what we now understand by the abstract terms of law and government. These necessarily produce a change in the relative situations of the several members of the society; each necessarily relinquishes some of those natural rights and liberties which he enjoyed in his more rude state of existence; he is no longer entitled to pluck the first grape he sees, or to kill the first kid he finds on the adjoining mountain; he cultivates his own vineyard, and rears his own flocks, and as his neighbour assists to defend these against plunder, so is he bound to assist in the protection of his neighbour's; more especially is he bound not to become the plunderer himself; and in order that the whole may be protected against encroachment by other independant societies, the individuals select from among

themselves some person or persons, whose duty it shall be to devise and carry into effect such regulations as appear to be best adapted to these several ends.

In these regulations we see the first rudiments of law.

As we have seen man advance in civilization, so we have seen him relinquish his title to some of those liberties which he enjoyed in his primitive state; but we also perceive that, by this relinquishment, he purchases other rights of a more valuable sort, and certain civil privileges, which are infinitely superior to the unrestrained liberty of his condition, when in a state of nature.

From the regulations, which man thus introduces into his civilized state, spring the relative situation of governors and governed. The latter, having chosen the former from among themselves, and having in such choice requested that they would undertake the labour of making rules and regulations for the protection and government of the whole, are consequently bound to observe those duties thus prescribed to them; their obedience is the

price they pay for the protection they enjoy, and the powers and privileges of the governors are the reward which they receive for the labour and duty, they take upon themselves.

When I say the governed are bound to obey the rules and regulations thus prescribed to them by persons of their own election, it must always be understood with this qualification, that these rules and regulations do not infringe those eternal laws prescribed to man at his creation, and which he cannot violate without being guilty of what no human power can bind him to commit, SIN; therefore no human power can compel him to violate God's laws as originally planted in the breast of man, promulgated from time to time to his creatures, and as they are now recorded in his scriptures. No man ought to obey such a law, and an attempt to impose it would authorise the members of the society to revoke and annul the power, which they had delegated to their governors—a power evidently given to them for the general benefit, and not for the destruction of the community or its members.

Subject to this exception, the governed are bound to obey the rules and regulations thus made for their own government, by their own consent; which consent is essential to render them obligatory, for "No law can oblige a people without their own consent; but this consent is either verbis or factis, i. e. it is either expressed in writing, or implied by deeds and actions."—3d. Salk. 112; and as no man can be bound by any law to which he has not given either an express or an implied consent; it follows as a matter of course, that he is not bound to submit to the jurisdiction of any man or set of men, by whose judgment he has not either directly or impliedly consented to be bound.

From what has been already advanced, it should seem, that original contracts among the first members of society are not altogether ideal, nor is it material to trace whether these contracts have been made by a regular convention, or whether they have obtained their force from immemorial and habitual acquiescence in, and to certain fixed principles and regulations, which imply an original and general agreement, entered into at some remote period, the record of which has been lost; and which, like the common law of England, is preserved only in certain general principles, set down in the writings of grave and learned men of great antiquity, and in the reports of cases which have been determined agreeable to these principles.

In the original contract of this kingdom are two IRREVOCABLE articles, which by universal consent it is declared the society itself shall not have the power of annulling.

The first is, That no man shall be found guilty but by a jury of his equals.

The second, That the sovereign power (that is, the power of making rules and regulations for the government of that society at large) shall be for ever vested in a political assembly, consisting of a King, a House of Lords, and a House of Commons.

These two great unalienable fiefs are a proud portion of that inheritance, which raises the meanest subject of the United Kingdom above the most exalted and favored minion of arbitrary power.

To the united wisdom of this assembly, now called a Parliament, created as it were at some remote period, by an original contract of the people, founded on the general consent, which is the fundamental basis of its authority, is committed the power of making laws for the government of the whole; and as each individual of the state has a voice in constituting this assembly, it is evident that each individual has given his assent to be bound by the laws thus framed.

