mother, and another of a mother by her son, both attendant with almost incredible brutality, are for trial at the next assizes.

The return of the criminal offenders for 1844 is not yet published. It will afford us an opportunity of recurring to this subject in our next number. In the meanwhile we may be allowed to express our satisfaction, that our former notice of the subject was in some measure the means of bringing it under the notice of parliament.[1] It is in truth a matter which no Christian government or country can regard with indifference.

S.

[1] See the powerful speech of Lord Ashley, M. P., in the House of Commons, on the 18th Feb. 1845.

Art. XI.—HABEAS CORPUS IN JERSEY

Mr. Charles Carus Wilson, an Englishman resident in Jersey, was committed on the 23d of September last by the Court Royal of that Island, for an alleged contempt of the court, and, until his subsequent removal to the Court of Queen's Bench, continued a prisoner there on that charge. In Michaelmas term last, he applied by his counsel to Mr. Justice Patteson, in the Bail Court, for his deliverance by writ of habeas corpus. The writ was granted, and was duly served, but, by order of the Court Royal, the gaoler was commanded to disobey the writ, which order was acted upon accordingly

The order of the Court Royal to the gaoler, together with the reasons on which it is founded, are set forth in the document, of which the following is a copy

"At the Royal Court of Jersey, in the year 1844, on the 13th day of November. The Queen's Attorney-General having read to the Superior Court a report of the Depute Viscomte, showing that on Monday last he received from Mr. J Kandich, the gaoler, a report, informing him that on the said day he was served with a writ named habeas corpus, running as follows —

[The writ of habeas corpus cum causa is then set out.]

"The amount of the expenses to be tendered to the gaoler for the bringing over of the within-named prisoner to be 5*l.*, by the direction of Mr. Justice Patteson.

"WILLIAM STEPHENS, 30, Bedford-row, London.

"Nov. 6, 1844.

which had been served on him by Col. Davidson, who had, at the same time, given in his hands a paper commencing with—

"Wednesday, the 6th day of November, in the eighth year of the reign of Queen Victoria,

and terminating

"'By the Court.'

as well as a Bank of England note, bearing the number 84,030, and the value of 5*l.* sterling, all which documents the gaoler gave him at the same time, the whole, as contained more at length in said report, lodged *au greffe*.

"Seeing That the constitutions issued by King John after the separation of the Duchy of Normandy (of which the Channel Islands are the only remaining parcel) from the Crown of England, declare, in positive terms, that the twelve jurats (*coronatores juratos*), in the absence of the itinerant justices, and concurrently with said justices, when in the country, must judge all causes in this island, of what nature soever they may be that this exclusive and independent jurisdiction has been recognised and confirmed (with our other privileges) by the greater number of our kings, and more particularly by Henry III., Edward I., Edward II., Edward III., Richard II., Henry IV., Henry V., Henry VI., Edward IV., Henry VII., Henry VIII., Edward VI., Mary, Elizabeth, James I., Charles I., Charles II., and James II.,—

"That the King Charles II., to whom, in the days of his adversity, the island was happy to give shelter, saith the charter, bearing date from Westminster, the 10th October, in the fourteenth year of his reign —

"We give and grant unto the said Bailli and Jurats, and to all and every other magistrates, ministers, and other persons whatsoever, constituted into any charge and office in said isle, authority, full, entire, and absolute, with power and faculty to take cognizance and of themselves to give justice in all sorts of pleas, suits, differences, actions, quarrels, and causes whatever, mooted in said isle and aforementioned places, whether personal, real and mixed, or criminal and capital, there and not elsewhere to plead, perfect, pursue, and defend all and every such, and to proceed with or abandon them, to examine, hear, terminate, absolve, condemn, decide them, and cause them to be executed according to the laws and customs of the aforesaid isle and maritime places as heretofore practised and approved, without evocation or appellation whatever, except in cases reserved for our Royal cognizance, according to the ancient custom of the island and places above-named, or which, of our right and Royal prerogative, must be reserved unto us. Which authority, except in the reserved case, we give for us and our aforesaid heirs and successors, commit, concede, and confirm, by these presents, unto the said bailli and jurats, and others so amply, freely, and entirely as the bailli, jurats, and others aforesaid, or any of them have ever heretofore formally and legitimately exercised, performed, or possessed, or must have exercised, performed, or possessed, or should or could legally, or could and did. We further will, and by these presents, for us, our heirs and successors, concede unto the said bailli and jurats and other manens and inhabitants of the said isle and maritime places aforementioned, that none of them in future, by any brief or process issuing from our courts in our kingdom of England, or any of them, be summoned, apprehended, called in judgment, drawn, or in any other manner compelled to appear or answer out of the isle and places aforementioned, before any of our judges, justices, magistrates, or officers, or others for or because of any thing, difference, matter, or cause whatsoever, emanating from said island, so that each and every of the said insulars may have faculty and power to reside, dwell, and live in peace, legally and with impunity, in the said isle, and await justice therein, all such writs, warrants of apprehension, briefs, and processes, notwithstanding; and that without penalty, corporeal or pecuniary, fine, ransom, or mulct, which for this cause they might incur or forfeit. And similarly that no offence, cause of contempt, or contumacy, may therefore unto them be inflicted, imposed, or otherwise adjudged by us, our heirs, or successors.

