SIR FRANCIS BURDETT

TO

HIS CONSTITUENTS;

DENYING THE POWER OF THE HOUSE OF COMMONS TO IMPRISON THE PEOPLE OF ENGLAND.

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"No Freeman shall be taken, or IMPRISONED, or be disseised of his Freehold, or Liberties, or Free Customs, or be out-lawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by *lawful judgment of his Peers*, or by the *Law of the Land*. We will sell to no man, we will not deny or defer to any man, either justice or Right."——MAGNA CHARTA: Chapter XXXIX.

"PERSONAL LIBERTY is a natural inherent right, which cannot be surrendered, or forfeited, unless by the commission of some great and atrocious crime, and which ought not to be abridged, in any case, *without the special permission of law*. A doctrine coëval with the first rudiments of the English Constitution, and handed down to us from our Saxon ancestors, notwithstanding all their struggles with the Danes, and the violence of the Norman Conquest: asserted afterwards, and confirmed by the Conqueror himself and his descendants: and, though sometimes a little impaired by the ferocity of the times, and the occasional despotism of jealous and usurping princes, yet established on the firmest basis by the provisions of Magna Charta, and a long succession of Statutes enacted under Edward III. To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society, and, in the end would destroy all civil liberty, by rendering its protection impossible: but the glory of the English Law consists in CLEARLY DEFINING the *times*, the *causes*, and the *extent*, when, *wherefore*, and to *what degree*, the imprisonment of the subject may be lawful."——BLACKSTONE'S COMMENTARIES. Book III. Chap. 8.

SIR FRANCIS BURDETT

TO

HIS CONSTITUENTS,

&c. &c.

GENTLEMEN;

THE House of Commons having passed a Vote, which amounts to a declaration, that an Order of theirs is to be of more weight than Magna Charta and the Laws of the Land, I think it my duty to lay my sentiments thereon before my Constituents, whose character as free-men, and even whose personal safety, depend, in so great a degree, upon the decision of this question——a question of no less importance than this: Whether our liberty be still to be secured by the laws of our fore-fathers, or be to lay at the absolute mercy of a part of our fellow-subjects, collected together by means which it is not necessary for me to describe.

In order to give to this subject all the attention to which it is entitled; and to avoid the danger to be apprehended from partial views and personal feeling, it will be advisable to argue the question on its own merits, putting the individual (however we may deplore his present sufferings) out of view; though at the

same time, every man ought to consider the case his own; because, should the principle, upon which the Gentlemen of the House of Commons have thought proper to act in this instance, be once admitted, it is impossible for any one to conjecture how soon he himself may be summoned from his dwelling, and be hurried, without trial, and without oath made against him, from the bosom of his family into the clutches of a jailor. It is, therefore, now the time to resist the doctrine upon which Mr. Jones has been sent to Newgate; or, it is high time to cease all pretensions to those Liberties which were acquired by our forefathers, after so many struggles and so many sacrifices.

Either the House of Commons is authorised to dispense with the Laws of the Land; or it is not. If the Constitution be of so delicate a texture, so weak a frame, so fragile a substance, that it is to be only spoken of in terms of admiration, and to be viewed merely as a piece of curious but unprofitable workmanship; if Magna Charter and all the wholesome Laws of England be a dead-letter: in that case, the affirmative of the proposition may be admitted; but, if the Constitution lives, and is applicable to its ends; namely, the happiness of the community, the perfect security of the life, liberty and property of each member and all the members of the society; then the affirmative of the proposition can never be admitted; then must we be

free-men; for we need no better security, no more powerful protection for our Rights and Liberties, than the Laws and Constitution. We seek for, and we need seek for, *nothing new;* we ask for no more than what our fore-fathers insisted upon as their own; we ask for no more that what they bequeathed unto us; we ask for no more than what they, in the Testament which some of them had sealed, and which the rest of them were ready to seal, with their blood, expressly declared to be "*the Birth-right* of the People of England;" namely, "THE LAWS OF ENGLAND". To these Laws we have a right to look, with confidence, for security: to these laws the individual now imprisoned has, through me, applied for redress, in vain. Those, who have imprisoned him, have refused to listen to my voice, weakly expressing the strong principles of the Law, the undeniable claims of this Englishman's "*Birth-right*." Your voice may come with more force; may command greater respect; and, I am not without hope, that it may prove irresistible, if it proclaim to this House of Commons, in the same tone as the tongues of our ancestors proclaimed to the Kings of old, "NOLUMUS LEGES ANGLIÆ MUTARI"; or, in our own more clear and not less forcible language; "THE LAWS OF ENGLAND SHALL NOT BE CHANGED."

The Principle, fellow-citizens, for which we are now contending, is the same Principle, for

which the people of England have contended from the earliest ages, and their glorious success in which contests are now upon record in the Great Charter of our Rights and Liberties, and in divers other subsequent Statutes of scarcely less importance. It was this same great Principle, which was again attacked by Charles the First. In the measure of Ship Money, when again the people of England and an uncorrupted House of Commons renewed the contest; a contest which ended in the Imprisonment, the Trial, the Condemnation, and the Execution of that ill-advised King. The self same Principle it was, that was so daringly violated by his Son James the Second; and for which violation he was compelled to flee from the just indignation of the people, who not only stript him of his Crown, but who prevented that Crown from descending to his family. In all these contests, the courage, perseverance, and fortitude of our ancestors, conspicous as they were, were not more so than their wisdom; for, talk as long as we will about Rights, Liberties, Franchises, Privileges and Immunities, of what avail are any, or all of these together, if our Persons can, at the sole will and command of any man, or set of men, be seized on, thrown into prison, and there kept during the pleasure of that man, or set of men? If every one of you be liable, at any time, to be sent to jail without trial, and without oath made against you, and there to be detained as long as it pleases the parties

sending you there (perhaps to the end of your life), without any Court to appeal to, without any means of redress: if this be the case, shall we still boast of the Laws and of the Liberties of England? Volumes have been written by Foreigners as well as by our own countrymen in praise of that part of our Law, which in so admirable a manner, provides for our personal safety against any attacks of men in power. This has, indeed, been, in all ages, the pride of our country; and it is the maintenance of this principle which enabled us to escape that bondage, in which all the States and Kingdoms in Europe were enthralled by abandoning and yielding it up; and, we may be assured, that if we now abandon it, the bright days of England's glory will set in the night of her disgrace.

But, I would fain believe that such is not to be our fate. Our Fore-fathers made stern grim-visaged PREROGATIVE hide his head: they broke in pieces his sharp and massy sword. And, shall we, their Sons, be afraid to enter the lists with undefined PRIVILEGE, assuming the powers of Prerogative?

I shall be told, perhaps, that there is not much danger of this power being *very frequently* exercised. The same apology may be made for the exercise of any power, whatever. I do not suppose that the Gentlemen of the House of Commons will send any of you to jail, when you do

not displease them. Mr. Yorke did not move for the sending of Mr. Jones to jail, until Mr. Jones displeased him; but, it is not a very great compliment to pay to any Constitution, to say, that it does not permit a man to be imprisoned, unless he has done something to displease persons in power. It would be difficult, I should suppose, to find any man upon earth, however despotic his disposition, who would not be contented with the power of sending to prison, during his pleasure, every one who should dare to do any thing to displease him. Besides, when I am told, that there is little danger that the Gentlemen in the House of Commons will *often* exercise this power, I cannot help observing, that, though the examples may be few, their effect will, naturally, be great and general. At this moment, it is true, we see but one man actually in jail for having displeased those Gentlemen; but the fate of this one man (as is the effect of all punishments) will deter others from expressing their opinions of the conduct of those who have had the power to punish him. And, moreover, it is in the nature of all power, and especially of assumed and undefined power, to increase as it advances in age; and, as Magna Charta and the Law of the Land have not been sufficient to protect Mr. Jones; as we have seen him sent to jail for having described the conduct of one of the members as an *outrage upon public feeling*, what security have we, unless this power of

Imprisonment be given up, that we shall not see other men sent to jail for stating their opinion respecting Rotten Boroughs, respecting Placemen and Pensioners sitting in the House; or, in short, for making any declaration, giving any opinion, stating any fact, betraying any feeling, whether by writing, by word of mouth, or by gesture, which may displease any of the Gentlemen assembled in St. Stephen's Chapel?

Then, again, as to the *kind* of punishment; why should they stop at sending persons to jail? If they can send whom they please to jail; if they can keep the persons, so sent, in jail as long as they please; if they can set their prisoners free at the end of the first hour, or keep them confined for seven years: if, in short, their absolute Will is to have the force of Law, what security can you have, that they will stop at *Imprisonment?* If they have the absolute power of imprisoning and releasing, why may they not send their prisoners to York-Jail as well as to a jail in London? Why not confine men in solitary cells, or load them with chains and bolts? They have not gone these lengths yet; but, what is there to restrain them, if they are to be the sole judges of the extent of their own powers, and if they are to exercise those powers without any controul, and without leaving the parties, whom they choose to punish, any mode of appeal, any means of redress?

That a Power such as this should exist in any country it is lamentable to be obliged to believe; but, that it should be suffered to exist, and that its existence should be openly and even boastfully avowed, in a country, whose chief glory has been its free constitution of government, is something too monstrous to be believed, if the proof were not before our eyes. Had the least doubt hung upon my mind of the illegality of the proceedings in the present case, it would have been altogether removed by the answers given to the references made by me to the Great Luminaries of our Law and to the Laws themselves. The Argument, by which I endeavoured to convince the Gentlemen of the House of Commons, that their acts, in the case of Mr. Jones, were illegal, I shall now lay before you, in a more full and connected way than it could possibly be done by the Parliamentary Reporters; and, in doing this, I shall do all that now remains in my power towards the correction of this, as I deem it, most enormous Abuse of Power, and most dangerous of all encroachments upon the Rights and Liberties of Englishmen.

I remain, Gentlemen,

Your most obedient,

humble Servant,

FRANCIS BURDETT.

Piccadilly, March 23, 1810.

THE

ARGUMENT, &c.