Should it be objected, that each individual of the state has not a voice in constituting this assembly, or that this applies to the written laws only, the answers to both are easy.

That each individual of the state has a voice in constituting this assembly is to be inferred, from this, because all, at the original formation of the constitution, have severally consented, first, that a King shall form an essential part of this assembly; secondly, that the Lords, spiritual and temporal, assembled, shall form an integral portion of parliament; and

thirdly, that there shall also be assembled a certain number of Commoners, elected by the commoners of property from among themselves, who shall also be associated with the two former branches, and form a necessary component part of parliament. And as each individual of the state has virtually consented that parliament shall consist of these three distinct branches, it follows, that all have actually given their full assent to the formation of the several branches of which it is composed. Hence the meanest individual of the state, having consented that the persons of property among the commons should be solely invested with the power of duly electing and returning the representative body of the commons, in this national assembly, is as effectually bound to abide by the laws, as if he had been one even of the representative body itself, giving his individual and personal consent to their enactments. The constitution would receive as severe a wound in changing the elective Franchise from the Commons of property, to an election PER CAPUT, as it would, if the House of Commons

was deprived of its due share in the making of a law.

To the second objection, that the implied consent of each individual applies only to the written laws, or such as are promulgated in the form of acts of parliament; the answer is equally clear. For the same assent of each individual of the state, to be bound by the rules and ordinances of the common law, is as necessarily inferred from the universal and immemorial obedience to it, as in the case of an act of parliament; indeed the rules of conduct prescribed by the common law, derive their force from a presumption of some prior competent ordinance to give them existence, as well as of an universal assent of the people to be bound by them. When a power is given of making laws for the community at large, many consequences necessarily follow, such as, that the power shall be absolute, that its ordinances shall be permanent and irrevocable by any other power, that each individual shall implicitly obey them, and that there shall be vested somewhere a competent power to enforce obedience.

Another important consequence is, that it possess the power of regulating its own proceedings, and of prescribing to itself the mode of discharging the duties imposed upon it; such for instance as in our Parliament, whether the deliberations upon a projected law shall be carried on in one Room, where the three Estates shall be assembled together, or whether each Estate shall hold its deliberations separately from the other; the essence or the spirit of the law is, that each ordinance of the king shall be made with the advice, and have the consent of the lords spiritual and temporal and commons assembled in parliament; but it is not essential that this advice and assent shall be given in two separate rooms, as is now the case, or in one, as was formerly the case, the joint assent of the three branches is essential to every Edict, and this assent was a part of the original compact prescribed by the people, and is an absolute essential of the law; but the mode, by which that assent is given, may be varied as it suits the wisdom and convenience of the three Estates, who alone are competent to prescribe for themselves, not only

the mode, but also the period of assembling, of proposing, and giving their advice and consent in, and to the enactment of laws, and of carrying on their deliberations, so as to give that advice and consent seriatim.

The edicts of this assembly are absolute and binding on all, unless (which it is not admissible to suppose) they should be a violation of either the natural or divine law, or transgress the fundamental and irrevocable principles of the Constitution; with these exceptions they can prescribe bounds to the Prerogative to the crown, they can dictate the privileges of the Nobility, abrogate those of the Commons, and restrain the remainder of the people; because in this assembly we find the rights of the crown guarded by its immediate Possessor in his natural person; likewise we find the whole body of the nobility either assembled or represented, and because every individual in the state below the rank of nobility has, as we have before seen, a voice in parliament either personally or by his representative; yet whatever may be done by either branch of this assembly, or

by two only, while the three is in existance, is not to have the force and effect of a law, nor does the Constitution demand that the individuals of the state should yield obedience to it as such, except in cases which relate to the promulgation of the privileges essential to that particular branch or branches of the Legislature.