"Seeing That the code of laws issued by the States of this country, and confirmed by an order in council of his late Majesty King George III., of the 28th of March, 1771, saith, that

"'The laws and privileges of the island are confirmed as of old, and no acts, warrants, or letters, of what nature soever they be, shall be executed in the island until they have been presented to the Royal Court, in order that they be registered and published, and in the event that such orders, warrants, or letters be found contrary to the charters and privileges, and hurtful to the said island, the registration, execution, and publication thereof may be suspended until the case shall have been represented to his majesty, and his gracious will thereon be signified. As to the acts of parliament wherein the island is mentioned and interested, they must be exemplified in form under the great seal of England, sent to said isle, and there registered and published, in order that the inhabitants may have knowledge thereof to conform and avoid the penalties for transgressions.

"Seeing further, that in the year 1832 two acts of parliament touching the writ of habeas corpus—namely, that of the 31st year of the reign of Charles II., and that of the 56th year of the reign of George III., were transmitted to the Royal Courts of Jersey and Guernsey, with orders from Council ordering the registration thereof,

"That the said Royal Courts, viewing the provisions of these acts as aiming at the privileges of these islands, suspended the registration thereof, and referred the subject to the States of said islands, by whom deputies were appointed to go to London, with instructions to present to the King's Government humble remonstrances against the registration of those acts,

"That the said deputies, having addressed energetic representations to Lord Melbourne, then Home Secretary, as well as to other members of the administration, succeeded in convincing these ministers that force of law could not be given to these acts without producing results for these islands of a disastrous nature, and that, in consequence, the government acceding to the just claim of the deputies, did not press for their registration,

"That since that period no attempt has been made to extend the provisions of these acts as to these islands, wherein they have remained powerless,

"That the execution of the writ of habeas corpus, or of any orders, summonses, or sentences of her Majesty's courts in England, would be a serious infraction of the charters and privileges granted to the inhabitants by their grateful princes as rewards for their unbounded devotedness, and of their ancient and unalterable loyalty,

"That it would deal a fatal blow to the jurisdiction and prerogatives of the Royal Court, the power of which has been recognised as supreme by those same charters, in all matters civil, mixed, and criminal, which originate therein, whatever be their nature (save some cases specially reserved for the cognisance of royalty), the sovereign in his council alone having the right to confirm, modify, or annul their decisions,

"Seeing that there is every reason to believe the judge who granted the said order was deceived by a dissimulation and concealment of

this country's privileges, and of the jurisdiction and attributes of this Royal Court,

"That if the said Wilson was displeased with the judgment of the 23d of September last, he might have caused a re-examination and cancelliug thereof by means of a remonstrance before the full Court, or, as a last resource, by *doleance* (complaint) to her Majesty in Council —

"The Court unanimously and conformably with the conclusions of the Queen's Attorney-General, empowers the Viscomte to order the gaoler not to obey the said writ of habeas corpus."

In the category of writs there are various writs of habeas corpus, for example Habeas corpus ad respondendum—habeas corpus ad satisfaciendum—habeas corpus ad prosequendum—habeas corpus ad testificandum—habeas corpus ad deliberandum—habeas corpus ad faciendum et recipiendum.

The above are writs which issue not to dispute the imprisonment which the party that is to be removed by them may be under, but go forth to enable him, though a prisoner, to answer —to satisfy—to prosecute—to testify—to receive judgment—to carry on a suit in a superior court. (See 3 Black. 130.)

The writ, by which the subject calls on those who imprison him to justify that imprisonment, is the writ of habeas corpus ad subjiciendum, by this, he appeals to the laws of his country to pronounce, through the voice of a judge of one of the superior courts at Westminster, upon the justice of his taking and detainer.

Blackstone, vol. iii. p. 131, says, "This is a high prerogative writ—running into all parts of the king's dominions—for the king is at all times entitled to have an account why the liberty of any of his subjects is restrined, wherever that restraint may be inflicted." And, in another place, vol. iii. p. 132, he says, "It is not granted of course, but on motion only—for the court ought to be satisfied that the party hath probable cause to be delivered. And this seems the more reasonable, because, when once granted, the person to whom it is directed can return no satisfactory excuse for not bringing up the body of the prisoner." Again, "But on the other hand, if a probable ground be shown that the party is imprisoned without just cause, and therefore hath a right to be delivered, the writ of habeas corpus is then a writ of right, which may not be denied, but ought to be granted to every man that is committed or detained in prison or otherwise restrained, though it be by the command of the king, the privy council, or any other."

The law of this country has been, at all times, careful to provide for the liberty of the subject, not merely by general

declarations of his rights, but by adequate machinery for carrying them into effect, and, above all, by means of this writ of habeas corpus. In the charter of King John we find a solemn recognition of this right—that no free man be imprisoned, &c.

In this, says Sir James Macintosh, we have the germ of the writ of habeas corpus. The writ itself is no more than a common law right, incorporated into a process for its own enforcement. It was born of right, though statutes have acted as its pioneers against opposition.

It was accustomably used long before the mention of it in any statute, its object then was the same as now, but, happily, the facilities of granting it, and the means of enforcing it, are greater now than then.

