

as some persons have treated them, as "things of a novel origin and constitution beginning within the time of legal memory, and standing upon no authority of prescription or Statute." But can it be shown that there is in force in this Island any negative Statute, any law or usage whatever, which would, in defiance of Magna Charta and the 28 Edw. 3d, interfere with the liberty of the subject in the mode now under consideration? If it be said that the King's commission, which called the Assembly into existence, if it even contained express words to that effect, could grant such a power, I deny it;—for the King can no more make a Law than either branch of the Legislature. If it be said that it is necessary to the House of Assembly to possess the power of punishing summarily, as for a breach of their privileges, (whatever these privileges may be assumed to be) as the House of Commons do, I deny it also. They are entitled, and I will admit particularly entitled to protection in the due performance of their functions, but the Laws of the land are equally open to them as to every other lawfully constituted body, and amply sufficient to punish all offenders against that freedom and protection to which they are entitled. Their sittings are not necessarily open to the public, though it is most desirable they should be, but certainly they of all public bodies should know how to preserve order and decorum in their meetings, and of all public bodies would undoubtedly have the fullest aid of the constituted authorities to protect them. If, then, the power of imprisonment is not absolutely necessary, to them, it cannot for any other reason that I can discover, if indeed it could possibly upon this one, be said to be inherent in them (as some would have it) any more than the power of impeachment or any other of the extraordinary powers of Parliament is inherent in them.

But let us look at the present case, for we cannot shut out the whole facts of it as disclosed in the affidavit before me, and it plainly appears that, without defining what their privileges are, Assembly assume the power of adjudging and determining at pleasure upon any act committed by an individual which they may consider to be a breach of those privileges, and this too without permitting the person accused, or his witness, to be parties to the investigation, when the offence complained of was denied. Here at least the House of Assembly have not conformed to the practice of the House of Commons, who invariably call on the offender to admit or deny the charge, and disprove it, if he can. My duty now, however, is not to pronounce upon the merits of the complaint, but upon the legality of the punishment with which it has been visited.

Again this power of vindicating, what they assert to be their privileges, by summary punishment cannot, according to the same rule by which they claim to exercise it—i. e. the Law of Parliament, in any manner be drawn in question; nor can the party imprisoned obtain redress by or in any Court in the Queen's Dominions. And yet such absolute powers as these are claimed to be exercised by a body, not being a Court of Record—scarcely six years in existence—consisting of but fifteen individuals, of whom six only form a quorum—eligible upon a qualification which in England would not entitle them to a vote for a member of Parliament—without the sanction of any law, usage, or precedent—and having other abundant means of protection and redress, but merely because the House of Commons, forming with the House of Lords the Supreme Court of the Realm, and consisting of several hundreds of the most eminent men in the nation, for talent, learning, wealth, and influence, exercise similar powers and privileges, originally assigned to them by a positive Statute, and sanctioned by immemorial usage from the remotest ages.

I am sworn to do equal law and execution of right to all the Queen's subjects rich and poor, without having regard any one; and as I find the law so will I to the best of my ability administer it. We live, thank God, under a system of laws he boast of the civilized world, & the best bulwarks of British freedom, which will not permit the liberty of any subject of the crown to be restrained upon light or trivial grounds; and while there is no man more chary of just rights and privileges of any of the constituted authorities than I am, no man will be more forward in enforcing, so far as lies within my province, these laws which hedge round and secure the liberty of the subject, and which are the chief supports of the freedom of the state.

I shall now consider, as the last point, the validity and sufficiency of the warrant set forth in there turn to the *Habeas Corpus*; and here I will say in limine that if the House of Assembly do really possess the powers which they claim to exercise equally with the British House

of Commons, the warrant of the Speaker (provided it discloses a sufficient ground of commitment) ought not to be scanned with that critical nicety as to technicalities which are requisite to the validity of other commitments. But, admitted, for argument's sake that they have the same authority with the House of Commons to direct their Speaker to issue his warrant in cause as this, does this warrant disclose a sufficient ground of commitment? In my judgment it does not.—The prisoner is not stated to have been adjudged by the House to be guilty of any offence—for the proceeding of the House is in the nature of a judgment, or it is nothing—nor does it recite any order or resolution that the party should be committed for the offence, and that the Speaker should issue his warrant to the Sheriff accordingly.

But having shewn that the House of Assembly is not a Court of Record, nor part of a Court of Record—that it does not possess the powers which it claims to exercise by virtue of any law, usage or precedent, upon no one, in short, of the grounds or authorities by virtue of which the House of Commons exercise such a power, let us see whether, under these circumstances, there is anything in this warrant which gives it any efficacy; for in a warrant which is to take away a man's liberty, nothing is to be inferred but what the words themselves fairly and strictly import. A warrant, then, must be in writing, and made by a person having competent authority. It must be under seal: without this the commitment is unlawful the gaoler is liable to false imprisonment, and the wilful escape by the gaoler, or breach of prison by the prisoner, makes no felony.* A warrant committing one in execution (where is the case here) must state that the party has been convicted.† And it must be for a time certain,‡ and should set forth clearly the authority under which it is made.§ In all these essentials this warrant is utterly defective.

