inconvenience arose in the administration of justice, from the want of a power in the *superior courts* of law to compel the attendance of witnesses resident in one part of the United Kingdom at a trial in another part, and that the examination of such witnesses by commission was not in all cases a sufficient remedy for such inconvenience, enacted by sect. 1.—

That if any action or suit now, or at any time hereafter, depending in any of Her Majesty's superior courts of Common Law at Westminster or Dublin, or the Court of Session or Exchequer in Scotland, it shall appear to the court in which such action is pending, or, if such court is not sitting, to any judge of any of the said courts respectively, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the court in which such action is pending, it shall be lawful for such court or judge, if in his or their discretion it shall so seem fit, to order that a writ, called a *Writ of Subpœna ad testificandum*, or of *Subpœna duces tecum*, or Warrant of Citation, shall issue in special form, commanding such witness to attend such trial wherever he shall be within the United Kingdom: and the service of any such writ or process *in any part of the United Kingdom*, shall be as valid and effectual to all intents and purposes, as if the same had been *served within the jurisdiction of the court from which it issues*. By sect. 1, persons are not to be punished for disobedience if sufficient money has not been tendered for expenses.

These statutes it must be admitted, when fairly considered, show that the topical jurisdiction of the Court of Queen's Bench at Westminster is co-extensive with England proper, and not beyond, and that the authority and powers of its judges are limited by such jurisdiction, except where expressly enlarged by statute. But whether a court has or not jurisdiction in any given case, can readily be known by the following simple test, viz.: By ascertaining whether, if the jurisdiction were assumed and denied by the subject, such court could legally enforce its judgment by execution; for it is a legal axiom on this subject, that the power of enjoining its decision is a consequence of jurisdiction, and thus that jurisdiction and execution are convertible terms. This axiom is acknowledged by Lord Campbell in *Ex parte Lees*, El. Bl. & El. p. 834, where he said—"It was not at all explained in what manner our writs of error, *certiorari*, or *habeas corpus* could be enforced in such dependencies," which passage was, as we have seen, quoted with approbation by Chief Justice Cockburn in Anderson's case. This test is also laid down and descanted upon in a learned and accurate treatise, known to the profession as "Mosley on Inferior Courts," in p. 64, of which is the following paragraph:—

So a power of enjoining its decision is a necessary adjunct to a jurisdiction, and therefore it is said by Bracton *—"Oportet etiam quod ille qui judicat, ad hoc quòd rata sint judicia, habeat jurisdictionem ordinariam vel delegatam, et non sufficit quòd jurisdictionem habeat, nisi habeat coertionem, quòd si judicium suum executioni demandare non posset, sic essent judicia delusoria." Also—"Sunt enim causæ spirituales, in quibus judex secularis non habet cognitionem nec executionem, CUM NON HABEAT COERTIONEM."† and so strongly is a jurisdiction dependent upon a power and authority of giving it effect, that if a jurisdiction be created by act of parliament, or letters patent, and no mention made of such powers as are necessary for giving it effect, as a power of issuing process and execution, they will be implied by mere operation of law.

2nd—*As to the privileges and territorial ambit of the Canadian Courts of Civil Judicature.*—The first statute to which attention is directed to the Imperial Statute of 3 & 4 Vic. c. 35, which was passed on the 30th July, 1840, and is entitled,—"An Act to reunite the provinces of Upper and Lower Canada, *and for the government of Canada.*" It recites that it is necessary that provision be made for the good government of the provinces of Upper Canada and Lower Canada in such manner as may secure the *rights and liberties*, and promote the interests, of all classes of her Majesty's subjects within the same; and that it is expedient that the said provinces be reunited, and form one province for *the purposes of executive government and legislation.*

This statute, after declaring the union of the provinces, provides a legislative council and assembly, appoints a governor with very large powers, and by section 44, which establishes Courts of Appeal, Queen's Bench, and Chancery, in and for Upper Canada.‡

After reciting "That, by the laws then in force in Upper Canada the governor, lieutenant ,overnor, or person administering the government thereof, or the chief justice thereof, together with any two or more of the members of the Executive Council thereof, constituted and were a *Court of Appeal* for hearing and determining all appeals from such judgments or sentences as might lawfully be brought before them. And also, that by a legislative act of Upper Canada, stat. 2 Wm. IV. c. 8, entitled 'An Act respecting the time and place of sitting of the Court of King's Bench,' it was amongst other things enacted, that his Majesty's Court of King's Bench in that province should be holden in a place certain, that is, in the city, town, or place which should be, for the time being, the seat of the civil government of such province, or within one mile therefrom. And also reciting, that by a Legislative Act of Upper Canada, passed in 7 Wm. IV. c. 2, entitled 'An Act to establish a Court of Chancery in this province,' it was enacted that there should be constituted and established a Court of Chancery, to be called and known by the name and style of 'The Court of Chancery for the province of Upper Canada,' of which Court the governor, lieutenant-governor, or person administering the government of such province, should be Chancellor; and which court, it was also enacted, should be holden at the seat of government in the said province, or in such other place as should be appointed by proclamation of the governor, lieutenant-governor, or person administering the government thereof."

And it was enacted, that until otherwise provided for§ by an act of the Canadian legislature, all judicial and ministerial authority which before and at the time of the passing of the said Act 3 & 4 Vic. c. 35, was vested in, or might be exercised by the governor, lieutenant governor, or person administering the government of the said province of Upper Canada, or the members, or any number of the members of the executive council of the same province, should be vested in, and might be exercised by the governor, lieutenant-governor, or person administering the government of Canada, and in the members of the like number of the members of the executive council of such province respectively.

And that, until otherwise provided for,‖ by act or acts of the Canadian legislature, the said Court of King's Bench, now called the Court of Queen's Bench of Upper Canada, should, from and after the union, be holden in the city of Toronto or within one mile from the municipal boundary of such city. Provided always, that until otherwise provided by act or acts as aforesaid, the governor of Canada might, by and with the advice and counsel of the Executive Council of such Province, by his proclamation fix and appoint such other place as he might think fit, within that part of the last-mentioned province which then constituted the province of Upper Canada, for the holding of the said Court of Queen's Bench.‖

* Lib. iii. f. 106, 107, par. 4. † Lib. iii. f. 106, 107, par. 5.

‡ As Anderson escaped to Upper Canada, we need not trouble ourselves with the courts of Lower Canada. Other courts are also established by this statute, but for our purpose it is unnecessary to detail them.

§ This section is superseded by the provincial act, 12 Vic. c. 63, and other acts making other provision for the same matters.

‖ See *ante*, p. 44, and *post*, p. 60.

¶ The 47th section of the same Act enacts—"That all the courts of civil and criminal jurisdiction, within the provinces of Upper and Lower Canada, at the time of the union of the said provinces, and all legal commissions powers, and authorities, and all officers, judicial, administrative, or ministerial, within the said provinces respectively, except in so far as the same may be abolished, altered, or varied by, or may be inconsistent with the provisions of this act, or shall be abolished, altered, or varied, by any act or acts of the legislature of the