We hear of it as early as the reign of Edward I. In the 33 Edw I., no less a person than the bishop of Durham was punished for disobeying the writ. Either by the common law, or by force of a series of statutes, it may now be issued in term, or in vacation. It is in the power of any judge of either of the Superior Courts at Westminster to grant it, and we have thereby not a new writ of habeas corpus ad subjiciendum, but a common law writ, with the power of the writ at common law aided and cleared up by statutory enactments. More or less to this effect, and in the whole to the full extent thereof, we have the several statutes, 16 Car. I. c. 10, s. 8, 31 Car. II. c. 2, 56 Geo. III. c. 10.

The 16 Car. I. c. 10, "An Act for the regulating of the Privy Council, and for taking away the Court commonly called the Star Chamber," so far as regards the writ of habeas corpus, had for its object to secure the subject of his liberty by this writ, against all imprisonment by any future court of Star Chamber, or the like, and against commitments by the king's warrant in person, or of his council board, or of the members thereof, this it effects by the 8th section.

The 31 Car. II. c. 2, "An Act for the better securing the Liberty of the Subject, and for prevention of Imprisonments beyond Seas," divides itself into two parts, the one authorizing the writ of habeas corpus to be issued in vacation time, the other imposing penalties for sending subjects into foreign prisons.

Touching the place where the writ of habeas corpus shall run, the 11th section of this act is express, "that an habeas corpus, according to the true intent and meaning of this act, may be directed and run into any county palatine, or other privileged places within the kingdom of England, the dominion of Wales, or town of Berwick-upon-Tweed, *and the islands of Jersey or Guernsey*, any law or usage to the contrary notwithstanding." Nor are the words of the statute 56 Geo. III. c. 100,

"An Act for more effectually securing the Liberty of the Subject," less express. These are (sec. 5) verbatim as above, with respect to Jersey and Guernsey, and go beyond them in respect of the mention of other places.

What has the Court Royal of Jersey to answer to the above acts of Parliament, what *can* it have? Can it rely on this, that the 31 Car. II. c. 2, and the 56 Geo. III. c. 100, each speak of writs of habeas corpus to be issued in vacation time, without expressly mentioning writs issued in term, whereas the writ granted by Mr. Justice Patteson in this case was granted in term? Scarcely, for no one will doubt as to the provision in the 31 Car II. c. 2, that the mention of granting the writ in *vacation* was to set at rest all questions as to whether such might be done at common law, and that it was not intended to confer on those writs any power superior to that which at common law was possessed by the writs when issued in term time. This was the object of that statute, but then it clearly makes the writs issued in vacation, issuable into Jersey and Guernsey, and thus becomes a statutory reading as to what by the common law was a force inherent in the writs when issued in term. Can it be said that the statute did not intend the writ to run into Jersey, except in those cases where one had been sent from hence prisoner to Jersey? Scarcely, for the clause in the statute 31 Car. II. c. 2, which authorizes the writ to run there, does not come *after*, but *precedes* that part of the statute, viz. the twelfth section thereof, where the enactments as to the second object of the statute (the punishment of those who should send subjects into imprisonment beyond the seas) commences. But besides this, the statute 56 Geo. III. c. 100, s. 5, is without any such division of purpose, and is as absolute as the statute 31 Car. II. would have been without it.

This question, however, touching the right of the Court Royal of Jersey to imprison without any power of supervision on the part of the Superior Courts of Westminster, is a grave one, as affecting the liberty of all British subjects who may be resident there. It has long since been mooted as a mere abstract question, it is now mooted for the purpose of trial let us discuss it further.

Let us consider, 1st, Whether in the views of legal writers, the writ of habeas corpus from the Courts of Westminster may run there.

2nd, Whether the connection between Great Britain and Jersey is such that Jersey stands related thereto only, as any other dependency of Great Britain, in respect of the right of the British Parliament to make laws that shall be of force there.

As to the first point.

The writ of habeas corpus, say all the judges, at a meeting of them mentioned in Cro. Car. p. 466, "Is an antient and a legal writ."

It is no original writ, it is in the nature of a judicial writ. (Per Vaughan, C. J., Carter's Rep. p. 221.) The register is the rule for original writs, whereby they are framed. (Stat. West. 2.) So for judicial writs, they may be framed according to the discretion and direction of the court. (Berkeley, arguendo, Mounson v Bourn, Cro. Car. 527) These writs have gone beyond the seas. (Wild, J., Carter's Rep. ubi sup.) In this we have a prelude to the more emphatic language of the next quotation. "It is a prerogative writ which concerns the king's justice to be administered to his subjects. For the king ought to have an account why any of his subjects is imprisoned, and it is agreeable to all persons and places, and no answer can satisfy it, but to return the cause with paratum habeo corpus, and this writ hath been awarded out of this court to Calais and all other places within the kingdom. To dispute it, is not to dispute the *jurisdiction but the power* of the king and his court, which is not to be disputed." (Per Montague, C. J., Bourne's case, Cro. Jac. 542.) And of this opinion (says the reporter) were all the other justices.

In a case where the question was whether the writ ran into the County Palatine of Durham, Lord Hale says, "There is a great deal of difference between the writ of habeas corpus ad subjiciendum and any other habeas corpus, for this *is the subject's writ of right*, in which case the county palatine hath no privilege." (3 Keble, 279, Bac. Abr. Hab. Corp. p. 129, Hil. 2.)