IN order to make clearly underſtood the Argument which is here ſubmitted to the conſideration of the Public, it will be neceſſary, firſt, ſimply to ſtate the queſtion about to be diſcuſſed, as it was propoſed originally to the Houſe of Commons, and to endeavour to put out of view altogether, as making no part of the preſent enquiry, every other Privilege or Power for which the Houſe of Commons may contend. I am the more anxious upon this point, on account of the difficulty experienced during the diſcuſſion in the Houſe of Commons of keeping ſeparate, things, in their nature totally diſſimilar, and quite diſtinct, but always confounded: namely, The other Privileges and Powers contended for by the Houſe of Commons, and that which we are now about to diſcuſs; namely, "*The Power exerciſed by the Houſe of Commons of paſſing a Sentence of Impriſonment on any perſon not being a Member of that Houſe.*" It will be neceſſary to keep our minds conſtantly fixed upon this ſimple queſtion alone, and to apply to it, and to it only, all the arguments about to be adduced in the courſe of this enquiry.

Had I not been prevented by indiſpoſition from being preſent when the Houſe of Commons paſſed by vote a Sentence of Impriſonment on Mr. Gale Jones, I ſhould have endeavoured to ſhew, That under the falſe notion of Privilege, they were exerciſing a power, and committing an act of oppreſſion, ill ſuited to the character of Guardians of Public Liberty, and deſtructive of the firſt and moſt important object of the Conſtitution, viz. "The Perſonal Security of the Subject."

Though I was well aware of the greater difficulty of perſuading men to recall an act once committed, than to prevent its commiſſion—it being much more eaſy to ſlide into than to recover from error—I would not allow that conſideration to deter me from what my duty called upon me to attempt. To others I ſhall always leave fanciful ideas, ſuggeſted by wild metaphyſical imaginations, on the ſuppoſed nature of what they may be pleaſed to call Privilege, or any other chimerical, undefined non-deſcript; and, as a plain man, be content, upon this as upon all other occaſions, to be guided by the old Laws of the Land; in which alone I am able to find THE CONSTITUTION of this Country—the Liberty which I claim as the inheritance of Engliſhmen—and that Standard by which and by which alone, every act and proceeding of any man or body of men ought to be meaſured.

The Common Law of the Land is the inalienable inheritance of the people—it is, ſays Lord Coke, "The "Inheritance of Inheritances: it is the beſt birth-right "the Subject hath, for thereby his goods, lands, wife, "children, his body, life, honour and eſtimation are "protected from injury and wrong. *Major hæreditas "venit unicuique noſtrum a jure et legibus quam a pa-"rentibus.* It is higheſt above the higheſt; None are

"above its reach, nor any beneath its protection: Its "foundations are laid broad and deep in nature and rea-"ſon, and therefore not to be removed from thoſe foun-"dations by any power upon earth *." "The Law of "England," ſays the great Lawyer Plowden, "is no "other than pure and tried reaſon †." And, according to Lord Coke, "the abſolute perfection of Reaſon. The "ground whereof is beyond the memory or regiſter of "any beginnings ‡."

The queſtion, then, for the People to conſider, is, Whether a Vote of the Houſe of Commons can deprive them of theſe their impreſcriptible Rights?

Many are the ſtatutes, which, embodying theſe principles of the Common Law, have declared, That no Order, Writ or Commandment whatſoever, either from the King or any other, ſhall ſtop the Common Law: That it ſhall by no means be delayed, being the ſureſt ſanctuary for the innocent, and the ſtrongeſt fortreſs to protect the weak. It has clipt the wings of high-flying prerogative; and will, I truſt, yet diſſolve the potent ſpell of undefined Privilege of Parliament: for there are no Powers or Privileges, even the higheſt, that are not bounded by the known aſcertained Laws of the Land. If, therefore, any man, or ſet of men, lay claim to Privileges or Powers, not recognized by, but repugnant to, thoſe Laws; ſuch claims ought to be legally resisted by every one who values regulated Liberty, and abhors Anarchy or Despotism—the never-failing conſequence of departing therefrom.

* See also Co. Lit. 141. a. 2 Inst. 56, 63.
† Plowden, 316.
‡ See also Co. Lit. 976, 2 Inst. 179.

Founded on ſuch a baſis; fortified by ſuch Authorities as I ſhall have occaſion to appeal to in the progreſs of this enquiry, I have little doubt of being able to convince every impartial mind, that the Houſe of Commons, by proceeding to judgment—paſſing a Sentence of Impriſonment, and iſſuing a Warrant of Commitment, has gone beyond its preſcribed limits, acted in a manner inconſiſtent with the ends of its inſtitution; and violated the fundamental principles of the Law and Conſtitution of the Land. And this I ſhall prove by the application of the ſtandard of the law to the Proceedings of that Houſe.

To bring this queſtion fairly into diſcuſſion, it will be neceſſary to ſtate the origin and extent, from which will appear the nature and reaſon, of the Privileges of members of Parliament.

The firſt mention of Privilege of Parliament is to be found in Spellman, who records a law of king Canute, "*Omnis homo eundo ad Gemotum, vel redundo á Gemoto habeat pacem.*" That every one going to, or coming from the Wittena gemotte, ſhould have protection."

The next notice of Privileges is to be found in two Writs of Superſedeas of Edward the ſecond, to privilege members from being ſued in any court, (ſitting the parliament) and which are ſtill extant.

The extent of theſe Privileges cannot be better ſet forth than in the following Order of the Houſe of Commons, of the 1ſt of June, 1621, ſuppoſed to have been drawn up by ſir Edward Coke, then a leading member of the Houſe:

"Ordered, upon queſtion, That if any Arreſt, or any "diſtreſs of goods, ſerving any proceſs, ſummoning his "land, citation or ſummoning his perſon, arreſting his "perſon, ſuing him in any court, or breaking any other

"privilege of this Houſe, a letter ſhall iſſue, under Mr. "Speaker's hand, for the party's relief therein, as if the "parliament was ſitting; and the party, refuſing to obey "it, to be cenſured at the next Acceſs." *

On the 18th of December, 1621, the following Proteſtation concerning the Privileges of the Houſe of Commons, was agreed to, and ordered to be entered in the Journal:

"The Commons, now aſſembled in parliament being "juſtly occaſioned thereunto, concerning ſundry Liber"ties, Franchiſes, Privileges, and Juriſdictions of Par"liament, amongſt others not herein-mentioned, do make "this Proteſtation following: That the Liberties, Fran"chiſes, Privileges and Juriſdictions of Parliament, are "the ancient and undoubted birthright and inheritance of "the ſubjects of England; and that the arduous and "urgent affairs concerning the King, State, and the De"fence of the Realm, and of the Church of England, and "the making and maintenance of laws, and redress of "miſchiefs and grievances, which daily happen within "this realm, are proper ſubjects and matter of counſel "and debate in parliament: and that in the handling and "proceeding of thoſe buſineſſes every member of the "houſe hath, and of right ought to have, Freedom of "Speech, to propound, treat, reaſon and bring to conclu"ſion the ſame: that the Commons in parliament have "like liberty and freedom to treat of thoſe matters, in "ſuch order, as, in their judgments ſhall ſeem fitteſt: "and that every ſuch member of the ſaid houſe hath like "freedom from all impeachment, impriſonment and mo"leſtation (other than by the cenſure of the houſe itſelf), "for, or concerning any bill, ſpeaking, reaſoning or de-

* 1 Commons' Journals, 634.

" claring of any matter or matters, touching the parlia-
" ment or parliament buſineſs; and that, if any of the
" ſaid members be complained of, and *queſtioned* for any
" thing ſaid or done in parliament, the ſame is to be
" ſhewed to the king, by the advice and aſſent of all the
" Commons aſſembled in parliament, before the king
" give credence to any private information."*

The nature and reaſon of theſe Privileges are declared by a Reſolution of the Houſe of Lords, May 28th, 1624. On which day, the Earl Marſhal, from the Committee for ſearching Precedents to ſuſtain the Privileges, &c. of the Houſe, made the following Report: viz.

" How far the Privileges of the Nobility do clearly
" extend, concerning the Freedom of their Servants
" and followers from Arreſts.

" To all their menial ſervants and thoſe of their fa-
" mily, and alſo thoſe employed, neceſſarily and pro-
" perly, about their eſtates as well as their perſons.—
" This freedom to continue twenty days before and after
" every ſeſſion; in which time the Lords may conve-
" niently go home to their houſes in the moſt remote
" parts of the kingdom.—That all the Lords, after the
" end of this ſeſſion, be very careful in this point, and,
" remember the ground of this Privilege; which was,
" only, in regard they ſhould not be diſtracted, by the
" trouble of their ſervants, from attending the ſerious af-
" fairs of the kingdom; that therefore they will not per-
" vert that Privilege to the public injuſtice of the king-
" dom, which was given them, chiefly, that the whole
" realm might, in this High Court, draw the clear light
" of juſtice from them. In which caſe, every one ought

* 1 Cobbett's Parl. Hiſt. 1361.

" rather to keep *far within*, than any way exceed their
" due limits,—That hereafter, before any perſon be ſent
" for in this kind, the lord whom he ſerves ſhall, either
" by himſelf or by his letter, or by ſome meſſage, certify
" the houſe upon his honour, that the perſon arreſted is
" within the limits of the privilege before expreſſed.—
" And, for the particulars, they muſt be left to the judg-
" ment of the Houſe, as the caſe ſhall come in queſtion;
" wherein the Houſe wants no means, as well by oath as
" without, to find out the true nature of the ſervant's
" quality in his lord's ſervice. Thereupon, if it be ad-
" judged by the Houſe contrary to the true intent, any
" member whatſoever muſt not think it ſtrange, if in ſuch
" a caſe, both himſelf ſuffer reproof, as the Houſe ſhall
" think fit, and his ſervant receive no benefit by the pri-
" vilege, but pay the fees; becauſe the juſtice of the
" kingdom muſt be preferred before any perſonal reſ-
" pect, and none to be ſpared that ſhall offend after ſo
" fair a warning.—Ordered to be obſerved accordingly,
" with this alteration, viz. This freedom to begin with
" the date of the writ of ſummons, and to continue
" twenty days after every ſeſſion of parliament *."

We may reaſonably conclude, that all the Privileges, the Houſe of Commons then thought itſelf intitled to, were enumerated in the Order of the 1ſt of June 1621, as ſir Edward Coke, ſo well acquainted with, and then contending for them againſt the undue prerogative of the crown, claimed no more.

