

comes to be fairly considered upon authorities and usage, it will be found that the chief-justices of the Court of Queen's Bench in England have so constantly refused (except where specially authorised by statute) to accept jurisdiction over a local action arising, or crime committed, out of England, that the jurisdiction of the court is practically and actually co-extensive with its judges' patents.

The nature and extent of the topical jurisdiction of the Court of Queen's Bench at Westminster may therefore be defined to embrace England, Wales, and Berwick-upon-Tweed, but not Scotland nor Ireland. The Isle of Man, and the Islands of Jersey, Guernsey, Alderney, and Sark are also excluded. Here the ordinary process of the Courts at Westminster has no force, and no action of a local character arising therein can be brought in the courts of this country. The colonies are also excluded, as is shown by the case of *R. v. Hooker*, 7 Mod. 193 (7 Geo. II., K. B. cor. Lord Hardwicke C. J., and Page, Probyn and Lee, JJ.), in which a motion for an information for an assault and battery, committed on a person in Newfoundland, was refused on the ground that the offence was local, and that the procedure by information was not distinguishable, so far as related to the court's jurisdiction from an indictment. Further, in *Doulson v. Matthews*, 4 T. R., 503, Lord Kenyon and Buller, J. expressly held that trespass would not lie in the superior courts at Westminster for entering a house in Canada. The latter judge saying—"We may try actions here which are in their nature transitory, though arising out of a transaction abroad, but not such as are in their nature local." These authorities are, it is submitted, conclusively against the jurisdiction of the English courts.

We now proceed to notice several acts of parliament which have been from time to time passed, in order to enlarge not only the jurisdiction and process of the superior courts at Westminster, but also the powers of their judges and other officers, which, but for such enabling statutes, could not have been legally exercised; and it appears that it has only been after centuries of struggles, that the Court of Queen's Bench at Westminster has at last established its jurisdiction over the whole of England proper. The first we propose to notice is the Stat. 11 Geo. IV. & 1 Wm. IV., c. 70; which was passed in order to give currency to Westminster writs within the county Palatine of Chester and in Wales, which it does in language that clearly shows that Queen's Bench writs were previously limited to England. Thus, section 13 enacts:—

That from and after the commencement of such Act, his Majesty's writ shall be directed and obeyed, and the jurisdiction of his Majesty's Courts of King's Bench, Common Pleas, and Exchequer, respectively, and of the several judges and barons thereof, shall extend and be exercised over and within the County of Chester, and the County of the City of Chester, and the several counties in Wales, in like manner, to the same extent, and to and for all intents and purposes whatsoever, as the jurisdiction of such courts respectively is now exercised in and over the Counties or ENGLAND, not being counties Palatine; any statute heretofore passed to the contrary notwithstanding: and that all original writs to be issued into the said several Counties of Chester, City of Chester, and Wales, shall be issued by the cursitors for London and Middlesex, and the process and proceedings thereon shall be issued by and transacted with such of the officers of the several Courts of King's Bench and Common Pleas, as shall be named for that purpose by the chief-justices of such courts respectively, each naming for his own court.

So, when our relations with our East Indian possessions became considerable, it required the Stat. 13 Geo. III. c. 63, to empower the Court of Queen's Bench at Westminster to issue a *mandamus*, commanding the chief-justice and judges of the Indian Courts to examine witnesses in India, and to render legal the use of such examinations in the superior courts at Westminster, on the trial of misdemeanours or offences committed in India.

Further, the Stat. 1 Wm. IV. c. 22, after reciting that great difficulties and delays were often experienced, and sometimes a failure of justice took place in actions depending in courts of law, by reason of the want of a competent power and authority in the said courts to order and enforce the examination of witnesses when the same might be required before the trial of a cause; and after reciting the above-mentioned Stat., 13 Geo. III. c. 63, enacted by sect. 1st, That all and every the powers, authorities, provisions, and matters contained in such recited Act, relating to the examination of witnesses in India, should be, and the same were thereby, extended to all Colonies, Islands, Plantations, and places under the dominions of his Majesty in foreign parts.

The 5th section provided—That every person whose attendance is required, is entitled to the like conduct-money, and payment for expenses and loss of time, as upon attendance upon a trial; and the 6th section enacted—That any sheriff, gaoler, or other officer having the custody of any prisoner, may take such prisoner for examination, under the authority of this Act, by virtue of a writ of *habeas corpus*, to be issued for that purpose; which writ may and can be issued by any court or judge under such circumstances, and in such manner as such court or judge might then by law issue the writ, commonly called the writ of *habeas corpus ad testificandum*.

Notwithstanding the passing of the last-mentioned Act, yet so jealously have the courts at Westminster respected their original jurisdiction, that when, in *Wainwright v. Bland*, \* a *mandamus* was moved to examine a witness in Scotland, the court of King's Bench refused the rule, and held that the witness must be examined by a commission, the court having no authority to issue a *mandamus* to Scotland, not being "foreign parts" within the above statute.

So it required the passing of the Stat. 45 Geo. III. c. 93, in order to provide for the appearance of persons to answer in cases where warrants were not usually issued, and to give evidence in criminal prosecutions in every part of the United Kingdom. The second section of which Act enacted:—

That the service of every writ of subpoena or other process, upon any person in any one of the parts of the United Kingdom, requiring the appearance of such person to answer or give evidence in any criminal prosecution in any other of the parts of the same, shall be as good and effectual in law as if the same had been served in that part of the United Kingdom where the person so served is required to appear; and in case such person so served shall not appear according to the exigence of such writ or process, it shall be lawful for the court out of which the same issued, upon proof made of the service thereof to the satisfaction of the said court, to transmit a certificate of such default under the seal of the same court, or under the hand of one of the judges or justices of the same, to the Court of King's Bench in England, in case such service was had in England; or, in case such service was had in Scotland, to the Court of Justiciary in Scotland; or, in case such service was had in Ireland, to the Court of King's Bench in Ireland; and the said last-mentioned courts respectively shall and may thereupon proceed against and punish the person so having made default, in like manner as they might have done if such person had neglected or refused to appear in obedience to a writ of subpoena, or other process issued out of such last-mentioned courts respectively.

And the 4th section provided and enacted—That none of such last-mentioned courts shall in any case proceed against or punish any person for having made default, by not appearing to give evidence in obedience to any writ of subpoena, or other process, for that purpose, unless it shall be made to appear to such court that a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena or other process was served upon such person.

So the Statute 17 & 18 Vic. c. 34, after reciting that great

\* 1 Gale, 103. S. C. 3 Dowd, 653.