Had I entertained doubts only that this warrant was issued by a Court of competent jurisdiction, it would still have been my duty to see that it was in form and substance legal and valid for the purposes for which it professed to be issued; for the Queen's Bench upon a *Habeas Corpus* will examine into the commitment of a party for contempt by any other Court of Law having competent authority to commit, and will discharge the prisoner if the process of such Court be irregular, though the judgment upon which it issued be unquestionable; but under all the circumstances, having no doubt of the want of authority in the Assembly, it is the more imperative upon me to pronounce upon the legal sufficiency of this warrant.

When power and privileges affecting the liberty of the subject are for the first time arrogated by any man or body of men, who claim also to draw in question and pronounce definitively upon any act which they may deem to be a breach of those privileges, and to punish for the same by their own authority as they may see fit, it especially behoves those who administer the laws to take care that no one is subjected to such punishment, unless it be clearly warranted by the law of the land. And if the power which has on this occasion been exercised can be shewn to be warranted by the law of the land, and to be unquestionable in any other Court, than I say, and with every deference, that such a power is of all others the most liable to be abused as to render the liberties of all who dwell in this portion of the British dominions dependent upon as frail a tenure as those of the subjects of the most despotic government in the world.

As I have already said, the powers which the Assembly have claimed to exercise upon this occasion are not necessary for them, and the laws of the land are abundantly sufficient for their protection—but if it be considered that the omnipotent powers which they have arrogated are necessary, then let it be so declared and enacted by the legislature. Until, however, I can satisfy my mind that the laws of the land now in force given them such powers, I shall at least withhold my sanction from them.

* 1. Hale. 583.
† 6. T. R. 509.
‡ 5. B. & A., 894.
§ 2. Han., c. 16, s. 13.

CONSTANTINOPLE, JUNE 7.—The Council of State has very frequent sittings, at two of which the Sultan himself presided. The subject of the discussion is the old question of the pretensions of Mehemet Ali. It is resolved that no change shall be made in the existing relations, and that extreme measures shall be resorted to, if the Viceroy will not respect the authority of the Porte. This resolution has been entirely and unanimously approved by the foreign ambassadors, who have however, advised the Porte to retain its calm attitude, and not give Mehemet occasion for any well founded complaint. This he has engaged to do, and as a proof of its intention to follow the advice of the ambassadors, counter orders have been sent to three regiments of infantry, and a brigade of artillery, who were to join the army of the Seraskier in Asia, and instructions have been sent to the Seraskier himself not to quit his present position, and not to be moved by threats of any kind. But while the Porte thus

manifests a disposition to conciliation together with dignity, it reckons on the good offices of the friendly powers, and has called on their ambassadors to urge Mehemet to pay the arrears of his tribute. They have declared their readiness to do this; and there is no doubt that Mehemet who would willingly embarrass the Porte, will reflect, and again assure the Sultan of his submission, when he sees that this Sovereign can depend on the support of foreign powers.

THE STAR

WEDNESDAY, August 29, 1838.

The past month or six weeks have been so fruitful in extraordinary events, that the public mind has been kept in a continued state of feverish and painful excitement: scarcely has one object obtained its meed of admiration, when another and another have presented themselves to the view and laid claim to a share of the general wonder. The passing of the *Supply Bill*—the arrest and imprisonment of *Dr. Kieley*—the outrage upon the *High Sheriff* and the *Judge*—the decision of the *Privy Council* in the case of *Mr. Boulton*—the treatment experienced by a noble and heroic *Female*, and her triumphant but final departure from our shores,—are circumstances which have crowded themselves within the compass of a few short weeks; and which, notwithstanding the patriotic efforts of those who would fain "cast oil upon the troubled waves" have given an influence to party feelings that time and an over-ruling Providence alone will be able to subdue. If this Paper were the advocate of a party—if we were disposed to lay hold of every passing event with a view to trumpet ourselves into notice; if, reckless of the peace and harmony of society, we could take a malignant pleasure in dilating upon the follies or extravagancies of the times, there would now be ample room for comment: but to what would all this tend? Would it restore men to their reason? Would it quench the heart-burnings of opposition? Would it be likely to bring about a system of "brotherly kindness and charity"? No; it would—it could have no other effect than to propagate and perpetuate the very miseries which all parties have so much reason to deplore. Let it not be supposed that men can be goaded into submission, or abused into propriety; such means may arouse their anger, but it will neither rectify their conduct nor subdue their minds. 'These are wise saws, thread-bare sentiments'—it may be said—and every one knows and believes them! if so, we reply, why not act upon them? Why speak and write and act as if they had never been thought of,—as if the world had yet to learn them? But are we to lay down that others may ride rough-shod over us! Are we to be still and mute while others are moving heaven and earth against us! By no means; we speak not against a becoming spirit, nor even think against it; we admit the necessity of a firm, steady and manly resistance to all unwarrantable assumptions of power whether on the part of the governing or governed; but we do not see the propriety, nor could we ever discover the policy of keeping up a system of mutually vindictive annoyance—a series of old-womanish assaults, without any specific object in view—aimless and interminable. It ought not to be forgotten that as kindness begets kindness, so will the contrary beget the contrary; it were folly to expect it otherwise. Let