Whenever theſe Privileges, ſo modeſtly and reaſonably claimed, and ſo neceſſarily complied with, were in-

* 1 Cobbett's Parl. Hiſt. 1488.

fringed, they were as modeſtly and reaſonably maintained by an appeal to the tribunal of the Laws: which is apparent by reference to all the Caſes of Privilege which occurred up to the time of the Civil War. As for inſtance:

In 1427, one Richard Chedder, a menial ſervant, attending upon ſir Thomas Brooke one of the knights for Somerſetshire, who was aſſaulted, beaten, and cruelly maimed, was content to ſeek redreſs by law *.

In 1430, William Larke, ſervant to William Mildred one of the members for the City of London, was committed to the Fleet on an execution of debt, and delivered in due courſe of law †.

And in 1433, an act of parliament was made, affixing a heavier penalty for the aſſaulting a member, than the law had previouſly inflicted. The act is entitled "An Act againſt aſſaults made upon Lords or others coming to the parliament."

In 1456, Thorpe, the Speaker, was arreſted at the ſuit of the duke of York, on which the Commons appealed to the whole parliament, who referred the caſe to the Judges, whoſe opinion was in favour of Thorpe's being entitled to privilege: notwithſtanding which, the Parliament decided otherways, and the Commons acquieſced and choſe another Speaker ‡. What is remarkable in this caſe is, that both the Judges and the Parliament appeal to the ſame maxim: both apply the ſame argument as concluſive, viz. "That the party aggrieved could have no redreſs, and that there could be no wrong without a remedy." The Judges determine from this maxim and from this reaſon, that no general Writ of *Superſedeas* could lye, "becauſe" (ſay they,) "if it could, the High Court

* 1 Hatſell, 14. † Ibid. 17. ‡ Ibid. 28. 1 Cobbett's Parl. Hiſt. 392.

of Parliament from which all juſtice and equity ought to flow, would ſeem to ſtop the courſe of juſtice, and leave the party aggrieved without remedy." And the Parliament yield to this ſame reaſon ſet forth by the duke of York in the argument againſt Thorpe's being allowed Privilege, viz. "That in caſe it was granted to Thorpe in this inſtance, the party aggrieved could have no remedy." So that we have the Opinion of the Judges and the Deciſion of the Parliament equally determined by the never failing maxim, "That there can be no Wrong without a Remedy."

In 1461, Walter Clarke, a Member arreſted, was relieved by law *.

In 1472, John Walſh, ſervant to the Earl of Eſſex, being ſued in the courts below, pleaded Privilege not to be ſued, as being ſervant to a member of parliament: but the Judges decided that there was no ſuch Privilege †.

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 the Serjeant at Arms *for the firſt time*, to relieve their member. This was reſiſted by the Sheriffs with violence, the Serjeant had his mace broke, and returned without the member; whereupon the Sheriffs, were ſummoned before King, Lords and Commons, who referred their puniſhment to the latter, who ſent them to jail ‡.

In 1545, Trewynnard, a member, was arreſted and relieved according to law by writ of Privilege; for obeying which, the Sheriff ſuſtained an action for eſcape ‖.

Another caſe in the reign of Henry the 8th is very re-

* 1 Hatſell, 35. † Ibid. 41. ‡ Ibid. 53. 1 Cobbett's Parl. Hiſt. 553. ‖ 1 Hatſell, 59.

markable, namely, that of Mr. Stroud a member; who for bringing a bill into parliament for regulating the Tinners in Cornwall, was upon the breaking up of parliament *queſtioned* for it in the Court of Stannaries—fined and impriſoned in Lilford Caſtle; but relieved by due courſe of law, by Writ of Privilege*.

In 1580, the ſingular and complicated Caſe of Mr. Hall, a member, occurs, who having written a Book derogatory to the character of the Houſe, and having publiſhed the ſame againſt its Orders, and miſrepreſented its Proceedings; and having beſides written an impudent Letter to the Speaker, and being abſent when ordered to attend in his place, was impriſoned †.

In all theſe Caſes we may obſerve that Members, when their Privileges were violated, and their Perſons arreſted, were content to appeal to the Law, and had that tenderneſs and reſpect for other men's Rights as well as their own Privileges, as to make proviſion for the intereſt of creditors, when affected by their Privileges, and to indemnify officers againſt actions for eſcape, to which they were legally liable for giving up their priſoners. And never did the Members of the Houſe of Commons preſume to overleap the bounds of the Conſtitution, and take the law into their own hands, till the days of the Long Parliament; when, from the peculiar circumſtances of the country, in order to reſiſt the arbitrary encroachments of a deſpotic Prince, the Houſe of Commons found it abſolutely neceſſary in the ſtruggle, not only to extend their Privileges, but to aſſume powers, the exerciſe of which aboliſhed the Houſe of Lords, brought the King to the block, and ultimately diſſolved the whole frame of the Government. If theſe uſurpations of Power were not

* 1 Hatſell, 86. 126. 206. † Ibid. 93.

only acquieſced in, but ſtrenuouſly ſupported by the People, it was becauſe they were ſuppoſed to be indiſpenſibly neceſſary to enable the Houſe of Commons to ſtem the torrent of tyranny which was ſweeping every thing before it to deſtruction; and as the only means of wreſting from the graſp of deſpotiſm, the expiring Liberties of the country.

But theſe, ſurely, are not ſources ſufficiently clear, nor times ſufficiently analogous to juſtify our drawing thence inſtances, miſcalled Precedents, to countenance ſimilar proceedings under a legal, ſettled, and eſtabliſhed ſyſtem of government. But as every day's experience will inform us how reluctantly all men relinquiſh power and authority, which they have once exerciſed, even after having experienced its miſchiefs, ſo was the Houſe of Commons after the Reſtoration unwilling to yield up its uſurped power and authority, ſubmitted to in times of trouble and commotion, but incompatible with the return of order and the laws.

Accordingly, we find in the Caſes of Dr. Carey, Mr. Fitten, ſir Samuel Barnardiſton, Shirley, and Stoughton *verſus* Onſlow, the pretenſions to Power under the name of Privilege ſtill clung to by both Houſes of Parliament, but as conſtantly denied and reſiſted by each Houſe in its turn; the one always denying the uſurpation of the other, and the parties aggrieved the authority of both: conſequently no power or authority is acknowledged or allowed to belong to either. But the following Caſe, which occurred about the ſame time, and which having been argued at a Conference between the two Houſes is entitled to more particular notice, is that of the four Council in the Appeal of ſir Nicholas Criſpe *verſus* the lady Bowyer, Dalmahoy and others, who were taken into the cuſtody of the Ser-

jeant at Arms, for pleading before the Lords, contrary to an Order of the Houſe of Commons to forbid them; at which Conference, the Lords aſſert, That the Houſe of Commons is no Court, has no authority to adminiſter an Oath, or to give a Judgment; that it is a tranſcendant invaſion of the Liberty of the Subject; that it is againſt Magna Charta, the Petition of Right, and many other laws, which have provided, That no freeman ſhall be impriſoned, or otherwiſe reſtrained of his liberty, but by due proceſs of law; that it tends to the ſubverſion of the government of the kingdom, becauſe it is in the nature of an Injunction from the Lower Houſe; which has no authority or power of juriſdiction over *inferior ſubjects*, much leſs over the King and Lords*: Which arguments not to be controverted, the Houſe of Commons contented itſelf with replying to, by retorts upon the aſſumed juriſdiction of the Houſe of Lords, and by advancing empty aſſertions of its own authority, without attempting to offer a ſhadow of proof in their ſupport.

But in the Caſe of ſir Samuel Barnardiſton before mentioned, it is curious to obſerve the two Houſes changing ſides. The Houſe of Commons then becomes, in its turn, the advocate for Magna Charta and the Rights of the People againſt the uſurping juriſdiction and arbitrary pretenſions of the Houſe of Lords. Each Houſe deciding as equitably againſt the unjuſt pretenſions of the other, and according to the laws and the intereſt of the public; and as regardleſs of all equity, the public intereſt and the laws, when taking upon it to decide in its own cauſe; thus affording a ſtrong additional illuſtration of the old wholeſome doctrine, "That no one ought to be judge in his "own cauſe."

* 4 Cobbett's Parl. Hist. 733.

From this period to that of the Revolution, the firſt inſtance that occurs, is that of a Pamphlet on clipping and coining guineas. The Houſe of Commons offered a reward for the diſcovery of the author, and ordered the Pamphlet to be burned.

The next caſe that occurs, is that of Dr. Welwood, who publiſhed a weekly paper, reflecting upon the whole Houſe. He was reprimanded and diſcharged. *

Complaint being made againſt a Book entitled "King William and Queen Mary Conquerors," ſaid to be written by Charles Blount, eſq., it was ordered to be burnt: as likewiſe was a Paſtoral Letter at the ſame time †. Dyer, a News-paper man, was reprimanded for publiſhing Debates, and diſcharged. ‡

Having briefly noticed theſe important Caſes, I ſhall next proceed to direct the public attention to the remarkable Caſe of Bridgeman *verſus* Holt § in 1696-7. The ducheſs of Grafton having claimed under a patent of Charles the ſecond, a right to appoint the Clerk to the King's Bench, Lord Chief Juſtice Holt conteſted the claim. It was a trial at bar, and was decided againſt the Ducheſs in favour of Lord Chief Juſtice Holt. Upon which, the counſel of Bridgeman, who had been nominated as Clerk by the Ducheſs, tendered a Bill of Exceptions, which the Juſtices refuſed to ſeal. In conſequence of which, a Petition, complaining of the conduct of the Judges, was preſented to the Houſe of Lords, accuſing ſir Wm. Dolben, ſir Wm. Gregory, and ſir Giles Eyre, Juſtices of the King's Bench, of acting illegally in having

* 5 Cobbett's Parl. Hist. 658.
† Ibid. 756.
‡ Ibid. 862.
§ Showers's Cases in Parl. 111.

ſo refuſed. They were, in conſequence of this Charge, ſummoned by the Houſe of Lords to appear before them, and anſwer to the complaint made in the Petition. Which the Judges refuſed to do: and they, in a ſolemn, well-digeſted Argument, denied the Juriſdiction of the Houſe of Lords, and inſiſted upon their undoubted Right, as Engliſhmen, to a Trial by a Jury of their equals, in caſe they, in any thing were accuſed of having done wrong, and claimed the benefit of being tried according to the known courſe of the Common Law: they relied upon Magna Charta as free born Engliſhmen, which, they ſaid, was made for them as well as for others; that all Powers and Privileges in the kingdom, even the higheſt, are circumſcribed by the laws, and have their limits. In the Courts of Weſtminſter, (ſaid they) the Law is determined by one, and the Fact aſcertained by another; *here*, both the Law and the Fact would be in the ſame hands. If the Houſe of Lords ſhould puniſh, could ſuch order ſtop or bar the legal proceſs hereafter? or be uſed below as a recovery or acquittal?—as an *autrefois convict?* or *autrefois acquit?* Would the Proceedings in the Houſe of Lords ſave them from the trouble of anſwering to an information or indictment *for the ſame thing* elſewhere?