And again, at a later period, it is said by Lord Mansfield, "Writs not ministerially directed (sometimes called prerogative writs, because they are supposed to issue on the part of the king), such as writs of mandamus, prohibition, habeas corpus, certiorari, *upon a proper case may issue to every dominion of the crown of England.* There is no doubt of the power of this court when the place is under the subjection of the crown of *England* the question is as to the *propriety.* To foreign dominions which belong to a Prince who succeeds to the throne of England, this court has no power to send a writ of any kind. We cannot send a habeas corpus to Scotland, or to the Electorate, but to Ireland, the Isle of Man, the Plantations, and (as since the loss of the duchy of Normandy, they have been considered as annexed to the crown in some respects) to *Guernsey and Jersey,* we may But notwithstanding the power which the court have, yet, when they cannot judge of the

cause, or give relief on it, they would not think proper to interpose. Therefore, upon imprisonments in Guernsey and Jersey, in Minorca, and in the Plantations, I have known complaints to the king in council, and orders to bail or discharge. But I do not remember an application for a writ of habeas corpus, yet cases have formerly happened of persons sent from hence and detained there when a writ of habeas corpus out of this court would be the properest and most effectual remedy." (Per Lord Mansfield, in delivering the judgment of the court, Rex v Cowle, 2 Burr 856.)

In these observations Lord Mansfield expresses an opinion in a judgment of the court, that habeas corpus runs from the courts here into Jersey, even in a case of original imprisonment there, though he thinks that the properest occasion for the application would be when the complainant had been sent there prisoner In other cases than the last he asserts the power, whilst he questions whether the discretion of the court would grant the writ. His opinion is thus all on the side that at common law the writ ran there, for he speaks evidently without the Habeas Corpus Act, 31 Car. II. c. 2, before his mind, by which such grouuds for refusing the writ of habeas corpus as might be furnished by the fact, that an original imprisonment there would be in a place at a distance, and that the cause would arise out of the ordinary jurisdiction of the court, are taken away The case in which he was delivering judgment was one as to granting supersedeas of a certiorari to remove a record from Berwick, where the Habeas Corpus Act neither was nor was likely to be referred to, and in which the supersedeas of the certiorari was *refused* entirely upon the strength of the common law, in spite of the strongest language of charters that the king's writ should not run there.

To these expressions of judicial opinion, which may be taken as the very common law itself, may be added the case of R. v Overton, Sid. 386, in which a writ of habeas corpus directed to the Governor of Jersey was granted by the Court of King's Bench. The report simply mentions that he had been a prisoner there several years. Even assuming that he had been *sent* there a prisoner, the case is an example of the authority of the courts at Westminster to issue the writ of habeas corpus in that case to Jersey No statute specially gives authority for this in particular, and if they did it by the common law, no case or dictum can be found which restrains the *power* to send the writ there.

As to this peculiar case of imprisonment Lord Mansfield has emphatically declared the *power* of the courts, and the statute 31 Car II. c. 2, has taken from them those grounds for refusing

it in their discretion, on which he laid stress. Lord Hale (Hist. C. L. 6th ed. p. 268) speaks unhesitatingly "A writ of habeas corpus lies into those islands (Jersey and Guernsey) for one imprisoned there" and he goes on almost in the very words already quoted from another quarter,—"for the king may demand and must have an account of the cause of any of his subjects' loss of liberty, and therefore a return must be made of this writ, to give the court an account of the cause of imprisonment, for no liberty, whether of a county palatine or other, holds place against these brevia mandatoria; as the great instance of punishing the Bishop of Durham, for refusing to execute a writ of habeas corpus out of the King's Bench, 38 Edw I., makes evident."

Blackstone in various places cites the different authorities above quoted, and though in the place (vol. i. p. 106), where he directly speaks of Guernsey and Jersey, he simply says, "The king's writ or process from the courts of Westminster is there of no force," yet in this he can mean no more than those terms have been judicially determined to mean, viz. that the king's *ordinary* writs run not there. (See per Lord Mansfield, R. v Cowle, in the judgment before referred to.)

Thus much for judicial and legal opinions. They contain a doctrine, with the application of it, to the full extent proposed, viz. that the writ of habeas corpus ad subjiciendum runs from the courts at Westminster into Jersey

This brings us to the second point. Is the connexion between Great Britain and Jersey such that Jersey stands related thereto only as any other dependency of Great Britain in respect of the right of the British parliament to make laws that shall be of force it?

The island of Jersey, with other neighbouring islands, has been under the same sovereign as England,—it may be said without exception (so short have been the periods of separation, and so immediately have they been reunited) from the time of William the Conqueror to the present day So close and so constant has been this association, that the learned Selden has even argued that it "perpetually" existed. (Selden, De Mare Clauso, c. 19.)

The accounts of the history of Jersey are all based upon that given by Falle, who wrote in the reign of William and Mary, an edition of whose work was printed in the year 1694. He it is who cites authorities for his statements, and who has been copied by succeeding authors.

From the authors cited by Falle, p. 1 to 6, it is to be gathered

that Jersey and the neighbouring islands were under the dominion of the Romans and afterwards of the Franks.

In the year A. D. 912 the islands were ceded with Normandy by Charles IV of France to Rollo, the Norman chieftain, to be held as a fief of the crown of France. (Falle, p. 5.)

From Rollo the islands descended with Normandy through five intermediate dukes to William the Conqueror. (Falle, p. 9.)