it then be the object of the *Terra Novian Press* henceforward to take a more magnanimous stand; let the past be forgotten—let revenge be laid aside; let us throw a veil over each others deformities rather than expose them; let the people be persuaded to submit cheerfully to the laws of the land; let *Rulers and Pastors* and *Masters* deport themselves in a manner consistent with their respective callings; and in a little while things will again wear a more smiling aspect; but reverse the procedure, and it requires not the gift of prophecy to foretel, that a more fearful catastrophe than that of *Canada* inevitably awaits us.

TO THE REAL AND PRETENDED FRIENDS OF MR. JOHN KENT.

MESSEURS,
I have been thinking that if some blunt, honest individual were to undertake to give you a few honest hints it might possibly be of some service to yourselves, to Mr. KENT and the country. I now take upon myself the task, and as I have neither wit nor learning at command you must be content with plain honesty instead. I intend to be very short, therefore, listen and be wise. I have divided you into two kinds real and pretended; by REAL I mean those of you who in the simplicity of heart are desirous for Mr. KENT's prosperity; by PRETENDED I mean such as make a tool of him for their own selfish ends. Now to the former of these I would say, Gentlemen I am sorry you should be so dim sighted as not to see that you are doing a serious injury to the person you are desirous of befriending; you helped to send him to the House; and as far as in you lay you have ever since been trying to lead him to a prominent position on the public stage. Well, I want to shew you that by so doing you are accountable for much of the noise and disturbance we daily experience. You are aware that the Gentleman I am speaking of is a person of some little parts and that in his proper walk of life he might become a useful and industrious member of society—he might earn his own bread and give bread to others; but by your thrusting him forward into a higher sphere you are causing him to lose his time, misapply his little talents and render himself a butt for other, besides what is worse, you are destroying or rather you are helping to destroy the peace and quiet of the country; for you must all know that he has no discretion to guide his conduct—you know, or rather you ought to know, that he has no foresight whatever, and that consequently he seldom or ever brings about the measures he intended at first—nay, that he often does what he did not intend, and intends what he has not power to do. And why does he place himself in this awkward plight; because you keep urging and praising him, telling how fine he speaks and that his language is the best in the world. Whereas you ought to persuade what even I cannot help observing—that he is the most miserable person to express his sentiments that can be found. Such hemming and hawing! Such, I don't know what to call it, in fact it is tiresome to listen to him going on—no more like what we see printed as his speech than chalk is like cheese. Then why do you urge him on or rather why don't you persuade him to give up his place to some able person, I am sure he would listen to you in a moment if you would speak to him in an open candid manner; then, my good Gentlemen I beg of you to try your endeavours upon him in this way and you would confer a great benefit on us all by so doing.

And you ye pretended friends what a shame it is that you make a tool of the Gentleman; don't you think it very base and wicked? leave off your vile flattery before his face, and mock behind his back, and take some more honorable means to bring about your purposes—I beseech you, to listen to the words of a plain experienced old man and not to persist, otherwise you will bring down much mischief upon us and our children. So no more at present from
Messieurs,
Your most obedient Servant,
THOMAS TRUSTY.

MR. EDITOR,

So highly has our Honorable House of Assembly appreciated the Address of many of the respectable Inhabitants of *Harbor Grace* to Chief Justice *BOULTON*, on his leaving this country for England last winter, that they have ordered an unlimited number of copies to be printed and circulated at the public expence, besides publishing it in their own organ "*The Patriot*."

Now Sir, in order to forward the enlightened views of the Assembly, may I request that you will also give it a place in your column, feeling confident that it will afford your numerous readers the highest satisfaction, to find in your valuable Journal, so excellent a document, equally creditable to the parties, and to the distinguished individual whom they had the honor of addressing.

And oblige
A SUBSCRIBER.

To the Honorable Henry John Boulton, Chief Judge of the Supreme Court of the Island of Newfoundland, and President of Her Majesty's Council, &c.
Deeply interested as we are in the welfare and

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