Here it is to be remarked, that when the Judges of the land were attacked by an unwarrantable power, they ſheltered themſelves behind the broad ſhield of Magna Charta and the Trial by Jury, well knowing the value of ſuch a protection—and they conclude with theſe memorable words: "Some perſons have, perhaps, from a diffidence "of ſucceſs, or from a ſlaviſh fear, or private policy, for-"borne to queſtion the power of their ſuperiors, but the "Judges muſt betray their reputation, and their know-"ledge of the laws, if they ſhould own a juriſdiction

"which former times and their predeceſſors were unac-"quainted with." Whereupon, the Petition was diſmiſſed.

If theſe reaſons were concluſive againſt the juriſdiction of the Houſe of Lords, they apply much more forcibly to the Houſe of Commons: for the Houſe of Lords retains the judicial authority of the parliament, being a Court of Appeal; but, the Houſe of Commons has no judicial function to perform, and is no court at all. The Judges claimed no more than their right as commoners of England in Magna Charta and the Common Law of the land; which they contended, and with ſucceſs, admitted of no man's being tried, except by a jury of his equals. They affirmed, that all Powers and Privileges in the kingdom, even the higheſt, are circumſcribed by the laws of the land, and that they, the Judges, ſhould betray a ſlaviſh fear and groſs ignorance, if they permitted ſuch an uſurpation to be drawn into a precedent unknown to former times.

Theſe arguments, which need no further comment, ought to have been ſufficient to put an end to all ſuch pretenſions in either houſe of parliament for ever; but ſo reluctantly do all men part with power, that we find the Lords in the very next year, 1697, in the Caſe of Lord Banbury, ſummoning Lord Chief Juſtice Holt, to appear before a Committee of their Houſe; but Lord Chief Juſtice Holt refuſed to appear, and the Lords liſtened to the voice of reaſon, and dropped their pretenſions.

From theſe ſolemn acts of venerable Judges in good times, it is evident, that undefined Privileges in the Houſes of Parliament were unknown to the Conſtitution and the

Law; though, ſometimes, perhaps, yielded to from ignorance or fear, but in which the Judges who knew the laws would not acquieſce.

This ſound expoſition of the Law, and the conduct and example of the Judges, might reaſonably have been expected to operate as a prevention of any further diſquietude of an Engliſh ſubject from the power of either houſe of parliament: and that it did produce a conſiderable effect, we may preſume from the number of ſubſequent Caſes, in which neither Houſe preſumed to trench upon the Liberty of the Subject. For inſtance: in the year,

1698. Molyneux's "State of Ireland." He refuſed to appear, and the Houſe of Commons addreſſed the King to diſcontinue the like Works in future.

1699. Mr. Chivers, a member, was ordered to attend for a contempt; but declined coming: and, next day, on its being put to the vote, Whether he ſhould be taken into cuſtody by the Serjeant at Arms? it was carried in the negative.

1702. Doctor Drake's "Hiſtory of the laſt Parliament," a libel.

1707. Doctor Friend's "Account of Lord Peterborough's Conduct in Spain," a libel.

1719. Hall's "Sober Reply,"—a work againſt the Trinity.

1750. "Conſtitutional Queries."

1763. Wilkes's "Eſſay on Woman," to which the name of Biſhop Warburton was prefixed as the author.

1763. Wilkes's "North Briton, No. 45."

1763. Veni Creator paraphrased.

In all of which Cases, whether for libelling any mem-

ber of either house, or the whole house, or both houses, or the whole frame of the government, both Lords and Commons were content to pursue the known course of the Law, and leſt the party accused to be tried by the law of the land and a jury of his country.

There is a Case which, though prior in point of time, I have reserved for the last, because it demands a few observations: That of the Kentish Petition* in 1701, presented to the House of Commons by Mr. Colepepper and four other Kentish Gentlemen: voted by the house libellous, seditious, and a breach of privilege, and for presenting which the House of Commons sentenced these five gentlemen to be impriſoned. Is this an act to be juſtified and drawn into precedent? And of what avail is any precedent from the proceedings of an aſſembly whoſe conduct is arbitrary, and whoſe actions are meaſured by the crooked cord of its own diſcretion, not by the golden meteyard of the law?

The next and the laſt Caſe I ſhall have occaſion to adduce, is that of the Middleſex Journal, in 1771, when the Serjeant at Arms of the Houſe of Commons was ſent by their order to arreſt the Printer; inſtead of which, the Printer took up the Serjeant, and brought him before Croſby, Lord Mayor, and Aldermen Wilkes and Oliver, who committed the Serjeant. Notwithſtanding this outrage which the Houſe of Commons ſuſtained by the attack upon its officer, it preſumed not to touch any of the offending parties, except its own members, the Lord Mayor and Alderman Oliver; paſſing over the Printer, the Journaliſt, and Alderman Wilkes, who, at that time,

* 5 Cobbett's Parl. Hist. 1520. See also "The History of the Kentish Petition," in the Appendix to the same volume, No. XVII.

was not a member of the Houſe—than which diſaffirmance of its power a ſtronger proof cannot be conceived.

Leſt it ſhould be poſſible that any perſon ſhould attach the ſlighteſt importance to the Reſolutions of either Houſe of Parliament, which may go to affect thoſe who are not members of thoſe bodies, it may be neceſſary to remark, that the Journals furniſh Reſolutions of the moſt contradictory nature: for inſtance,

April 3, 1626-7, Reſolved, "That the Writ of Habeas Corpus cannot be denied, but ought to be granted "to every man, that is committed or detained in priſon, "or otherwiſe reſtrained, by the command of the king, "the privy-council, or any other; he praying the "ſame *."

June 9, 1705, Reſolved, *nem. con.* "That no commoner of England, committed by Order or Warrant "of the Houſe of Commons, for breach of privilege, "or contempt of that Houſe, ought without order of "that House to be, by any Writ of Habeas Corpus, or "other authority whatſoever, made to appear and anſwer, and do, and receive a determination in the "Houſe of Peers, during the ſeſſion of parliament "wherein ſuch perſon was committed †."

And, in 1740, in Walpole's Caſe, it was reſolved by the Lords, "That any attempt to puniſh a man without "a trial or hearing, was contrary to the natural prin"ciples of Juſtice and Liberty." And, in the Caſe of Skinner *verſus* the Eaſt India Company, in 1675, the Commons Reſolved, "That aſſuming a juriſdiction over "the Caſe, being relievable at common law, is con-

* 2 Cobbett's Parl. Hist. 259.
† 6 Cobbett's Parl. Hist. 431.

"trary to law, and tends to introduce arbitrary power."
—But, to Reſolutions of the Houſe of Commons, Sir Fletcher Norton ſaid, when Attorney General, (and he was afterwards ſelected, for his knowledge of the laws, uſage, and cuſtom of parliament, to fill the Chair), "He would pay no more reſpect, than to the Reſolutions of ſo many drunken porters at an ale-houſe." The expreſſion was coarſe, but the principle is juſt.

It has been ſhewn, from the Opinions of learned Judges—from the Declaration of both Houſes of Parliament, when not judging in their own cauſe,—and from undeniable legal Maxims, that the power exerciſed by the Houſe of Commons, of paſſing a Sentence of Impriſonment upon any perſon, not a member of its body, is contrary to the Common Law, to Magna Charta, and every conſtitutional principle. I will now go further, and undertake to prove, that not only every fundamental principle of the Common Law has been violated, but that every expreſs proviſion of the Statute Law, for the perſonal ſecurity of the ſubject, has been tranſgreſſed. For which purpoſe it will be neceſſary to examine ſtrictly, and with the utmoſt preciſion, what the legal and conſtitutional functions of the Houſe of Commons are: ſuppoſing, for the ſake of the argument, that they are the fairly choſen Repreſentatives of the People. Its Privileges we have enumerated from the higheſt authority. Let us now conſider its Powers—begging that the Reader will never loſe ſight of the wide diſtinction between Privilege and Power.

Its Powers, then, briefly are: To remove Obſtructions to its Proceedings: to abate a Nuiſance legally called Contempt: As the Grand Inquest of the nation (which very term is enough to ſhew that its office is but to in-

quire, not to punish), it has authority to summon Witneſſes for the purpoſe of inſtituting Inquiries into Public Grievances—of controuling Public Expenditure, and of impeaching Public Delinquents, in furtherance of juſtice, with a view to Judgment at the Tribunal of the Laws.

Such being its Powers, it will be neceſſary, in the next place, to examine it in another point of view, viz. as a Court exerciſing judicial Powers. And here, at the outſet, we diſcover, that it is not a Court of Record, becauſe it cannot hold Plea of Debt or Damage to the amount of forty ſhillings. Lord Coke ſays, "That a Court *not* of "Record, is where it cannot hold Plea of Debt or Da"mage to the amount of forty ſhillings;" and he expreſsly lays it down, "That no Court not of Record can "fine or impriſon," as reſolved *per totam curiam*, on argument in Grieſley's Caſe, as well as by Holt, in the Caſe of Grenville, *verſus* Barwell. To impoſe a Fine of the loweſt denomination the Houſe of Commons has relinquiſhed its former pretenſions. If it does not, then, preſume to impoſe the ſmallest Fine, does it not neceſſarily follow, that it cannot inflict the higher puniſhment of Impriſonment? It is an acknowledged maxim in Law: "*Cui minus non convenit, ei non majus convenit;*" and, of how much more value, in the eye of Reaſon and the Law, is a man's Perſon, than his Property, though it protects both? To what end, indeed, ſhould a man acquire Property, if his Perſon is inſecure? The notion entertained by our old lawyers, reſpecting Impriſonment, which is the highest execution of the law ſhort of death; the importance attached by them to the power of impriſoning men, may be collected from Lord Coke, who ſays, "That a man in priſon is dead in law; he is *homo mortuus*, loſt to ſociety, himſelf, his family, and his friends;

and that a man indefinitely impriſoned, is a man in Hell." And the Goſpel ſays, "Is not the Life more than meat and the Body than raiment?" in which word "raiment" all external poſſeſſions are included.

