the effect of introducing it, or making it lawful for the Judge to issue Writs under it, to the exclusion of the Provincial Ordinance of 1784, which, being nearly a transcript of the Statute of Charles, may have given rise to the casual mention of it as found in the clause in question. Yet, if it were law in Canada, still it does not fall under the words of the proviso, for it is neither a Statute of "Great Britain," or of the "United Kingdom," but is a Statute of the *Kingdom of England*, local in its nature, and never was law in Canada, nor is the slightest allusion made to it in the Provincial Statute subsequently passed in 1821, the 1 Geo. 4, ch. 8, wherein more ample powers are conferred upon the Judges to grant, issue, and determine upon Writs of *Habeas Corpus ad subjiciendum* in vacation time, under the Ordinance of 1784, and repealing certain provisions of the Judicature Act of 1793.

The effect of a suspension of the *Habeas Corpus* Act is not in itself to enable any one to imprison suspected persons, without giving any reason for so doing, but it prevents persons who are committed, upon certain charges, from being bailed, tried, or discharged for the time of the suspension, except under the provisions of the suspending Act, leaving, however, to the Magistrate, or person committing, *all the responsibility* attending an illegal imprisonment.

It is the happiness of our Constitution, (as *Blackstone* well expresses it,) that it is not left to the Executive power to determine, when the danger of the State is so great as to render this measure, (confinement of the person in gaol) expedient; for it is the Parliament only or *Legislative power* that, *whenever it sees proper*, can authorise the Crown by suspending the *Habeas Corpus* Act for a short and limited time, to *imprison suspected persons* without *giving any reasons for so doing*. In cases of *extreme emergency*, the nation parts with its liberty *for a while*, in order to preserve it for ever. (a)

The Ordinance of the 8th November is but a transcript of the Ordinance of the 23d April last, 1 Victoria ch. 2, which ordinance came under the consideration of the legal authorities in England, and even of the Imperial Parliament, in the discussion which took place respecting the ordinance relating to the banishment of certain persons to Bermuda, and had any doubts been entertained of its legality, would have been disallowed with the Earl of Durham's ordinance in that behalf.

The illegality of this ordinance of the 8th November is likewise on the ground that His Excellency could not legally anticipate the period fixed by his proclamation for the meeting of the Special Council and summoned it to meet at the city of Montreal on the 9th day of November, any law passed by the Governor and Council on the 8th, must be utterly null and void.—To meet this objection, it is barely necessary to consult the Imperial Statute 1 Victoria ch. 9, which does not impose, upon the Governor, the necessity of issuing any proclamation to summon the Special Council, and if from courtesy, the persons residing at a distance from the present seat of Government, the formality of a proclamation, instead of a circular letter, or other mode of calling them from home has been observed, it can in no wise vitiate the proceedings. The Council are not by law allowed to initiate bills, but to give or withold their assent to such bills as the Governor may from time to time think right to submit to their consideration. It is matter of notoriety, that Sir John Colborne was obliged to take the field on the 9th November, against persons who were then in arms attempting to subvert Her Majesty's Government in the Province, and thence the necessity of submitting to the Special Council on the 8th the ordinance in question.

But to revert to the case of the prisoner, *John Teed*:—by his own shewing it appears he is detained in the common gaol at Quebec, charged with suspicion of high treason, his commitment bears date in November 1838.

By the first clause of the ordinance in question the right is taken away absolutely from persons so detained to have a writ of Habeas Corpus, whether claimed by them as a prerogative writ issuing *at common law*, or in *virtue of any statute* "for the better securing the liberty of the subject," made before the passing of the ordinance, the words of it being, that all persons who are or shall be in prison, or otherwise in custody in this Province, at or upon the day of making and passing thereof, *or after*, by any warrant for any of the foregoing offences, may be detained in safe custody without bail or mainprize during the continuance of such ordinance, and no Judge or Justice of the Peace shall, *during such continuance*, bail or try any person or persons so committed, without an order from the Governor with the advice and consent of the Executive Council of the Province.

The suspension of the ordinance 24 Geo. III. ch. 1, contained in the second clause, was by no means necessary for the purpose of depriving persons so confined from the benefit of a writ of *Habeas Corpus*—the chief object of that clause appears to have been to fix and limit the time of the suspension to the first of June next, and likewise to prevent harassing suits at law, from being brought against the ministers and officers of justice, who might refuse to grant writs of *Habeas Corpus*, under the enactments of the first clause.

It has been argued, that this Court is bound to issue the writ of *Habeas Corpus*, and to cause the prisoner to be brought before it, and to examine into the grounds of the commitment, even tho' it should not have the power to liberate, try, or admit to bail, persons so accused. The following authorities will suffice to shew the opinions of the Courts in England and of the United States on this point.

It is not compulsory on the Court or Judge to grant the writ of *Habeas Corpus*.—Lord Kenyon indeed once said in *Flower's* case, (a) "We were bound to grant this *Habeas* "*Corpus*, but having seen the return (committed by the "House of Lords,) we are bound to remand the defendant "to prison." But this *supposed obligation* to issue a *Habeas Corpus* thus ineffectually, can only exist where the *commitment* is so *general*, that the Court *cannot know* its real *occasion* from the *terms* in which it is *worded*, "for the Courts are not compelled to award it without "some *reasonable* ground is shewn for their interference. "If it were otherwise, a traitor, a felon under sentence "of death, a soldier or mariner in the King's service, a "wife, a relative, or a domestic confined for insanity "might obtain a temporary enlargement by suing out "a Habeas Corpus, though sure to be remanded as soon "as brought up on its return." (b)

Sir Edward Coke, Chief Justice, in 13 Jac. I. did not scruple to deny a *Habeas Corpus* to one confined by the Court of Admiralty for piracy—there appearing, *upon his own shewing*, *sufficient* grounds to confine him. (c)

In the case of the *King vs. Hobhouse*, who was committed by the House of Commons for a breach of privilege, Hobhouse applied to the Court of King's Bench for a writ of Habeas Corpus, and in consequence of Lord Kenyon's dictum, which has before been noticed, it was granted, but *Abbot*, Chief Justice, in delivering the judgement of the Court, said, "The Court has power to grant a writ of *Habeas* "*Corpus*, but whether it be granted *under the Common* "*Law Jurisdiction*, or under the Statute, there ought "always to be a proper ground laid before the Court to "justify it in granting the Writ. *It is not to be granted* "*as a matter of course* and at all events. The party "seeking to be brought up by *Habeas Corpus* must

(a) 1. Bl. Com. 136. Coleridge's Ed,

(a) 8. T. R. 324.
(b) 1. Chitty's Crim Law, 128. 14. East, 110, 111. 3. Bl. Com. 132.
(c) 3. Bl. Com. 132.