On the death of the Conqueror, England and Normandy were separated. William Rufus, his second son, succeeded him in England, but Robert obtained Normandy and the islands. On the death of William Rufus, Robert was again supplanted. Henry I. secured England, and, making war upon Robert, conquered Normandy and the islands from him—captured him, and having put out his eyes, retained him a prisoner until death. (See Falle, pp. 10, 11.)

On the reduction of Normandy and the islands by Henry, he declared them inalienable from the crown of England. (Falle p. 12, citing Camd. de Ins. Brit. p. 855.) And they descended with the crown in the succeeding reigns of Stephen, Henry II., and Richard I. (Falle, p. 12.)

King John, having been declared by the parliament of Paris to have forfeited all the dominions which he held of the crown of France, was by main force deprived of Normandy, but by help of the inhabitants he succesfully preserved Jersey and the other islands. (Falle, pp. 14, 15.)

In the next reign Normandy was formally ceded to France by King Henry III., but he reserved the islands.[1] (Falle, p. 15.)

From Henry III. they descended through the succeeding reigns of Edward I. and Edward II. to Edward III., and Normandy in this latter reign was again formally ceded to France and the islands retained. It was stipulated by an express clause in the treaty "that the islands which the king possessed on the coast of France should be his as before." (Falle, p. 21, citing Walsingham's Hist. Ang ad ann. 1360, seu 34 Edw III. p. 176.)

During the reigns of Richard II. and Henry IV little of note occurred touching the islands. (Falle, p. 21.) It is to be assumed that they followed the crown.

Henry V granted them to his brother, the Duke of Bedford, "without any recognition to be made to us or our heirs, notwithstanding our prerogative of the crown, for any other tenure held of us out of the said islands which may in anywise belong unto the said islands, castles or dominions." (Vid. Selden's Mare Clausum, fol. A. D. 1652, p. 340, translation by Nedham.)

[1] It seems that all recognition of feudal rights towards France was got rid of on the separation of the islands from Normandy.

Falle makes no mention of this, and it certainly may be regarded as an unauthorised act, seeing that it was an absolute dismemberment, not a mere feudal disposition of a dominion of the crown.

In the next reign the French got possession of one half of the island of Jersey, but were driven out in the time of Edward IV., when the island was again in the hands of the crown of England, and has pursued all the devolutions of the sovereign authority in this kingdom ever since.

Such has been the history of the original connexion between England and Jersey

In the treaties between England and foreign powers (vid. Selden, ut sup. p. 340) the islands have been spoken of and recognised as belonging to the kingdom of England.

In the dealings between our kings and the islanders, the recognition has been the same. They have not dealt with English sovereigns as lords of Jersey but as kings of England. To show the sense of English kings on this subject "in the more ancient charters of some of our kings, in confirmation of the privileges of the islanders, they are noticed more than once for such privileges as they or their ancestors or predecessors have enjoyed under the obedience of any of our predecessors *being kings of England.*" (Selden, ut sup. p. 339.)

These are not expressions merely of reference to the privileges that were confirmed, but of assertion of the authority by which they had been conferred. Thus Normandy with the neighbouring islands is ceded to Rollo, to be held as a fief of the crown of France. In this connexion they continue at the conquest of England by William I. The Duke of Normandy became King of England. After a temporary separation from the crown of England, the dukedom and its appendages are declared by Henry I. to be annexed to the crown of England for ever. Normandy is torn from John, but the islands remained. Henry III. cedes Normandy by treaty, but reserves the islands.

In the latitude of sovereign authority, Henry V makes a gift of the islands to the Duke of Bedford, but in a short time we see them united again to the crown, and dealt with and treated as an integral part of the kingdom of England by English and foreign princes and by themselves.

These are the foundations whence we have to deduce the right of the British parliament to make laws for Jersey, and of our superior courts to enforce in Jersey obedience to the British privilege of freedom from unjust imprisonment in every part of the British dominions.

And surely this review of the history of Jersey establishes

both these points. Upon the relationship which was established between England and Jersey by the events which have been detailed, there has been but one prevailing impression, viz., that they constituted one kingdom, with the sovereign legislative authority residing in the more powerful branch of it.

When the dependency of Jersey or Normandy was done away with by the separation of Normandy from England, enough (without regard even to an antecedent annexation of Jersey to England) was done to make Jersey the province of England.

Separate kingdoms might exist under the same head, when, in point of power, they stand equal or sufficiently near in this respect to one another, or where they have been integral states for a long time, but as between a powerful state and an appendage, the relict of another state, once both of them under the same sovereign with itself, and requiring and desiring protection, no such separation can exist. Its own necessities and the fate of war, which tore it from its principal, naturally transfer its allegiance, and convert it into an integral part of the state which yet remains under the same king

What third power stands between them? What rights intervene? What are their relations, save the natural relations of justice and government on the part of the strong towards the weak, who are protected by them?

Conventional usage and the course of events have placed Jersey in subjection to England. Our constitution, our laws and sense of right have laid down what the boundaries of that subjection shall be. That this is so, may be gathered from our legal sages, whose doctrines, after they have stood the test of time uncontradicted by special enactment, are, be it remembered, regarded as records of law and taken for what they assert.