This part of the ſubject may be reduced to a Syllogiſm:—

No Court, that cannot hold Plea of Debt or Damage to the amount of forty ſhillings, is a Court of Record;

The Houſe of Commons can hold no ſuch Plea;

Therefore is not a Court of Record—therefore cannot fine or impriſon.

We will now try this pretenſion of the Houſe of Commons by the teſt of its own proceedings.

The party is ſummoned to the bar to answer interrogatories. Should he be unwilling to do this, he is ſent to priſon.—See the Caſe of Mr. Howard, 1675*. Should he confeſs, he is likewiſe ſent to priſon. See the Caſe of Mr. Jones, 1810. No legal evidence can be brought. The Houſe is ſtopped *in limine*; for it cannot adminiſter an oath; and Magna Charta, who, ſays my Lord Coke, is ſuch a fellow, that he will bear no equal—arreſts its further progress—declaring, "That no man ſhall be put "to his law on the bare ſuggeſtion of another, but by "lawful witneſſes." Therefore, the Houſe cannot proceed to trial: conſequently, can deliver no Judgment—can paſs no Sentence. Magna Charta declares, "That "no Freeman ſhall be arreſted, impriſoned, or in any "way deſtroyed, but by the Judgment of his Peers, or "the Law of the Land;" and theſe words, *per legem*

† 4 Cobbett's Parl. Hiſt. 770.

terræ, or law of the land, are well and fully explained by the Statutes in confirmation of Magna Charta. The 5th, 25th, 28th, 37th, and 42d of Edward the 3d: which declare, That no man ſhall be put to anſwer without preſentment of good and lawful men, before Juſtices, or matter of record, or writ original, or in due proceſs of law. They alſo declare, That all enactments contrary to Magna Charta, are, *ipſo facto*, null and void. And hereupon, ſays Lord Coke, all Commiſſions are grounded, always having this Sentence, "*Facturi quod ad juſtitiam pertinet, ſecundum legem et conſuetudinem Angliæ.*" It is not, ſays Lord Coke, "*Secundum legem et conſuetudinem Regis Angliæ,*" leſt it ſhould be thought to bind the King only. Nor is it, "*Secundum legem et conſuetudinem Populi Angliæ,*" leſt it may be thought to bind the People only;—but *per legem terræ id eſt Angliæ*, that the law may extend to all.

Empſom and Dudley committed grievous oppreſſions under cover of an act of Henry the 7th; which ſhews the danger of ſhaking this fundamental law, by delegating diſcretionary powers to Juſtices of the Peace or others, without trial by twelve lawful men. To repeal which, the 1ſt of Henry the 8th was enacted, and "to deter," ſays the Act, "others by their fearful end, from ſimilar courſes, and to admoniſh future Parliaments, that inſtead of this ordinary and precious Trial *per legem terræ*, they bring not in abſolute and partial trials by diſcretion." It is worthy of remark, that Empſon and Dudley were hanged, for going contrary to Magna Charta, notwithſtanding that they acted under the authority of an Act of Parliament; and, above all, we ſhould lay to heart, that warning given to future Parliaments, not to take away the precious Trial by Jury, and not to introduce diſcretionary juriſdiction contrary to Magna Charta and the Common law *.

Yet, limited and circumſcribed as the Houſe of Commons is—having no means of trial—no rules of judicial proceeding—being no Court of Record—not preſuming to fine—not competent to adminiſter an oath—nevertheleſs, it takes upon itſelf; firſt, to determine the crime *ex poſt facto*: ſecondly, it calls upon the accuſed, to criminate himſelf, contrary to every principle of Engliſh law: and in this extrajudicial manner upon a man criminating himſelf (ſo far as avowing himſelf the author of what has not been proved to be a crime, can be called criminating himſelf) the Houſe proceeds to Judgment, and inveſting itſelf with all the powers of Grand Jury, Petty Jury, Accuſer, Judge and Executioner, without evidence, without trial, it pronounces a Sentence of indefinite impriſonment, and this in its own cauſe—where, leaſt of all, it ſhould take upon itſelf to decide.

Let us next examine theſe proceedings by the rules of the Law, and again recur to that grand expounder of the Law, Lord Coke; who ſays, 1ſt Inſt. ſec. 3d.—"No man "can be arreſted or impriſoned contrary to the form of "the Great Charter." 2d Inſt. 46, 3d Inſt. 209—"No "perſon is to be impriſoned, but as the law directs, either "by command, or order of a Court of Record, or by "lawful warrant, by which one may be detained lawfully to anſwer the law."

Every oppreſſion under the colour of authority is a kind of deſtruction; and Magna Charta ſays, "No man "*aliquo modo deſtruatur.*" Every oppreſſion tends to deſtruction: but that is the worſt oppreſſion which is

* See 1 Cobbett's State Trials, No. 26.

done under colour of Juſtice. Edward the 6th incorporated St. Albans with power to make Ordinances: They made a Bye-law with a penalty of impriſonment. This was adjudged void—becauſe contrary to Magna Charta—becauſe "*Nullus liber homo capiatur.*" No freeman ſhall be impriſoned, &c. On the ſame account, a Commiſſion under the Great Seal to arreſt a notorious Felon, was reſolved to be againſt Magna Charta—becauſe no man ſhall be brought to anſwer—not being indicted or appealed by the party or other proceſs of law. By the 2d of Henry 4th it is enacted, "If any man be arreſted or impriſoned againſt the form of the Great Charter that he be brought to his Anſwer and have right."

Theſe are ſome of the numerous Proviſions for the ſafety of the people, ariſing out of the Common and recognized by the Statute Law. Theſe are the glorious Privileges of Engliſhmen; their impreſcriptible, inalienable Liberties: "claimed, inſiſted upon and demanded" by the Bill of Rights, and ſealed and ſanctified by the blood of their forefathers:

"At once the pride and ſafeguard of the land."

Shall theſe Bulwarks, that have withſtood the pelting ſtorms of the Prerogative of the Crown, be ſapped and undermined by the creeping Privilege of Parliament? Yet, will this be the caſe, if the Houſe of Commons be permitted to uſurp a Power never pretended to by our moſt arbitrary kings.—But no! the Laws, Caſes, and Authorities, before cited, are poſitive: They make no reſervation of Privilege of Parliament; much leſs of Power of the Houſe of Commons; but on the contrary, are concluſive againſt both.

Let us now try, by another touchſtone, this Power exerciſed by the Houſe of Commons.

It is an acknowledged maxim in Law, That there can be no Wrong without a Remedy. When Edward the Fourth aſked Chief Juſtice Markham; If he could not arreſt a man? "No," ſaid the honeſt Chief Juſtice, "Your Majeſty cannot arreſt any man even for treaſon; becauſe the party, if aggrieved, could have no remedy; but if he was arreſted by any officer of your Majeſty, he could have his action for falſe impriſonment." This unanſwerable argument is equally applicable to the Houſe of Commons.

To whom does it hold itſelf accountable?

Againſt whom or what can a party aggrieved bring his action?

Where look for redreſs?

Here is an argument, which our old lawyers conſidered as concluſive to any point: as may be ſeen in all their pleadings, It is the legal, "*reductio ad abſurdum,*"—a failure of juſtice, which neither Law nor Reaſon will endure.

What the Duties, Privileges, and Powers of the Houſe of Commons are, have been already ſhewn. In contemplating the Conſtitution of this country, which will appear more admirable, the more cloſely it is viewed, and the more minutely it is inveſtigated, we ſhould be careful not to confound its parts: to bear in mind that the Houſe of Commons is not the High Court of Parliament—that Parliament conſiſts of three Eſtates—the King—the Upper—and the Lower Houſe—That each of theſe has its own peculiar functions, and that no one ſeparately has any power except over its own Members. Certainly not to bind the Subject. It is univerſally admitted by all writers upon the ſcience of Government, that the legis-

lative, executive, and judicial powers in a ſtate ſhould be kept diſtinct; that the monſter Deſpotiſm is generated by their union; and that Juſtice and Liberty are promoted and aſſured by theſe powers being kept separate and diſtinct. Accordingly, the Laws of England keep not only the great outlines, but every part of each feature diſtinct. The great outlines are, The King entruſted with the execution of the Laws; yet cannot the King execute any law; but he is bound to delegate his authority to officers of the law. Why?—becauſe, if it were otherwiſe; if a ſubject was injured, he could have no redreſs. There would be a wrong without a remedy; which the law will not endure. The King can do no wrong: that is, the King can do no act, but by the preſcribed forms of the law: Somebody or other muſt, conſequently, be anſwerable for it.—When the Petition of Right was preſented to Charles the Firſt, the Houſe of Commons would not accept of the King's Anſwer, though yielding to their wiſhes, becauſe it was not couched in the preciſe and formal phraſe of the law: they, therefore addreſſed the King for a more full, explicit, and ſatisfactory Anſwer. Nor were they contented, until the King coming down to the Houſe of Commons told them, "He had an anſwer now to give, he was ſure would pleaſe them;" and accordingly, when they again preſented the Petition—he returned the deſired Anſwer in the preciſe legal from, "*Soit droit fait comme il eſt deſire*," with which they were ſatisfied *.

As the Legiſlative is kept diſtinct from the Executive, ſo is the judicial from each and both. An Engliſh court of law is an object worthy the contemplation of every mind that delights in Juſtice. So is every step of conſti-

* 2 Cobbett's Parl. Hist. 409.

tutional legal proceeding. Is any perſon accuſed of having committed an offence, information upon oath muſt be given before a ſworn magiſtrate, who is authoriſed to admit him to bail, or commit him to priſon according to the nature of the Offence. In which laſt caſe, the warrant muſt clearly ſet forth the charge, and muſt have a lawful concluſion; that is, that the party ſhall be detained to anſwer the law, or till delivered by due courſe and proceſs of law. The ſworn Information before a ſworn magiſtrate, is tranſmitted by him to the Clerk of the Crown to be put into the form of an Indictment, which is laid before a Grand Jury of 23 equals of the accuſed, who find, or *ignore*, the bill. In the firſt caſe, he is put upon his trial, when, according to the ſworn evidence before given, the witneſſes confronted with the accuſed, twelve men on their oaths aſcertain the fact, and the Judge upon his oath determines the law: ſhould the party be acquitted he can never be troubled again for the ſame offence, he can plead his *autrefois acquit* from the records of the court; which will be a bar to further proceedings againſt him. Should he be convicted, he is committed by a warrant in execution iſſuing from the lawful authority, to hear and *determine* cauſes—ſtating the offence, and concluding, that the party be ſafely kept, till delivered by due courſe of law. Should he be moleſted again on the ſame charge, he can plead his *autrefois convict*—which ſtops all further annoyance.