These privileges, if I may be allowed the expression, are the bye-laws of the framers of them, and they must, not only, not violate any general law of the community at large, but they must also be consistent with, and in furtherance of the due discharge of the duty of the framers in their legislative capacity. These regulations, made by several branches of parliament for its own government, included in the LEX ET CONSUETUDO PARLIAMENTI, have, and apparently with great accuracy, been referred to this one maxim, taken from 4 Inst. 15. i. e.—

"That whatever matter arises concerning either house of parliament, ought to be examined, discussed, and adjudged in that house to which it relates, and not elsewhere."

The determinations arising out of these discussions are necessarily binding on the members of the house, where they arise, unless they are contrary either to the natural or the divine law, or the law of the land; though they are not here acting in the capacity of legislators and may not therefore alter any established law. But as parliament has been entrusted with the power of making laws, so it necessarily follows that it is invested with sufficient powers to secure the due discharge of the duties imposed upon it; and as it can make laws for the whole, it also follows it can prescribe for a part: accordingly, it has, with a due regard to the preservation of the whole, declared, by immemorial usage, that each branch or house shall be sole judge of its own privileges; without this, the independence of each branch could not have been secured, and without independence its discussions could not have been free.

The personal freedom of the several members of the different branches, from foreign interference, was essential to their independence; without this their deliberations might be interrupted, for want perhaps of information, known only to the individual, of whose advise and assistance it was deprived.

To effect therefore the great object of its institution, i. e. the regular making and administration of, and a due obedience to its laws, parliament has wisely prescribed, to its respective branches, various duties, invested each with divers powers, and secured, to them and their several members, such privileges as are necessary and incident to their several situations.

On the King it has imposed the duties of protecting, of governing the people according to Law, and of executing Justice in Mercy.

For these purposes he is necessarily invested with powers commensurate to the duties; and it is obvious that one of these powers must be the erection of Courts of Justice to declare the law, and the appointment of Officers to carry the declarations of his Courts into effect. These are perhaps the only duties and powers necessary to be here noticed, and it does not occur to me at present that we need particularly

advert to the duties and privileges of the House of Lords, further than that, when we say it has duties to perform, it necessarily follows that sufficient powers are given to it to discharge them, and such privileges granted as are adequate to the protection of them against encroachment.

It is equally unnecessary to enter upon an examination of all the duties, powers, and privileges of the House of Commons; it is sufficient to enumerate a few of them: let it be remembered that this house is a representative as well as a deliberative body, whose opinion and assent is to be taken from the Majority of its members, and that it does not require an unanimous assent to render its determinations binding,—that this assent, after due deliberation, is requisite to every law,—that to its Prudence and Wisdom is entrusted the raising of the requisite supplies for the service of the State and the immediate controul of the public expenditure; for these, among other reasons, it has obviously the power of examining into the Election of its own Members, and of rejecting the interference of any person not duly elected; it is also necessarily invested with the power of protecting the personal liberty of its rightful members. If this was not the case, it might happen that the determination of the Minority, might be substituted for that of the Majority; for suppose a question under discussion, on which there was a difference of opinion, and the numbers expected to be nearly equal, it might happen, if the Members were not protected in their personal liberty, that a sufficient number of the Majority might either by fraud or force be detained from the house to give the Minority an opportunity of carrying the question in their favour; a regulation would in that instance be held out to the public as a law, which in truth was not one. As guardians of the public purse, it follows as a consequence, that they shall have the power of examining into the conduct of public accomptants, and of calling for punishment, in case they find occasion, on any person, who shall have misconducted himself; to give effect to this, as well as for many other purposes, the power of examining witnesses

at their bar, is essential, and of enforcing a proper demeanor, when the witness is there, so as not to occasion any interruption to their proceedings, either by Contumacy or Prevarication; and, that its deliberations may be carried on with due decorum, consideration, and freedom, as it has the power of examining into the due Election of its members, it has also the power of regulating their conduct while members, and, in certain cases, of expelling them, such for instance, as that of having been convicte, by a Court of competent jurisdiction, of various offences; for it could never be intended that the people meant to depute, as their representative in the great Council of the Nation, a person, who was a disgrace to society itself.