Lord Coke, speaking of the islands of Guernsey and Jersey, says, "Both these isles did of ancient time belong to the duchy of Normandy, but when King Henry I. had overthrown his elder brother Robert Duke of Normandy, he did unite to the kingdom of England perpetually the duchy of Normandy, together with these isles." (4 Inst. p. 286.) In Calvin's case, where the question was whether one born in Scotland after the accession of James the First to the English throne might hold lands in England—there putting the case of Guernsey and Jersey upon the same footing as Scotland—Lord Coke says, "A man born in Guernsey or Jersey might no doubt inherit lands in England, though those isles are no parcel of the realm of England, but several dominions enjoyed by several titles, governed by several laws." (7 Co. 21 a.) What did he mean

by this? "By this," says Lord C. B. Comyn, "seems to be meant they were not so *originally*." (Com. Dig. tit. Navigation, F 3.) And assuredly such was Lord Coke's meaning, for to have spoken of Guernsey and Jersey according to the position in which they then stood towards England, would have furnished no parallel to the case of Scotland. They then stood in the relationship of a territory which, though it had originally been in the sovereign of this country by another title, had coalesced and become one with it, so as to be governed by it as a part of the dominions of its crown. In the opinion of Lord Coke they might be "bound by acts of parliament if specially named" (4 Inst. p. 287), which never was the case with respect to Scotland until after the Act of Union. This illustration therefore in Calvin's case only shows how really, in the opinions of the times in which that case was discussed, Jersey though it had originally been held in severalty from the British crown, had then adjusted itself into the position of a dominion thereof. And to this effect is what Lord Hale says his words are, "Those islands (Guernsey and Jersey), though they are parcel of the dominions of the crown of England, yet are they not parcel of the realm of England, nor indeed ever were." (Hist. Com. Law, 6th ed. p. 269.) By realm in the place where he is thus writing he means territory under the same single and original jurisdiction, so as to be an integral part of what is governed by one set of courts and judges (vide the context). Whilst then there is similarity of phrase between Lord Coke and Lord Hale in the use of the word "realm," in saying that these islands are no part of the realm of England, and a diversity between them and Chief Baron Comyn, who says that they are part of the realm of England, the meaning is one and the same, they are part of the dominions of the English crown, though no part of England itself, or of any thing originally subject with it to the same jurisdiction.

We have already referred to Mr. Selden's Mare Clausum. He there argues that "The kings of England have always been in possession of the islands lying near the French shore, that is, of the islands of Jersey, Guernsey and others on the coasts of Normandy and Bretagne." (Vide lib. ii. c. 19.) We are not concerned with this assertion of his in its full extent,—less will suffice. That which one argues for as a questionable point, and to bring opinions to a conclusion not before generally received, cannot of course be quoted as an authoritative opinion, but what he exhibits and shows to be such, descends to us with the weight due to a prevalent and public doctrine. His opinion as to this original conjunction has been ably disputed. (See

Remarks on chap. 19, book 2, of Mr. Selden's Mare Clausum, in the Appendix to Berry's History of Guernsey) But whilst the existence of a perpetual conjunction is disputed, the fact of an actual annexation from the time of Henry the First, whereby they were declared "inalienable from the crown of England," is not disputed. (See id. p. 231.)

These islands have received charters from our sovereigns, they have lived under the protection of the power of England. Wherever opinions are to be found in our law writers, they are to be found in favour of the view that they are of the dominions of the British crown, that they are not held in severalty, but run with it, that they are bound by acts of parliament when specially named.

Prevalent doctrine extending back to so remote a period has always been held to be law in this country, nor can any one see reason for an exception in this particular instance.

In what sense is Jersey a part of the dominions of the British crown, if in no respect subject to the power of the British parliament? It is either held by the sovereign in a separate right, as was the case with Scotland before the Union, and with Hanover until recently,—or else it stands related thereto on one and the same footing as a colony It does not stand in the first-mentioned position, but it stands as a colony, then if it stands as a colony, it is at once subject to the supreme control of the British parliament and to this writ of habeas corpus which "runs to every dominion of the crown."

In the order of the Court Royal to the gaoler, setting forth the reasons on the strength of which they command him not to obey the writ, charters are relied on which give the courts there, in general terms, exclusive jurisdiction over all matters and questions arising in Jersey The like powers have already been dealt with by the Court of Queen's Bench in the case of Rex v Cowle, before cited, and which shows that no such charters can restrain the prerogative writs.

Again, an order of council, confirming a code of laws for the island, which require that all acts of parliament to have force in Jersey shall first be registered there, is relied on, but lawyers here have yet to learn that the acts of a subordinate legislature can control that of the imperial parliament, or that the consent of the crown in council to such acts can give them any validity against acts consented to by the crown in parliament.

The crown could not grant to any jurisdiction within the British dominions an exemption from the writ of habeas corpus. It is the right of the subject, and no charter or dispensation can affect it. For there are rights which, though they rank in title

among the prerogatives of the crown, yet in truth are treated as what they really are—rights inalienable of the subject. Thus, from the inherent right inseparable from the king to distribute justice among his subjects, it has been held that an appeal from the Isle of Man lies to the king in council, without any reservation in the grant to the Isle of Man of any such right. (Christian v Correr, 1 P Wms. 329.) Nor was what counsel then said questioned, that even if there had been *exclusive* words, the king would be construed to be deceived and his grant void, for no grant could deprive the subjects of their right.