In theſe wiſe and cautious proceedings, no one party can take any two ſucceſſive ſteps: The Jury aſcertains the Fact; the Judge applies the Law; the Sheriff executes the Sentence. Such is the guarded practice of the law. Yet, notwithſtanding all theſe wiſe proviſions and regulations, does the Houſe of Commons, only one, and the

loweſt branch of the Legiſlature, take to itſelf the functions and powers of the whole Legiſlative, Executive, and Judicial. Skipping over all intermediate ſteps, over-leaping all the conſtitutional boundaries, they jump at once from accuſation to puniſhment—the higheſt, ſhort of death, that can be inflicted—Impriſonment; and illegal, becauſe indefinite.

The Speaker of the Houſe of Commons will, no doubt, be able to ſhew an example, which may be erroneouſly termed a Precedent, of a Warrant ſimilar to that by which Mr. Jones has been committed to Newgate. He will, no doubt, be able to point out the time when ſuch Warrants were iſſued; but, it muſt be obſerved, that it is as ſtrongly marked with the ſtamp of illegality, as every other part of the proceeding: in fact, it wants every ingredient of a lawful Warrant: it neither iſſues from lawful authority, nor contains lawful cauſe, nor has a lawful concluſion. Of this, the caſe above quoted of the illegal Warrant, under the Great Seal, for the apprehenſion of the notorious felon; the act of the 2nd of Henry the 4th; 2nd Inſtitute, 46; and 3rd Inſtitute, 209, are in proof. Should any more be wanting, the 1ſt Roll. Rep. 337, may be added; which ſays, "If a Warrant of "Commitment be for impriſoning a man till further or-"der, *it hath been held ill;* for it ſhould be, until the "party be delivered by due courſe of Law."

Having now ſtated the mode adopted by the Houſe of Commons in aſſerting its right to avenge itſelf, for what it is pleaſed to call a breach of its Privileges, when the authorities which have been adduced are conſidered with that attention to which they are ſo eminently intitled, it cannot be thought preſumptuous to ſay, That each and all of theſe proceedings are contrary to the Common

Law, to Magna Charta, the Petition of Right, the Act of Habeas Corpus, the Bill of Rights, the baſis of the Revolution, the compact between King and People; the Act of Settlement, the condition by which the King holds his Crown; and the numerous Statutes which have provided for the Liberty of the Subject:—That by ſo doing, inſtead of claiming, modeſtly and neceſſarily, the *Privileges* of wearing a ſhield to protect themſelves againſt the prerogative of the Crown, or any other annoyance, that may actually obſtruct them in the diſcharge of their duty to and for the People, the Houſe of Commons has aſſumed the *Power* of uſing a ſword againſt the Liberties of that People; thoſe Liberties which they are bound, in a peculiar manner, to maintain and defend:—That, by proceeding thus, they have exerciſed a juriſdiction not veſted in them; a juriſdiction beyond the limits of King, Lords, and Commons, whilſt Magna Charta remains unrepealed; and repealed it can never be, till England ſhall have found her grave in the corruption of a Houſe of Commons:—That, by this act, they confound the Legiſlative, Executive, and Judicial functions, which the Conſtitution has wiſely ordained ſhall always be kept ſeparate and diſtinct.

Being but one and the inferior branch of the Legiſlature, it has ſhot beyond its due limits; not a tendril only (an exuberance inſtantly to be lopped), but puſhed forth its arms till they over-top the other trees of the foreſt; rendering all beneath its ſhade, and within the reach of its influence, noxious and unwholeſome.

They have done a Wrong without a Remedy; and have put a ſubject out of the Protection of the Law, by dooming him to indefinite impriſonment without bail, or mainprize—prevented from his Writ of Habeas Corpus,

and debarred of all redreſs.—Thus ſubjecting the Liberties of the People to a capricious Vote and diſcretionary Reſolution of the Lower Houſe of Parliament.

Hitherto this queſtion has been argued on its own merits, from the general principles of the Common Law, and poſitive proviſions of the Statutes, all concurring on the ſame point, the aſſurance of the perſonal Liberty of the Subject, which is not to be reſtrained but by virtue of a warrant iſſuing from lawful authority, grounded on an information upon oath.

Of Lawful Warrants there are three ſorts:

1ſt. A Warrant of Apprehenſion; in which muſt be recited the depoſition upon oath, and which muſt conclude with an order to bring the offender before ſome magiſtrate, "to be further dealt with according to law."

2dly. A Warrant of Commitment; the offence not being bailable, which muſt ſet out particularly, the ſworn depoſition of the informant, and muſt conclude legally, with a mandate to the jailor to detain his priſoner, "to "anſwer the law."

3dly. A Warrant in Execution after the party has been found guilty, by a Jury of his equals. Which muſt contain a copy of the record of conviction and of the Judgment; muſt ſet out preciſely the Sentence to be executed according to Law, and conclude with an injunction to keep the convicted perſon in ſafe cuſtody, till he ſhall be delivered by courſe of Law: that is, till the expiration of the definite Sentence.

It is now propoſed to apply all the Arguments, Caſes, and Authorities referred to in the progreſs of this enquiry, to the caſe of Mr. Jones individually, from an anxious wiſh to have the ſubject conſidered in every point of view. The practice of the Courts of Law authoriſed

to take cognizance of offences and to inflict puniſhments, has been traced through every ſtep; it now remains to contraſt this legal practice with the proceedings of the Houſe of Commons.

John Gale Jones having (according to the words of the Speaker's Warrant), written and cauſed to be printed, "A certain Paper containing libellous reflections on the character and conduct of the Houſe of Commons, and of ſome of the members thereof," (viz., Mr. Yorke and Mr. Windham), the former gentleman, not being in the habit, perhaps of reflecting, that the known laws of his country would give him ample redreſs if he had ſuſtained any wrong, complained of what he fancifully called a Breach of Privilege, which he as whimſically grounded on the Bill of Rights. Whereupon, Mr. Gale Jones having been brought before the Houſe and acknowledged himſelf the author, was *adjudged*, according to the Speaker's Warrant, (or rather prejudged) *guilty* of a groſs libel, and ſentenced to be impriſoned during pleaſure.

Let us apply the Rules of the Law and Arguments of the Judges before ſtated, to the caſe of Mr. Jones.

1ſt. The proceedings are upon bare ſuggeſtion, contrary to Magna Charta.

2dly. Mr. Jones is called upon to criminate himſelf, contrary to common ſenſe, and every principle of the law.

3dly. The Houſe of Commons aſcertain the fact without Evidence, being incapable of adminiſtering an oath.

4thly. They previouſly determine the guilt without appealing to any law.

5thly. They deliver Judgment without Trial.

6thly. They paſs a Sentence of indefinite Impriſonment, contrary to law.

7thly. The Speaker iſſues a Warrant of Commitment illegal in the groſs, and in all its ingredients—no lawful

authority—no lawful cauſe—no lawful concluſion—and wanting that eſſential ſtamp of law, a Seal of Office. That the public may exerciſe its own judgment, however, the Warrant is here ſet forth.

" *Mercurii* 21° *die Februarii*, 1810.

" Whereas the Houſe of Commons hath this day *ad-*
" *judged*, that John Gale Jones, having written and
" cauſed to be printed a certain Paper containing *libellous*
" reflections, on the character and conduct of the ſaid
" Houſe and of ſome of the Members thereof, is thereby
" *guilty* of a high breach of the Privileges of the ſaid
" Houſe. And whereas, the ſaid Houſe hath thereupon
" *ordered*, That the ſaid John Gale Jones be for his ſaid
" offence committed to his Majeſty's Gaol of Newgate:
" Theſe are therefore to require you the Keeper of his
" Majeſty's Gaol of Newgate, to receive into your cuſ-
" tody the body of the ſaid John Gale Jones, and him
" ſafely to keep in your cuſtody, *during the pleaſure* of
" the ſaid Houſe; for which this ſhall be your ſufficient
" Warrant.—Given under my Hand this 21ſt day of
" February, 1810,

CHARLES ABBOT, SPEAKER."

" *To the Keeper of his Majeſty's*
" *Gaol of Newgate.*"

Let this Inſtrument—this thing *ſui generis*—be contraſted with the deſcription above given of the properties of a lawful warrant. Does it not evidently appear, that this piece of unſealed paper ſigned by the Speaker, by which an untried ſubject has been outlawed, bears no feature of Legality? And that from the commencement of this proceeding—in its progreſs and to its concluſion—there is not one ſtep that has not been marked in a peculiar

manner with diſreſpect for the laws—a diſreſpect in which all the parts have been wonderfully conſiſtent throughout, in conſtituting the moſt unlawful act the mind of man can poſſibly conceive.

Let the caſe of Mr. Jones now be meaſured by the Arguments of the Judges before cited: which Arguments were held by the Houſe of Lords as concluſive againſt its pretenſions.

The Judges claimed and inſiſted upon the benefit of the Common Law, Magna Charta, and Trial by Jury, *for any thing* in which they might have done wrong; not becauſe they were Judges, but becauſe they were commoners of England. They denied and rejected the juriſdiction of the Lords, and aſſigned their reaſons: " Be-
" cauſe, in that caſe, the fact would be aſcertained, and
" the law would be determined by the ſame party, and
" that if they ſhould be puniſhed by the Lords, that would
" not prevent their being called to anſwer again in the
" Courts of Weſtminſter hall, where they could not
" plead an *autrefois convict*, or *autrefois acquit*; and ſo,
" they might be puniſhed twice for the ſame offence."