These are a few of the duties, powers, and privileges, which necessarily arise out of the Constitution of the House of Commons, Besides them there are a great many others as certain, as well understood, and as universally admitted; but as it was impossible at the first formation of the Constitution to foresee what laws, in the progress of time, it would be necessary to enact, so was it

equally impossible to foresee what exclusive Rights would be requisite for either branch of Government, in order to secure the power of discharging its duties, as it ought, and agreeable to the terms of the original contract. And as laws might become necessary to restrain crimes, which were then unheard of, so it might become necessary for either house of Parliament to exercise powers, and assume privileges, which had never been before mentioned, because the case they were required to meet was unprecedented, and, consequently, for which no provision could have been previously made. To have passed a Resolution, that the House of Commons should have power to commit one of its own Members, for PRINTING a libel against it, before the art of printing was known, was as impossible, as that a law could have been made, for punishing a man, at that period, for PRINTING a libel on any other subject.

Unheard and unthought of Cases may yet arise, but if they do, the Constitution intended to give, and consequently has given, the Legislature, in the one instance, the power of

making laws to meet them, and in the other, it has in like manner given the House sufficient power to secure itself in the due administration of its legal and authorized functions.

It is sufficient that two great and never-to-be-forsaken principles pervade the whole.

First, that the King, Lords, and Commons, in Parliament assembled, shall have authority to make laws for the whole.

Secondly, that they shall, collectively and individually, enjoy, and possess such powers, and privileges, as will enable them to discharge this duty with effect. As, however, the Legislature was never intended to be invested with, and consequently does not possess, the power of making laws, which shall violate the divine laws, so neither shall any separate branch of the Legislature enjoy privileges, or have powers, which shall be a violation of the laws of the whole.

When any member of the community at large, becomes a member of either branch of the Legislature, he immediately acquires an Interest in the powers and privileges,

which are peculiar to that branch, with which he is connected; but, in order to acquire these, he must necessarily submit to the regulations and necessities that operate to bind his fellow-members, and must surrender some of those rights and liberties, which he previously enjoyed, as a general member of the Community.

As man surrenders part of his natural liberty, for the benefit of civil protection, so shall he surrender part of his civil liberty, as the price of the peculiar privileges and powers resulting to him in his capacity of a Legislator. And as man consents, when he becomes a member of civilized society, to be bound by laws, framed agreeable to the Constitution, to which he himself has acceded, so, when any individual of that civilized society becomes a member of the Legislature, he, to all intents and purposes, consents to be bound by those Rules, which it has prescribed for its own government, provided, as was before observed, they are not a violation of either the natural or divine law, or the law of the land. And as

the society at large can make laws to bind itself, so has each branch of the legislature power, to make laws to bind itself, provided these laws operate on all its members alike.

A Regulation to commit a particular Member, should he be guilty of a particular act, would be illegal; but a regulation to commit any member, who should be guilty of the same act, would be legal, and consequently binding upon all, as much on the members who opposed it, as on those who proposed and supported it.

But as each individual, when he becomes a member of society, surrenders only so much of his natural liberty as is necessary for the well-being of his Community, so each individual of the civil Society of this kingdom, surrenders only so much of his civil liberty, when he becomes a member of either branch of the Legislature, as is necessary for the well and due discharge of its duties.

This brings us to a point, which shews the defectiveness of all human institutions, however perfect they may appear, or founded on principles however just; for as each branch

of the Legislature is wisely made independent of the other, so is there no superior to controul the Regulations, which each branch prescribes for its own government, any more than there exists a Power to review or controul a law, which may be supposed to rench on such of the natural liberties of mankind, as were not surrendered on their entrance into society.

In either case there is no appeal, but to that inherent wisdom and justice, which, for the preservation of social order, it is necessary to presume, exists in the supreme Power, which is entrusted with the regulation and government of the respective societies.