We shall conclude that in law and reason Jersey, so far as regards the power of the British parliament to make laws that shall have force there, stands related to the British crown in no other light than that of a colony of the British empire, and is subject to this imperial control.

But after having discussed the question, whether Jersey is subject to the acts of the imperial parliament, and to the power of the courts here to issue the writ of habeas corpus into Jersey, is this two-fold subjection to be merely abstract and nugatory for want of an adequate machinery to make the orders of the courts here, in the matter of granting the writ of habeas corpus, effectual in Jersey? Far from it. Independently of whatever power before existed for the enforcement of the process of the courts by attachment against those who should disobey it, independently of the pecuniary penalties and forfeitures which the Habeas Corpus Act imposes on those who shall disobey that writ in particular, he who would resist it effectually must be provided to resist a force (no inefficient one) which a judge authorized to issue a warrant for the apprehension of an offender can set in motion for that purpose, for this is the enactment of the sect. 2 of the 56 Geo. III. c. 100. Nor can any one doubt that, a machinery being thus provided, the order would only fail to be enforced with the failure of the resources of the kingdom to make it complied with.

With these observations we shall leave the case of the right and power of the courts at Westminster to issue the writ of habeas corpus into Jersey The facts of this particular case only show how necessary it is that such a power should exist somewhere.

Whatever be the merits of Mr Carus Wilson in the question which brought him before the Court Royal of Jersey, the question between the court and him is one between them and every member of the British empire who may feel the advantage of carrying into parts beyond England the sense of security against unjust imprisonment, which the power of resorting to the courts

at Westminster, and through them of having impartial judicial investigation of the causes of their imprisonment, is calculated to afford. They have claimed an exemption from the controlling power of the parliament of the British empire, upon royal charters and acts derived from them, which the spirit of this country has ever opposed, and they call the eyes of the empire to see how far this effort of theirs shall be successful.

The causes of Mr Wilson's imprisonment have been fully and widely diffused. Ostensibly they were contempt shown to the Court Royal by exceptions taken by Mr Wilson, first, to the competency of the judges individually, who were to try the action of Le Sueur v Wilson, and then collectively, to that of the court itself, which at that time was composed of persons against whom he had individually excepted, but who had assumed the right to clear themselves of the grounds of Mr. Wilson's objections by mere disclaimers, and then to try the case in spite of them. Mr. Wilson having protested against this method of clearance, the court adjudged him to be in contempt till he paid a fine of 10*l.* and made an apology, and in default of his so doing that he should be imprisoned until compliance. Ostensibly, Mr. Wilson was imprisoned for the slight thus done to the authority of the Court Royal, actually and truly, he was imprisoned because the course of the proceedings adopted by him showed how cumbrous were the methods, and how little calculated was the system of procedure in the Court Royal to attain the ends of justice, or to enable an individual to prosecute a suit against one who was determinately bent on taking advantage of every step which the law afforded for preventing that action from coming to any conclusion.

Mr. Wilson, in an action against him which was especially hostile, took objection after objection. He caused the court deliberation after deliberation, they could not urge that his proceedings were irregular, they could not dismiss them as unworthy the notice of the court. He reduced them to unforeseen dilemmas, to difficulties which they could not solve, and which therefore they resolved to cut, they did so by determining that they could clear themselves of objections to their competency by declaring that they were competent, and judicially punished the defendant Wilson for daring to protest against a course so unprecedented and unimaginable. That these were the true causes, whatever were the ostensible causes, of Mr Wilson's imprisonment, will be seen by the whole course of the proceeding. An action was instituted against a man ignorant of the ordinary language of the court. It is not pretended that the court was ignorant of his language, or that any inconvenience would have occurred

from their allowing the trial to be transacted in the English tongue, though this was in every respect desirable for Wilson, one of the persons to be tried, and who was ignorant of the Jersey tongue. Nevertheless, the court would not suffer the trial to take place in English, they did not think Mr. Wilson entitled to any favour. A court of justice think it a favour not to hear charges and try questions against a man in a language that he did not understand! Would they allow him a sworn interpreter? No. What would they allow him? They would allow *him to plead his own cause in English*, they would allow him to answer, if he could, charges which he did not understand! What a revelation is here, what a picture of fair and candid justice, what particoloured wickedness, what a type of the veracity of the disclaimers which were self-adjudged to clear the competency of these judges! No sooner is this sentence uttered than Mr. Wilson is hurried to gaol he is thrown to the felons' side, and neither allowed the solace of visits, the use of pen, ink or paper, without the supervision of his gaolers. He is condemned to felons' treatment, to felon fare, and nothing which compassion from without would do to mitigate his imprisonment is allowed to have effect within the walls of his gaol. If food is sent to him, it is prevented access, if letters are written by him, they are prevented egress until inspection. This was the state of things up to a period when the whole power of coercing him or releasing him was deemed by the Court Royal to continue with them, this happened at the very time when a member of that Court Royal—a very judge of the same, who had been guilty of what undeniably was a contempt, and a very high contempt of that court—was suffering imprisonment for it, not in the felon's gaol, but in the governor's house, where every comfort and leave of exercise consistent with imprisonment was allowed him. But Mr. Wilson, after sustaining his imprisonment from 24th September till the meeting of the Courts at Westminster in Michaelmas Term last, applies to Mr. Justice Patteson for habeas corpus, and obtains it. What happens then? The jurisdiction of Jersey is in danger the sole and exclusive power of deciding what they will, and as they of the Court Royal will, is in danger the writ must be resisted, and Mr. Wilson cajoled or persuaded to take his departure from gaol, and let the business drop.

