have the practical application of the doctrine in cases in very modern times. The more remarkable instances are where the writ was issued to the islands of Jersey, Man, and St. Helena. Finding, upon these authorities, that the power has been not only asserted, but carried into execution as matter of practice, even where an independent local legislature and judicature were established, we *think that nothing short of a legislative enactment, expressly depriving us of this jurisdiction, will warrant us in withholding the exercise of it when called upon to do so for the protection of the liberty of the subject.* It may be that the legislature has thought fit to leave a concurrent jurisdiction to be exercised by the superior courts of this country and by the colonial courts, as there is in this court and the other courts of Westminster Hall. We can only act on the authorities, and we felt that we should not be doing right, under the authority of the precedents cited, if we refused to issue this writ." *Rule granted.*

So far for the argument and judgment in this important case; and it is worth noting that, during the whole of the discussion, the learned judges, as we have above shown, endeavoured by every means to ascertain their court's jurisdiction; while the learned counsel for the applicants not only used bold assertion for argument, but also neglected to cite either the Imperial statute 3 & 4 Vict. 35, or the Colonial statutes 2 W. IV. c. 8, and 22 Vict. c. 10, which are, by necessary implication, opposed to the jurisdiction of the court of Queen's Bench at Westminster.

But, before proceeding to lay the last mentioned statutes before the reader, it may be useful to shortly notice the *habeas corpus* acts, 31 Car. II. c. 2, and 56 G. III. c. 100; also to examine *seriatim* the nature and value of the above mentioned cases, premising that counsel for the applicants frankly admitted during their argument, that *no instance could be found of a writ of habeas corpus ad subjiciendum going into Canada,* and that the court of Queen's Bench at Westminster had no power to send such a writ either to Scotland or to the Electorate, all which Lord Mansfield had stated in *Rex* v. *Cowle.**

"THE HABEAS CORPUS ACT" is the statute 31 Car. II. c. 2, which was passed in the year 1678, and by it the writ runs into *any County Palatine, the Cinque Ports,* or other *privileged places within the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, and the islands of Jersey or Guernsey,* any law or usage to the contrary notwithstanding. Observe, no mention is made of Scotland, Ireland, the Plantations, the Colonies, or the Isle of Man.

The *habeas corpus* amendment act is the statute 56 G. III. c. 100, which was passed in the year 1816, and the territorial jurisdiction of that act is— *That part of Great Britain called England, dominion of Wales, or town of Berwick-upon-Tweed, or the Isles of Jersey, Guernsey, or Man.* Again no mention is made of Scotland, Ireland, the Plantations, or the Colonies; but the Isle of Man is mentioned for the first time, because it had, about fifty-one years previously, by statute 5 G. III. c. 26, been vested inalienably in the crown.

The reference to THE CALAIS WRIT, 8 Rym. Fœd. 15, although it gave Mr. Justice Blackburn an excellent opportunity of showing his intimate and ready knowledge of English history, yet, as an authority in Anderson's case, was altogether irrelevant and improper. Every body knows, or rather believes, that the unfortunate Duke of Gloucester, the subject of the writ, was kidnapped, secretly hurried to Calais, and confined there in a prison for treason, by the command of his king, and with the alleged assent of the Earls of Rutland, Kent, Huntingdon, Nottingham, and Salisbury, the Lord De Spencer, and Sir William Scrope, who afterwards presented to parliament their appeal against the duke; and, in order that such appeal should be heard, procured the issuing of a writ of *habeas corpus,* directed to the Earl Marshal of Calais, to bring the Duke to Westminster *to answer* the appeal. But that writ was, as Mr. Justice Crompton accurately remarked, not a *habeas corpus ad subjiciendum,* but a *habeas corpus ad respondendum,* i. e., a process of the crown to bring in the Duke to answer a charge. Such a writ *ad respondendum* is still among the *formulæ* of the superior courts of Westminster, and in every-day use when the presence of a prisoner in court is necessary as a party litigant. The following is a copy of the Calais writ, which is given in order that it may be seen that it and the modern writ in Chit. *Practice Forms,* p. 725, are almost identical; and that if the former, so the latter should have been cited:

DE HABENDO THOMAM DUCEM GLOUCESTRIÆ AD PARLIAMENTUM.