This difficulty is known to exist; and as man is, in the first instance, content to submit to it, when he becomes a member of society, so in like manner, when he joins either branch of the legislature, he professes himself to be content to submit to those Rules, which the Majority prescribe, without any appeal but to the Wisdom and Justice of his fellow members.

The Majority, therefore, of the House of

Commons having committed you to the Tower for a libel, you are bound to submit—and there exists no Authority in these kingdoms to question the legality of their vote. But, say you, it is illegal, because it is a violation of one of those irrevocable and unalienable Rights, which form a part of the Inheritance of every Englishman. This, sir, I deny. You are not, in the first instance, deprived of your trial by a Jury, in one of the King's Courts, without your own free will and consent; and in the next place, it is in fact a Trial by your Peers;—it is a Member of the House of Commons tried by Members of the House of Commons, all equally amenable to the same jurisdiction, and as such, this procedure is perfectly agreeable to the great principle, that none shall be found guilty but by a jury of his equals. It is a conviction before a Tribunal of your own chusing: when you became a Member of the House of Commons, you knew the terms, on which you entered into that house, and particularly that the Minority were to be in all cases bound by the Majority. When

you secured your person from arrest by the civil process of the law of the land, you exposed it to restraint at the will of the House of Commons. And to suppose that the House had the power of deciding, that you ought to be committed to the Tower, without admitting that it has the power of sending you thither, would be such an Anomaly in civil Policy, as cannot be supposed to exist in the Constitution of any country. To the power of judging and giving effect to their judgment, is necessarily attached the power of calling in, to their assistance, such force as shall ensure the due Execution of their Orders.

If it should be said, that they had no power to interfere with any thing you did out of the Walls of the House, such an argument can only be supported upon a Fiction in reasoning, i. e. that you were capable of being considered two persons at one and the same time; that it was competent for you to be considered a simple Citizen, when out of the house, and a Member only when you were within its Walls: but this reasoning cannot

be admitted for one purpose, and not for all; if you chuse to be considered as exempt from the power of the house, for all actions, which You commit out of the Walls of the House, you must leave within its walls that cloak of privileges, which, people are ill-natured enough to insinuate, is necessary for some of the Members to use out of doors, in order to secure the business of the house from interruption; but as this argument is, as was before observed, founded on Fiction, it is fair to answer it with another Fiction, which not only applies strictly in this case, but extends to all other privileged persons, i. e. that they are always supposed to be present in the actual discharge of their duty. If your address to your constituents were transmitted to Botley, for Mr. Cobbett's perusal, before its insertion in his Register, I may venture to ask, whether it was not cloathed in a privileged cover? a mode of conveyance which would not have been competent for me to adopt.

It does not, therefore, appear reasonable that the house should have a greater power

over its Members within, than it should possess over them without its walls. It would be futile, and unavailable, to give the House a power to restrain improper language in debate, and to withhold the power of restraining improper Publications, which may possibly prove a much greater Interruption to its proceedings, than any improper Language used within its walls could possibly be: in the latter case, the House would be under the necessity of instituting an Inquiry respecting the author, and of debating and deciding on the course to be pursued, which must necessarily interrupt their proceedings; and in this very case of yours, though you gave them as little trouble as possible, a most important Debate was essentially interrupted.

The House has secured Privilege to its own members, to prevent interruption; for the same reason it has, and necessarily must have, the power of dealing with them severally as in its Wisdom it may think right; and if it could not act without controul, in cases wherein Members are convicted of any Delinquency towards itself, I should tremble for the independence of the House of Commons.

It is a constitutional principle, as we have before seen, that each branch of the legislature shall be independent of the other; because this is essential to the due and faithful discharge of their respective duties; but this independence could not be preserved, if either Branch admitted of the Interference of the other with its privileges: yet what are You asking, but, that a question of pure Privilege between the House and one of its Members, shall be examined into by the Judges? which is, in direct terms, soliciting the interference of the Crown with the Rights and Privileges of the Commons, an interference which, as a Member of the Community, I should be sorry, was ever admitted.

