" lay such a case, on affidavit, before the Court, " as will be sufficient to regulate the discretion of the " Court in that respect.—The Court will not, in the " first instance, grant a *Habeas Corpus* when they see " that in the result they must evidently remand the " party. The Court, in this instance, ordered the Writ " to issue upon a suggestion that the Court was bound " to grant it, and certainly a most respectable authority " (Lord Kenyon) was cited for that purpose, and " the Court being anxious in a case where the " liberty of the subject might be supposed to be " effected, thought it right to grant the Writ that *the* " *question might be finally settled.* That decision, how- " ever, which could not but have been anticipated, the " Court is now bound to pronounce, namely, that the " *Habeas Corpus* does not lie in the first instance, but " must be left to the discretion of the Court, when " guided by grounds stated on affidavit. There are not " wanting authorities for this decision. In the case of " the King vs. Schriver, (*d*) and in the case of the " three Spanish Sailors, (Sir Wm. Blacks. 1324,) " acting upon this principle the Court said, that they " would not grant the Writ in a case where they saw " that they must remand the party as soon as he was " brought up. The Court is bound to exercise their dis- " cretion, as to the grounds laid before them, for granting " the Writ, and they are not to order it as a matter of " course in the first instance. It is necessary thus to " *remove an error* which seems to have prevailed upon " this subject, that this case may not hereafter be cited " as a precedent. (*e*)

Even in the United States, where, in the petition for the Writ of *Habeas Corpus*, the cause of detention is fully stated, the Court, if satisfied that no relief can be granted to the Petitioner, upon the return of the Writ, will not award it. (*f*)

—A petition was presented by T. Watkins for a *Habeas Corpus*, for the purpose of enquiring into the legality of his confinement in the gaol of the county of Washington, by virtue of a judgment of the Circuit Court of the United States of the district of Columbia, rendered in a criminal prosecution instituted against him in that Court. Chief Justice Marshall said, " This application is made " to a Court which has no jurisdiction in criminal cases, " which could not revise this judgment, could not re- " verse or affirm it, were the record brought up directly " by Writ of Error. The power to award writs of *Ha-* " *beas Corpus* is conferred expressly upon this Court by " the 14th Section of the Judicial Act, and has been " repeatedly exercised. No doubt exists respecting the " *power*, the question is, whether this be a case in which " it ought to be exercised. *The cause of imprisonment is* " *shewn* as fully by the petitioner, as it could " appear on the return of the writ, consequently the " writ *ought not to be awarded*, if the Court is *satisfied* " that the prisoner would be remanded to prison."

Sir *William Blackstone*, after analysing the *Habeas Corpus* Act, observes,—" This is the substance of that " great and important Statute, *which extends only to the* " *case of* commitments for such criminal charge *as can* " *produce no inconvenience to public justice*, by a *tempo-* " *rary enlargement of the prisoner.* (*g*)

A motion to bring up a Defendant in custody of a messenger, under order of the Secretary of State, was refused, on the ground of public inconvenience. (*h*)

" The Writ of *Habeas Corpus* is granted on motion, " because it cannot be had of course, and there is there- " fore no necessity to grant it.—The Court ought to be " satisfied that the party hath a probable cause to be " delivered." (*i*)

" Writs not ministerially directed, sometimes called " Prerogative Writs, (because they are supposed to issue " on the part of the King,) such as Mandamus, Prohibi- " tion, *Habeas Corpus* and *Certiorari*, upon a proper " case, may issue to every dominion of the Crown of " England. But notwithstanding the power which the " Court have to grant these Writs, yet where they can- " not judge of the cause, or give relief on it, they " would not think proper to interfere. (*k*)

" Out of many cases, I have selected nine where the " commitments were for *treasonable practices generally*, " and where Lord *Holt* and the rest of the Court were bound by their oaths to *discharge* the defendants, *if the* " *commitments were illegal*, and yet the Court did not " discharge them." (*l*.) " *If there be doubt* in the " case, and the commitment is *only* for treasonable prac- " tices, the *Habeas Corpus* Act, AT TIMES WHEN IT IS " IN FORCE, would entitle the party to be bailed. (*m*) " The arguments against commitments on suspicion of " treason, are at least as strong, for *mere suspicion* may " *not* even *amount to treasonable practices*, and yet they " are admitted on all hands to be legal. (*n*)

As showing the intention of the House of Commons in the year 1774 upon the question whether the *Habeas Corpus* act was introduced into Canada by the 14. Geo. III. c. 83. the following proceeding of that body may be referred to " when all the clauses were rejected or agreed to and the Speaker was reading over the bill *Mr. Dempster* moved that a clause should be inserted " that " the Canadians should, on claiming it, have a right to " the benefit of the *Habeas Corpus* act" a division was the consequence of this motion, when the numbers were 76 noes, 21 ayes. Mr. Mazeres the first Attorney General of the Province, on his examination before the House of Commons in committee upon the same act, adverting to the use of *Lettres de cachet* said " I cannot help " thinking that if they were used, the subjects against " whom they were employed would be without any " legal remedy against them. For if a motion was " made on the behalf of a person imprisoned by one of " them in the Court of King's Bench in the Province " for a writ of *Habeas Corpus* or any other relief against " such imprisonment, the judges would, probably, think " themselves bound to declare, that as this was a ques- " tion concerning personal liberty, which is a civil " right, and in all *matters of property* and *civil rights* " they are directed by *this act* of Parliament to have " resort to the laws of Canada and not to the laws of " England, they could not award the writ of *Habeas* " *Corpus* or any other remedy prescribed by the Eng- " lish law, but could only use such methods for the " relief of the prisoner as were used by the French " Courts of justice in the Province during the time of " the French Government, for the relief of a person im- " prisoned by the intendant or Governor, by a *lettre de* " *cachet* signed by the King of France. And such relief " would, I imagine, be found to be none at all. There- " fore, if it is intended that the King's subjects in Ca- " nada should have the benefit of the *Habeas Corpus* " act, I apprehend it would be most advisable, in order " to remove all doubts and difficulties upon the subject, " to insert a short clause for that purpose in this act." By the foregoing citation I by no means mean to express my own opinion that a subject so imprisoned would not have been entitled to have, from the Court of King's Bench, in term, a writ of Habeas Corpus, at common law,

(*d*) 2 Burr 767.
(*e*) 2 Chitty's Rep. 207. K. vs. John Cam Hobhouse.
(*f*) Ex parte—Tobias Watkins. 3 Peter's Rep. p. 201.
(*g*) 2. Bl. Com. p. 137.
(*h*) 13. East's Rep. p. 457.

(*i*) Per Lord Ch. J. Vaughan in Bushel's case—2. Jon. p. 13. cited by Sir Wm. Blacks. in 3. Com. 132.
(*k*) Per Lord Mansfield. *Rex. vs Cowle.* 2. Burr. 855. 6.
(*l*) Despard's case, 7. Ter. Rep. 743.
(*m*) Ib. p. 740.
(*n*) Despard's case, 7 Ter. Rep. p. 740. 741