

arguments that had been brought forward :—there were some circumstances collaterally introduced which he was obliged to notice before he went to the legality of the conduct of the proceedings that had taken place in Scotland; and he could not help observing with particular surprise and indignation, the manner in which the Learned Lord expressed a wish that the law of Scotland, as he expounded it, should be introduced into England, instead of those wise and salutary laws under which so much had been secured to this country; and when the Learned Lord roundly asserted that he was convinced the Scotch criminal law was preferable to the English law, and that he could wish to see them assimilated, he owned he was struck with the violence and boldness of such doctrines. Were they extended to the full length that the Learned Lord, and a Right Honourable Friend of his seemed to wish, he saw no security that he, his Honourable Friends, or any other person had, that they might not be sent to Botany Bay, as it placed them completely in the power, and at the discretion of the executive government. In the present case he thought the Scotch Judges had exercised their discretion to a degree of impropriety that was not justifiable, or if it was justifiable by any law, it was full time, from the enormity of the case, that such law should be repealed, and the people of Scotland put upon the same footing with those in England. He thought that House had shewn a degree of false delicacy about calling for the record on this case, and reminded them of the petitions in the reign of Charles I. which, though they came some of them from people not of unexceptionable character, were properly attended to by Parliament. With regard to the act of 1703, it certainly was a limiting act, and under the word banishment, never could mean transportation; and being a mitigating act ought to be construed mildly; he then came to the act 1672, which specifies when transportation is the meaning, that some of those convicted under that law, were to be transported to the West-Indies, and in other cases forth of the realm, which is no more than banishment from their country, without any direction where they are to be sent. He considered the negative evidence given by his Honourable Friend who made the motion, as entitled to much weight, as nothing had been said on the other side. His Honourable Friend had proved that there was no one instance, except for capital crimes, of any person being transported after sentence of banishment had passed, and no instance of any trial for sedition in the history of Scotland to be found. In one act, indeed, there were words which went farther on the subject of punishments by banishment to places specified, and added, "or otherwise;" but certainly no man would say, that this should be acted upon by construing the law with a latitude from those words to the injury of the subject: considering therefore the principle of this law, and of all mitigating laws, he was clearly of opinion that the Scotch Judges had either misunderstood or misinterpreted the law. As to what happened in 1704, and which had been stated as a precedent, it was only necessary to say, that those proceedings were ruled by the Privy Council, at the time the most reprobated of all the tribunals