Possibly, abuses may have crept into the practical Formation of the representative Body of the Commons; these, however, the Constitution is capable of rectifying; but it cannot admit of any deviation from those sound principles, which have hitherto preserved it in considerable Health, through a long course of years; it may indeed want either the Simplicity of its early days, or the vigour of Maturity, but it has acquired the Experience and

Prudence of Age, and will, undoubtedly, in due time, adopt, from its own native Energy, such remedies as shall preserve it from Imbecility or Weakness.

Confiding in the wisdom and purity of the present Judges, I shall be much disappointed, if I do not find them imitating the conduct of the learned Fortescue, and others, who have set them wise and constitutional examples, and informing you after they are possessed of the Case, that it is purely a Question of Privilege; and that the Rights of the Individual are absorbed by those of the Member of the House of Commons. As we have already seen, that to the King is delegated the power of erecting Courts for the administration of the laws to the community at large, so we shall also find, that such has been the provident wisdom of our Kings, that no individual can sustain an injury, but one or other of these Courts are open to him for redress, and the aggressor is bound to appear and answer the charge; or if he neglects to do that, the charge is taken against him,

PRO CONFESSO, and a remedial judgment is given, with the proper means of executing it.

But the jurisdiction of these several courts are to a certain extent peculiar; it may be admitted or denied by the defendant; if the prosecutor commences his proceedings in a Court, to which the defendant is not amenable, it is competent for him to plead to the jurisdiction, but if he means to deny the jurisdiction, he is bound to do it presently, it must be by appearing, and on his first appearance; if he enters on his Defence, or acknowledges his default by not appearing, the court has power to, and will undoubtedly, proceed. He cannot first admit, and afterwards deny its jurisdiction. Having once consented to abide by its jurisdiction, even if it is without appeal, he cannot complain, though he may afterwards think himself aggrieved. He knew to what he was about to submit, and must necessarily be bound by his own choice.

There does not exist in this country any Power, that can legally exercise a judicial authority, to which the individual judged has not, by the Constitution, given his assent to be bound by its judgments. And this I take to be the true Criterion, by which to examine whether any Court has a competent jurisdiction over the Party, whose case it is considering.

If the party's consent, to be bound by its determination, cannot be found, either by obvious implication, or direct assent, it follows, that there is not a competent jurisdiction; the proceedings are arbitrary, and the decisions are necessarily oppressive: but if that assent can, and, to make it legal, it must, be found, then has the individual no reason to complain.

A consent to be judged, in all cases, by Courts of competent jurisdiction, is implied by every Member of Society, when he associates himself in civilized life; and the individuals of these kingdoms have consented to be bound by the Judgment of the various Courts, which have been from time to time erected by the King, but independently of these, special courts and peculiar tribunals

are every day erected for special and particular purposes; societies are daily forming, and framing laws for their own Government: individuals are daily submitting to the decrees of Judges named by themselves. It is on this ground that the Law of the Land compels a party to perform an Award, which is nothing more than the determination of a Judge, by whose judgment he consented to be bound; and his assent to be bound by the determination of a judge of his own constituting, is directly implied in the Constitution. It was the want of this Assent, either implied or directly given, that made the proceedings of the Tribunals, which condemned Charles the First to the Scaffold, and Louis the Sixteenth to the Guilotine, illegal, arbitrary, and anarchichal. Had either Charles or Louis admitted the Power of the Court before whom they were severally arraigned, neither the assenting Monarch nor his Adherents could in Justice, have reprobated his condemnation. If, therefore, the assent of the Offender to the competency of the Jurisdiction, either express or implied, is necessary to the legality of the Court's judgments, it follows as a matter of course, that where such assent is directly or impliedly given, he is bound to abide by the determination; and, from the necessity of the thing, it also follows, that a competent power to judge cannot exist, without a power of giving efficacy to its judgments.