The writ is resisted. Mr. Wilson is invited to leave his prison upon giving bail, public opinion is attempted to be appeased, and the courts at Westminster flattered into a dereliction of duty and abuse of their position to stand between the subject and all opposite unjust authority they are invited to fix the

amount of Mr. Wilson's bail, and the public, it is to be hoped, will be content if, his discharge having been offered to him on these grounds, he refuses to accept it, or, if refusing to accept it, the mitigated ire of the Court Royal consents to transfer its victim from the felons' to the debtors' side.

Mr. Wilson refused his release, Mr. Justice Patteson refused to fix the amount of Mr. Wilson's bail, and public indignation is not satisfied with this attempted escape from the consequences of a most spiteful and tyrannical abuse of power. Nor, regard being had to the inherent authority of a sovereign state, the common voice of its sages in times gone by, and of its own statutes, backed by public determination to enforce them, will the Court Royal or its officers be suffered to make their escape. For what do men band themselves together and form states, but for the purposes of personal security what constitutes the perfection of a state but the enjoyment of personal security in the highest degree, in a word, of liberty—"security against wrong?" Are we in the 19th century to be told that Englishmen do not possess this sufficiently to guard them from outrage even in a dependency so near to the arm of British law and authority as the isle of Jersey? Are we, when we claim our rights, to be told of charters and gifts to the contrary? Charters and gifts from whom? From British sovereigns? How then can they be gifts of the rights of the British people? Show acts of parliament to answer the inherent right of the sovereign state, and its own acts in assertion of that right, show these to answer the 11th section of the Habeas Corpus Act, and then let it be said that the writ of habeas corpus runs not in Jersey, but till then let it not be believed that the British people have been deprived of a privilege which no power but their own can wrest from them, and which they must needs be self-deceived if they suffer any chicanery to cheat them of. Until men can be persuaded, without inducement and without even plausible reason, to abandon an obvious right, so long will this privilege and the principles from which it emanates be contended for and vindicated by this nation, which is at once interested to preserve it, and at the same time powerful to do so.

The preceding article was written pending the question whether the gaoler would be justified in refusing to make any return to the writ which had been issued by Mr. Justice Patteson.

The result of the proceedings taken by Mr. Wilson has fully established the position here contended for, viz. that the writ of habeas corpus ad subjiciendum runs into Jersey, though they have not terminated in his own release.

A rule was obtained to set aside the writ granted by Mr. Justice Patteson. The argument at first treated the writ as it has been treated in these pages, as a writ of

habeas corpus ad subjiciendum, and addressed itself to the question of whether this writ ran into Jersey, then altogether failing of effect, it was started that the writ was a writ of habeas corpus cum causâ, and not a writ of habeas corpus ad subjiciendum, and on this ground the rule was made absolute.

In the meantime, however, Mr. Baron Rolfe had granted a writ of habeas corpus ad subjiciendum on the same application.

The result of the question on the first writ altogether changed that which was to be discussed on the return to this writ.

The writ was returned, and Mr. Wilson produced before the Court of Queen's Bench.

On this return the question was no longer whether the writ of habeas corpus ad subjiciendum ran into Jersey, but whether the Court of Queen s Bench would examine into the proceedings of the Court Royal of Jersey in relation to this business, the Court Royal being a court with power to commit for contempts, and they having exercised that power in this instance, and it was decided that the Court of Queen's Bench would not make the inquiry, not, however, upon any ground of privilege especially allowed in the case of the Court Royal, but upon grounds common to every court of record.

Mr. Wilson has thus been remanded into custody, a technical difficulty has deprived him of the full relief for which he sought, but certainly, if the published facts in relation to his committal are true, some supervision should be established to secure a more judicial performance of the functions of the Court Royal than has been displayed in his case. It is not, however, a matter of small moment, that though the courts here will not inquire into the question of whether the Court Royal has properly exercised its power to commit for contempt, yet the writ of habeas corpus ad respondendum runs into Jersey, even though the imprisonment shall have originated there, and that the courts here will give relief against such imprisonment, if it be not prohibited by established law.

M.

Art. XII.—LORD ELDON, HIS BIOGRAPHY, AND ITS REVIEWERS.

The appearance of the memoirs of Lord Eldon by Mr Horace Twiss, and the unusual share of notice which they have attracted, remind us of Seneca's expression, "tot circa unum caput tumultuantes deos." All the criticisms they have called forth bear strong marks of the "esprit de corps," and must, we think, have been written by members of the legal profession. It is easier to find skilful defenders than a good cause. A little more ability, some habit of considering great and extensive interests, and some attention to the proprieties of style, might have made Mr. Twiss a more endurable writer, at any rate would have prevented him from affecting the style of the "Keepsake," in discussing subjects connected with political history, but would hardly have procured for him a greater share of approbation than the periodical distributors of fame, the managers of what Voltaire calls the "bureaux de médisance, et d'éloge," have thought proper to bestow Lawyers however, as we are,