Let us apply this reaſoning to the caſe before us: It hath been ſhewn, that the Common Law, Magna Charta, and Trial by Jury have been violated. We find Mr. Jones impriſoned for an act, the illegality of which has not been proved—the facts, not aſcertained—nor the law determined. Yet is he now undergoing ſuch a Sentence as hath been ſhewn. And, as to the other part of the Argument of the Judges: what is to prevent Mr. Yorke from preferring a Bill of Indictment, according to law, againſt Mr. Jones for this ſame act: And if we can ſuppoſe, that any twelve *lawful* men in England could be had to find a verdict of Guilty, then would he be puniſhed twice for the ſame offence? He could not prove his former con-

viction, becauſe he could not produce the record of his former Sentence; becauſe, the Houſe of Commons is no Court of Record, therefore incapable, by law, to furniſh a copy of the record; becauſe the law does not allow that Houſe *to try and determine* any cauſe. To determine is beyond its limits, as hath been ſhewn: its incapacity is clearly proved by the legal circumſcription of its powers.

We will next ſuppoſe that a Jury can find no injury to have been ſuſtained by Mr. Yorke, and ſhould return a verdict of Acquittal: then will Mr. Jones have been ſentenced to undergo the moſt ſevere puniſhment ſhort of death, that of indefinite impriſonment, by an Order of the Houſe of Commons, for having done an act not proved to be a crime; on the contrary, which will have been determined by a Jury of his equals, not to have been an offence, as in the caſe of Reeves; with whom the miniſter dealt more tenderly by giving him, his creature, the benefit of the law; when a Jury contradicted by their legal verdict the predetermined Judgment of the Houſe of Commons; but, if a Jury were to do the ſame in the preſent caſe, Mr. Jones could have no remedy for the wrong done to him—he cannot bring his action for falſe impriſonment againſt Mr. Yorke, nor againſt the Houſe of Commons, nor the Serjeant at Arms, nor the Sheriffs, nor the Jailor: that is to ſay, if the Courts of Law ſhould tell him, as they have told others heretofore, that they could not interfere with the Houſe of Commons.

Anxious to have this Caſe thoroughly conſidered, and to leave no loop to hang a doubt on as to the true character of the Proceedings of the Houſe of Commons, we will ſuppoſe it may be ſaid, that Mr. Yorke took this method, by calling out Breach of Privilege, of puniſhing Mr. Jones, as the act was not properly cognizable by a Court

of Law. To this is to be replied, in the firſt place, That if an act is not cognizable in a Court of Law, no offence has been committed: becauſe, an Engliſhman is at liberty to do every thing, not forbidden by the law. But, a fact has occurred, that proves that Mr. Yorke, if aggrieved, had his remedy by due courſe and proceſs of law: as a legal Bill of Indictment has been preferred by another member of the Houſe of Commons (lord Caſtlereagh) againſt Mr. Jones, as the author of a Placard of a ſimilar nature (inviting diſcuſſion) and found by the Grand Jury: And, in the event of Mr. Jones's being convicted by law, there is nothing to prevent lord Caſtlereagh from complaining of a Breach of Privilege after Mr. Jones has undergone the limited ſentence of the law, and getting him ſentenced by the Houſe of Commons to unlimited impriſonment for the ſame offence. Mr. Jones cannot plead his *autrefois convict*, though he may procure the record from the Court of Law where he was convicted. The Houſe of Commons will not receive it; ſo that he may be puniſhed, once by a Vote of the Houſe of Commons contrary to law, and by Bill of Indictment according to law—and again,—by Bill of Indictment by the law, and by Vote of the Houſe of Commons againſt all law, all for the ſame offence, for the legal and probable duration of the life of man.

The Speaker's Warrant (if it can be called by ſuch a name) which has been ſet out at length, commits Mr. Jones "during the pleaſure of the Houſe of Commons." It has been ſhewn, that a lawful warrant ſhould iſſue from lawful authority—ſhould aſſign lawful cauſe, and ſhould have a lawful concluſion. A Speaker of the Houſe of Commons is no Legal Magiſtrate—his Warrant aſſigns libel—is not libel bailable? But it may be pretended,

that the Culprit has been tried and condemned—This is a Warrant in execution.—A Warrant in execution by a Speaker of the Houſe of Commons on a ſentence of imprisonment!!! for a month—or ſix months—or a year—or ſeven years—or for a day—or an hour!——Let not the people think that this ſtatement is incorrect, becauſe that the facts ſtated are nearly incredible. The Houſe of Commons, that does not pretend to a right of committing any perſon for cuſtody, even one hour—yet inſiſt upon and exerciſe the power of paſſing a ſentence of imprisonment, during the pleaſure of the Houſe! Not to be "delivered by due courſe of law," nor to "anſwer any law." For what law is he to anſwer? for what offence committed? Or, is the alledged offence of ſo heinous a nature as to preclude the ſuppoſed offender from bail? By what law can he be delivered? To what law can he appeal? What is the term of his confinement?

"During the *pleaſure of the Houſe of Commons.*"

Here is an Engliſhman outlawed; put out of the protection of the King's law by order of the Houſe of Commons, who are peculiarly bound to protect and defend the Liberty of the Subject.—The Houſe of Commons, which is no court; which cannot fine; which the law forbids to paſs any Judgment; which cannot adminiſter an oath; which cannot take any one ſtep according to law, for the beſt of all reaſons, becauſe the law recognizes no ſuch Court, nor allows it any ſuch power, as paſſing a definitive ſentence.

But, it is truly admirable, how conſiſtently the Houſe of Commons has acted throughout the whole of this Caſe, always meaſuring its proceedings by the line of its own diſcretion, inſtead of the golden meteyard of the

Law—a principle, which if once admitted—admitted!! if not reprobated, and reſiſted, the inevitable conſequence will be, the total ſubverſion of all Law and Order. For what makes the diſtinction between a ſtate of Liberty and a ſtate of Slavery, but being guided and protected by known laws common to all, or being ſubject to variable, arbitrary, and uncertain diſcretion. "*Miſera ſervitus eſt, ubi jus est vagum, aut incognitum.*" Wretched is the Slavery of him who lives under uncertain laws!

If the Judges of the Laws of England in the days of lord Holt, thought ſo juſtly, and acted ſo firmly and decidedly in their caſe, ſo have we witneſſed in our time, how acutely a learned Judge of the Civil Law, ſir William Scott, can feel, when even a preſumed injurious ſuſpicion is thrown out, though no puniſhment has been inflicted upon him without trial or a fair defence. And here it is impoſſible to avoid remarking, how tender-ſkinned ſome men are upon being touched themſelves! how ſuſceptible their feelings! how tremblingly alive to the ſlighteſt annoyance! The learned Civilian felt nothing for poor Jones, ſent to jail without trial, without an opportunity of making his defence. His own words will beſt expreſs his feelings on the occaſion alluded to, which was on a charge brought forward in the Houſe of Commons by lord Cochrane, my moſt worthy colleague, againſt the Court where the learned Civilian preſides; when he ſaid:

"That the accuſation was brought forward againſt the "Court where he preſided, when there was no poſſibility "of a defence, and thus allowed to impend for many "months over the head of the court, which could not "demand its trial, and of courſe could not ward off a

" moſt painful and depreciating ſuſpicion; this was a " mode of proceeding which could not be ſufficiently " deprecated, nor too ſeverely reproved. It was placing " a man in the ſituation of a ſuppoſed culprit, in whom " every guilt was likely to be preſumed, and from whoſe " ſociety every innocent man was ready to fly, aban- " doned by ſociety, cut off, and in a manner excommu- " nicated, he might in the end appear completely guilt- " leſs, and prove by his acquittal, that his only misfor- " tune was not being allowed, in time, an opportunity " of defence. Notwithſtanding the cruelty of this, " many men were to be found anxious to bring forward " an unfounded accuſation, and the world, in general, " was but too prone to its reception. He deplored the " cuſtom, and deprecated its continuance; and he did ſo " the more earneſtly, feeling acutely its injuſtice in his " own caſe."—And, in theſe feelings the Houſe of Commons ſympathized.

He complains in the ſtyle of the Civil Law of being excommunicated. Mr. Jones remonſtrates in the language of the Law of England againſt being outlawed, without having been found legally guilty of any crime.

The Roman Satiriſt, when laſhing the vices of a corrupt country, particularly upbraids the abſence of feeling, generally, exhibited for the ſufferings of ſmall men in humble ſtations. The poor man may loſe his goods and all his effects. Should his houſe be burned to the ground, no one troubles himſelf about it. But, if misfortune touches the great, then, all partake of the general ſorrow:

" Magna Arturii cecidit domus, &c.
" Tunc gemimus casus urbis; tunc odimus ignem."

Poor Codrus excites no ſympathy:

" But if the palace of Arturius burn,
The nobles change their clothes, the matrons mourn;
The City Prætor will no pleadings hear;
The very name of fire, we hate and fear;
And look aghaſt, as if the Gauls were here."

From the conviction on my mind of the juſtneſs of the ſentiments here expreſſed by the learned Judge; and from as well weighed and fully digeſted an opinion as my reſearches enabled me to make, and my reaſon inſtructed me to form, I propoſed in the Houſe of Commons: " That Mr. Gale Jones ſhould be then diſcharged."

In oppoſition to theſe arguments, it was, in the firſt place, relied on, That this power of Commitment had been exerciſed for three hundred years. In ſupport of which aſſertion, only two inſtances were adduced. One of Ferrars, a member and ſervant to the king, before cited; and one Mornington, who beat Mr. Johnſon a member, and pleaded ignorance of his being a member of the Houſe of Commons*. But of what importance are theſe two Caſes? For their own acts, were they ever ſo numerous, can never be admitted as Precedents to eſtabliſh their own claims. Sir Thomas Bromley, Chancellor in the reign of Elizabeth, denied that their own acts could be cited as Precedents, when they were inſiſted on by a Committee of the Houſe as proofs in ſupport of their claim to a privilege of not being liable to be ſubpœnaed in Chancery. Sir Thomas Bromley ſaid, that unleſs thoſe precedents had been confirmed by the Court of Chancery, they were of no avail†; and all Lawyers know that a legal precedent is eſtabliſhed by a

* 1 Hatſell, 53, 74. † Ibid. 96.

decision of all the Judges, on an Argument at Bar. Nothing can be more mischievous or more calculated to mislead, than to use legal terms in a popular sense; and though the word Precedent in popular language means any thing that went before; yet, in a strict legal sense it means a Decision upon Argument, one of which is worth a thousand without.

From Custom or Usage such a claim never can be set up; for a custom to obtain must be reasonable in itself; must have been used from time immemorial; must be *pro bono publico*—not contrary to law, and never contested.