That assent, we have seen, has been given by every member of the House of Commons, to be bound by the determinations of that House, in all cases respecting its own privileges; but where is the assent of a stranger to be found? and where do we find any assent given by any other Member of the Community to be bound by the determinations of the House of Commons, either in its deliberative, legislative, or judicial Capacity, in the case of libel against the house, or any of its Members? but if the Individual voluntarily attends at their Bar, he, by that act, submits himself to their judgment, and is consequently bound by it; if he does not voluntarily appear at their Bar, there are only two grounds, upon which they can compel his attendance.

This compulsory power must be found, either in some Act of the Legislature, or in that Power impliedly given by the Community at large, to the house, to secure the due discharge of its Functions.

In the case of an Individual, who has written something, which is supposed to be a LIBEL, but who is not a Member of the House, and who does not voluntarily submit himself to its Jurisdiction, have the House of Commons a right to issue a Warrant by the hands of their Speaker, to seize the person of this individual, and bring him to their bar? and after he is brought there, and by the examination of witnesses, proved to be the Author of the Publication in question, have the House a power, by another Warrant, to send him thence to Newgate? or can they, after summoning and giving notice to the individual, proceed to examine evidence at their bar, in his absence, for the purpose of ascertaining whether he is the Author of the Publication? and if found to be so, can they pronounce the said publication to be a Libel, and forthwith, by their Warrant, commit its Author?

(If they have the Power to commit, it would be idle sophistry to argue, that they had not the power to use any adequate force to give Effect to their Warrant.) It is clear, it was never intended that they should possess any such power. I am not aware the Commons ever attempted to exercise such powers; but this I will not hesitate to affirm, that if they ever did exercise such powers, they were arbitrary, illegal, and a violation of the rights of the Party, against whom they were exercised, as reserved to him at the Formation of the Constitution, and guaranteed to him, by MAGNA CHARTA and the BILL of RIGHTS, which are in fact nothing more than written Records of Rights, which had existed, and were clearly understood, from time immemorial; although, in the unsettled and convulsed periods of our history, they had been frequently trampled on, and had, by Power, been disputed, as a colour for illegal and arbitrary proceedings.

Any interruption to their legal and constitutional proceedings, it is necessary and fit that the House of Commons should, un-

questionably, be able, on the instant, to remove, whether it is an Interruption to their free Debate, their unbiassed Determination, their Enquiry into the Grievances of the State, their consequent Measures for redress, or any other legal or constitutional proceedings. But, it not being necessary to the due discharge of their Duties, it was never intended that they should have, a Power of judging over any Individual of the Community, whose Offence does not interrupt or defeat any of their legal or constitutional Duties. To Offences which do interrupt their proceedings, committed, as it were, under their immediate observation, their judicial authority is confined, therefore, the Power of the House, over the Offender, exists no longer, than, while they are in the actual discharge of their duty. If a greater Power is given in one instance, consequently it is given in all; if they have the power to try a COMMONER for a Libel, they have the same power over the first PEER of the Realm; but if they have this power, unless the party accused choose to submit himself to their Judgment, it is certainly depriving him of

the right of being tried by his Peers; if he voluntarily submits himself to their judgment, and attends at their bar, of his own free will, he is undoubtedly bound to submit to their decision. Hence GALE JONES, having so appeared, and submitted himself, is bound by his own consent, and is rightfully and constitutionally committed to Newgate. No right, which I possess, is violated in his person: but if the House of Commons should consider this letter to be a Libel, and cite me to appear at their Bar, they have no legal power to bring me thither against my will; and the reason is obvious, I have a right, if I please, to have it tried by my Peers, whether I have written this Letter with a pure spirit of constitutional inquiry, or with a malicious and libellous intention, of bringing the Power of the House of Commons into doubt, and their Votes and Resolutions into disrepute, so that thereby the public may, through them, be injured.