A. D. 1397.
An. 31 *R.* 2.
Cl. 21 *R.* 2.
P. 1 *m.* 22.

Rex Carissimo Consanguineo suo. THOMÆ COMITI MARESCALLO, CAPITANEO VILLÆ NOSTRÆ CALESII, *et ejus locum tenenti— Salutem.*

Cùm,

Carissimus Frater noster, EDWARDUS COMES RUTLANDIÆ.
Dilectus Consanguineus noster, THOMAS COMES KANTIÆ.
Carissimus Frater noster, JOHAN. COMES HUNTYNGDONIÆ.
Dilecti Consanguinei nostri, THOM. COMES NOTTYNGHAMIÆ.
JOHANNES COMES SOMERSETIÆ. JOHAN. COMES SARUM ET THOMAS DOMINUS DE SPENCER, *ac.*
Delectus et fidelis noster, WILLIELMUS LE SCROP, *Camerarius noster,*

Coram nobis, in presenti parliamento nostro, inter alios appellaverint THOMAM DUCEM GLOUCESTRIÆ *in prisona nostra, sub custodia vestra, de mandato nostro, existentem, de diversis proditionibus, per ipsum et alios prædictos, contra nos, statum, coronam, et dignitatem nostram, factis et perpetratis.*

IPSIQUE APPELLANTES *appellum suum prædictum se optulerint, in parliamento nostro prædicto secundum Legem et Consuetudinem, in regno nostro Angliæ [illegible] usitatas, prosecuturi.*

Nobis humiliter supplicando quitanus ipsum ducem ad respondendum sibi, SUPER APPELLO PRÆDICTO, *coram nobis, in eodem parliamento nostro, corporaliter venire jubere velimus.*

Nos,

Supplicationi prædictæ annuentes,

Vobis MANDAMUS *firmiter injungentes, quòd præfatum Ducem* CORAM NOBIS *et* CONCILIO NOSTRO IN PARLIAMENTO NOSTRO PRÆDICTO, *cum omni festinatione quâ poteritis, salvò et securè venire faciatis,* AD RESPONDENDUM PRÆFATIS APPELLANTIBUS, SUPER APPELLO SUO PRÆDICTO, *secundùm legem et consuetudinem prædictas, et ad faciendum ulterius et recipiendum quod, per* NOS ET DICTUM CONCILIUM NOSTRUM, IN EODEM PARLIAMENTO NOSTRO, *de eo tunc contigerit ordinari.*

Et hoc nullatenus omittatis,

Et habeatis ibi hoc Breve.

Teste Rege apud Westmonasterium XXI. die Septembris, Per ipsum Regem et Concilium in Parliamento.

The Calais writ being now before the reader, it is clear that there are three principal and decisive objections against its being quoted as an authority in favour of the rule in Anderson's case, viz.:—1st, It was a *hab. corp. ad resp.,* and not a *hab. corp. ad subj.* 2nd, It was a writ *per ipsum regem et concilium in parliamento,* and not a King's Bench writ, issued by the king's *Justiciarii Angliæ.* And 3rd, It was part and parcel of one of the most unconstitutional, atrocious, and murderous transactions to be found in English history, and therefore should never have been referred to in support of a modern legal right.

In *Rex* v. *Cowle,* 2 Burr. 834 (1759), the argument arose on a rule to show cause why a *writ of supersedeas* should not issue to a *certiorari* directed to the Mayor of Berwick, to remove an indictment into the Court of Queen's Bench at Westminster. It was not a case of *habeas corpus ad subjiciendum,* and, if it had been, it would not have been an authority applicable to Anderson's case, as it arose in 1759, nearly one

* *Rex* v. *Cowle.* Burr. 834.