From Common Law it cannot be derived; because at common law, a man could not be imprisoned in any case, unless for force or violence—for which his body was subject to imprisonment, as one of the highest executions of the law. And, that it is forbidden by all the Statutes, it is to be hoped has been sufficiently proved. Therefore, unless it can be shewn, that an Order of the House of Commons can contravene all these Authorities, there can be no pretence on which this usurpation can be maintained. And to talk of the Law of Parliament as contradistinguished from and contradictory to the Acts of Parliament!—It is a phantom fitter to be entertained by the fancy of a Bedlamite than by a Lawgiver.

Notwithstanding the care that has been taken in the progress of this enquiry to keep legal words from being used in a popular sense, and to prevent a confusion of ideas arising therefrom, it will be necessary in this case to adopt the mode which has been invariably pursued, and to define correctly the legal meaning of the term about to be discussed. For, by not attending sufficiently to this distinction, much embarrassment was created during the former discussion of this subject in the House of Com-

mons: few persons having been able to keep sufficiently separate, things, in their nature so essentially different, as the power of Commitment for a legal Contempt, (or abatement of a Nuisance), and the passing of a Sentence of Imprisonment as a punishment for an offence.

Every one knows that in popular phrase a man is said to shew contempt for another if he turn upon his heel and do not answer a salute: but, in a legal sense, Contempt has one meaning, and one only—that is, obstruction to the proceedings of a Court, which every Court is necessarily competent to remove. "Contempt is a disobedience to the rules and orders of a Court. One may be punished for a contempt in Court, but not out, or a private abuse."* Whether the Case of the Incorporation of St. Albans, which has been accurately stated, and the Arguments of the Judges in Bridgeman *versus* Holt, are or are not applicable to the case before us, must be left to the candid consideration of the Reader.—It is necessary to observe, that I lay no stress upon the *authority* of the Judges merely as such, recollecting full well the many Opinions of Judges contrary to the Law of the Land and subversive of the Liberty of the Subject. In the case of Ship Money, the Judges determined, that the King had a right to levy taxes without consent of the Representatives of the People. In the famous Case of the Habeas Corpus, in the King's Bench, afterwards reversed, the Judges determined, that when the King committed, the Subject could have no relief. When Charles the First imprisoned Members of Parliament for their parliamentary conduct, the Judges determined, that the Act of the fourth of Henry the Eighth was a private Act, tho' made expressly to pre-

* See Crook, Eliz. 649.

vent members from being queſtioned, in conſequence of Mr. Stroud having been queſtioned in the Court of Stannaries, and fined and impriſoned by that Court, on account of a Bill he had introduced into the Houſe of Commons for regulating the Tinners in Cornwall. Therefore, it is not upon the authority, but upon the weight of the arguments above cited, and honeſt arguments they were, of unfeed Counſel in their own cauſe, that we rely.

As for Modern Deciſions of ſuch men as De Gray, Mansfield, or Kenyon, they will hardly be worth quoting on either ſide of the queſtion; and, for an illuſtration of the conduct of the laſt mentioned Judge upon this great conſtitutional queſtion, I beg leave to refer the Reader to the Caſe of Benjamin Flower, and to the able Argument of Mr. Clifford in that caſe; to which Argument I embrace this opportunity of acknowledging myſelf greatly indebted; and ſo in my opinion, are the public at large.

In purſuing this Argument, the Reader ſhould carefully keep in mind the marked diſtinction there is between Privilege and Power. No Privilege of the Houſe of Commons is here denied. But, it may be aſked, Upon what ground or pretence they aſſume a Power to puniſh? Since they have taken upon themſelves to exerciſe this Power, it is fair to call upon them to ſhew how they came by it, and when they firſt claimed it *.

* Sir Robert Walpole seems to have entertained the same sentiments, as appears from his Speech in the House of Commons, in the Case of Sir Richard Steele, in 1714: "Why," said he, "should the author be answerable in parliament for the "things which he wrote in his private capacity? And if he is "punishable by law, why is he not left to the law? By this "mode of proceeding, parliament, which used to be the "scourge only of evil ministers, is made by ministers the "scourge of the subject. In former reigns, the audacity of "corruption extended itself only to judges and juries; the at-"tempt so to degrade parliament was, till the present period, "unheard of. The Liberty of the Press is unrestrained; how "then shall a part of the legislature dare to punish that as a "crime which is not declared to be so by any law, framed by "the whole! And why should that House be made the instru-"ment of such a detestable purpose." See Coxe's Walpole, vol. 1, p. 73. See also 6 Cobbett's Parl. Hist. 1269.

The commencement of this Uſurpation was when they got rid of the Upper Houſe of Parliament, and cut off the head of the King. They ſtill, it ſeems, are emboldened to retain an illegal power not pretended to even by the King. But which theſe local ſovereigns over the King, claim as of right. But no wonder, when they have ſo entirely departed from the ends of their inſtitution —as was offered to be proved by Mr. Madocks, and acknowledged by themſelves, in the never-to-be-forgotten morning of the 11th of May, one thouſand eight hundred and nine; when, from being the Lower or Inferior (for it is the ſame ſenſe, one being an Engliſh, the other a Latin word), Branch of the Legiſlature, they have become the proprietors, by burgage tenure, of the whole Repreſentation; and, in that capacity, inflated with their high blown fanciful ideas of majeſty, and tricked out in the trappings of royalty, think Privilege and Protection beneath their dignity, aſſume the Sword of Prerogative, and lord it equally over the King and the People *.

* Upon this memorable Debate, Mr. Ponsonby, Lord Chancellor of Ireland, under the Whig Administration, observed, "That he could not consent to proceed against indi-"viduals, because that had been proved to exist, which had "long been as notorious as the Sun at noon-day; namely,

But, in order that nothing may be wanting, to render truly ludicrous every part of this proceeding, which, inverting the laws of the drama, as well as all other laws, begins with a Farce and ends with a Tragedy, the Houſe of Commons impriſon Mr. Jones—under the ſanction of what law think ye?—THE BILL OF RIGHTS!!!—Well might Paine call it the Bill of Wrongs; if it could be thus converted into an inſtrument to oppreſs and to deſtroy the Liberties of the People, thoſe Liberties which it was expreſsly framed, claimed, demanded and inſiſted upon to protect.

Mr. Yorke has diſcovered a new meaning in the Bill of Rights; and, becauſe the Bill of Rights declares, That a member of parliament cannot be queſtioned any where out of parliament for words ſpoken therein, he has ſapiently concluded, That the People are prohibited from exerciſing their underſtanding, for the purpoſe of diſcuſſing or cenſuring the conduct of the Gentlemen who ſit in that Houſe. Theſe Gentlemen all concurred with him in the Sentence paſſed on Mr. Jones; though no one agreed with him in his new interpretation of the word "Queſtion," in the Bill of Rights—knowing, as they

"the Sale of Seats in that House." See Cobbett's Debates, vol. xiv. p. 519.

And in a Committee of the whole House, on the 1st of June last, upon Mr. Curwen's Reform Bill, the Speaker made use of these expressions: "The question now before us, is no "less than this: Whether the Seats in this House shall "be henceforth publicly saleable?—A proposition, at the "sound of which, our ancestors would have startled with in-"dignation; but a practice, which, in these days, and with-"in these walls, in utter oblivion of every former maxim and "feeling of Parliament, has been avowed and justified." See p. 837 of the same Volume.

did, that "queſtioned," legally, means accuſed before a tribunal competent to puniſh; and that the power intended to be counteracted was the King's Prerogative and the arbitrary proceedings of the Court of Star Chamber, which were in the conſtant habit of queſtioning and puniſhing Members, for their conduct in the Houſe, as in the Caſe of Mr. Strode before mentioned, and of Strickland, Sir John Eliot, Col. Churchill, Holles, Valentine, and many others. And, ſurely, that cannot be deemed a Privilege of Parliament, which is incompatible with the Rights of the People; as the Lords reſolved in the Caſe of Aſhby and White: "That declaring Aſhby guilty of a Breach of Privilege of the Houſe of Commons is an unprecedented attempt upon the juriſdiction of parliament; and is, in effect, to ſubject the law of England to the Votes of the Houſe of Commons*"—And how much more ſo is this act of impriſoning Mr. Jones!

But the Houſe, it ſeems, thinks that its *dignity* is concerned in continuing Mr. Jones in priſon. That dignity ſhould conſiſt in puniſhing is a novel idea. The dignity of any man or body of men is beſt maintained by their doing their duty, according to their ſeveral ſtations. If dignity conſiſted in puniſhing, then would Jack Ketch be the moſt dignified man in the land†. But the Commons do not ſit in that houſe for their dignity, but as Servants

* 6 Cobbett's Parl. Hist. 431.

† Lord Clarendon obſerves, "That the damage and miſchief cannot be expreſſed, that the Crown and State ſuſtained by the deſerved reproach and infamy that attended the Judges by being made uſe of in this and like acts of power, there being no poſſibility to preſerve the dignity, reverence, and eſtimation of the laws themſelves, but by the integrity and innocency of the judges."

of the People; not to exercise Prerogative and Power over them, but to inspect and controul the Public Accounts, to protect Liberty and Property; to complain of exorbitances of Power in any quarter; and to maintain the Laws of the Land. They are the last persons who ought to set an example of encroachment. If they become destroyers of the Liberties of the People, in them, oppression is combined with treachery; they destroy where they are bound to protect. Every reason is as strong against such an act, from them towards the People, as it was against Macbeth in the murder of Duncan.

" He is here in double trust,
" First as I am his subject and his kinsman—
" Both strong against the deed—then as his host
" Who should against his murderer shut the door,
" Not bear the knife myself."

HAVING now arrived at a conclusion of the Argument upon this most interesting and important case, one cannot, in taking leave of the subject; in reviewing the whole of the proceeding complained of; in beholding an assembly whose sole business it is to make laws, and to watch over the due execution of the laws already made; one cannot, with such impressions in one's mind, help entertaining a fear, that the Gentlemen of the House of Commons, may in time, unless they revert to the Great Principles of the Constitution, be in danger of incurring the sentence of St. Paul upon the insolent and tyrannical High Priest, who had commanded him to be stricken for

opening his mouth in his own defence:—" God shall " smite thee, thou whited wall: For sittest thou to judge " me after the Law, and commandest me to be smitten " contrary to the Law?"

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