As it also may be doubted who CIVIS is, no person should be convicted and deprived of his liberty, without his own consent, except

upon evidence given on Oath, a mode of procedure which the constitution has withheld from the House. It is therefore evident the warrant of their Speaker would not be a sufficient authority for their Officer to remove me from my house, and lodge me in a prison.

In the view, which I have taken of the subject under consideration, I am supported by the opinions of very early dates, for which I will refer you to the Journals of the House, where, in vol. 1, p. 603, the then Attorney-General Noye is reported to have said:—

"No doubt but in some cases, this house may give judgment; in matters of returns and CONCERNING MEMBERS of our House, or falling out in our view in parliament; but for foreign matters, knoweth not how we can judge it."

And in p. 604, Sir Edward Coke is represented to have said:—

"No question but this is a house of record, and that it hath power of judicature in some cases—have power to judge of returns and members of our house; one, NO

member, offending OUT of parliament, when HE came HITHER and justified it, was CENSURED."

Revered, however, as the opinions of such men are, and ought to be, from having stood the test and examination of ages, I would by no means maintain that they are not even now open to examination and discussion. If the opinion which they promulgate cannot be supported by the sound principles of Reason and the Constitution, I should, for myself, consider them as an indisputable verification of the Adage—"Humanum est errare."

If the premises I have laid down, and the mode of reasoning pursued therefrom, be found to be consonant to Reason and Truth, I feel myself justified in these conclusions, THAT, over its own Members, the House has, and necessarily must have, Power and Controul, both in and out of Doors, as far as concerns the House and its Proceedings; and that, for these purposes, it is necessarily invested with a Power of Commitment.

THAT, as to all matters concerning the

House and its Proceedings, it has a like Power over all the other Individuals of the State, when such individuals voluntarily submit themselves to its Jurisdiction.

THAT, over Individuals who are not Members of the House, and who deny its Jurisdiction, it has not radically a summary Power, except in case of Interruption to its Proceedings. And this may happen by an improper Return of a Member, the Arrest or Assault of a Member, a Witness refusing to attend and submit to Examination on a legal constitutional Enquiry, Misconduct under such Examination, either at the Bar, or in the Neighbourhood of the House; in such, and in similar cases, the Constitution has invested the House with the Power of Commitment, and it is the bounden Duty of the offending Individual to submit. But, in cases where the Proceedings of the House have not been interrupted, either DE FACTO VEL NECESSARIA IMPLICATIONE, acquiescence to its Jurisdiction must be the voluntary Act of the Party; otherwise a Submission to its Judgment would be a Surrender of the party's Birth-Right, and an Abandonment of that, for which our Forefathers have bled, and for which we should ever be ready to sacrifice our dearest interests.

In the midst of the general jarring of opposite opinions on this subject, it will afford me no small satisfaction, to find, if any thing advanced in this Letter shall tend to allay the present fermentation arising from political disputes. Whatever reception it may meet with, I can assure you, Sir, it contains not one sentiment, nor argument, which has been dictated either by Prejudice or party-attachment; I have no motive for appearing before my fellow citizens, but that of promoting their happiness, by placing under their eye, what I conceive to be, the outlines of the Power and Privileges of the House of Commons.

I am, Sir,

With much respect,

Your very obedient servant,

CIVIS.

London,
5th May, 1810.

Printed by G. Hazard, Beech-street, London.

0025

EFFINGHAM WILSON,

BOOKSELLER AND PUBLISHER,

88, CORNHILL, AND 51, PATERNOSTER-ROW;

Where are constantly kept on Sale a VALUABLE COLLECTION of BOOKS, in the various Branches of Literature, plain and superbly bound, together with every New Publication.

*** An extensive Collection of MAPS, CHARTS, GILLRAYS, and all other CARICATURES.

†|† PERIODICAL PUBLICATIONS regularly sent to any Part of the Town.