

Lib. C. B. that have made these objections but Satisfied that the hab^s Corpus Act 31^o Car 2^d R^s Cap. 11. which M^r Smithson has altogether proceeded (did it Extend to this province) has neither Expression nor Intent to bayle any but such who are comitted for such Supposed Criminall Matters for which they are Lyable to be Indicted. The Iurisdiction of the Courts of Starr Chamber and high Ecclesiasticall Courts with others of that nature having Long before Vanished and not left any Shaddow behind them at the time of the making that Act.

2^{dly} As to the Courts of co^mon Law having enlarged p^{ersons} comitted for contempts in the Court of Chan^{ry} as well as in the high Comission Court will not be denyed, And in the latter Severall comitted for contempt of their Decrees and even in the Case of Alymony But the reason is plain because of its being an inferiour Court to the K. B. And that those Comissioners had either taken upon them that for which an Action lay at Co^mon Law, as in S^t Anthony Ropers Case in hughes Abr. about the pension &c or because they have Exceeded their Authority given by by fining and Imprisoning where they had no such Authority of any Legall proceedings in the Spirituall Courts before that time Used (even under the Usurpation of the pope) to Warrant them And as to persons enlarged on 2 H. 4. 15. by the Bishops for Heresie not being fundamentall the Case is as wide because their Authority was declared by Stat. which they Exceeded in not confining themselves to the Heresies declared by the first four Generall Councells &c. And therefore it was the Court of the Kings Bench adjuvantib alijs Iusticiarijs dⁿⁱ Reg were able to Iudge as well of that fact as their authoritys to Imprison &c. But as to persons in the contempt of the Decrees of the high Court of Chancery being bayled on hab^s Corpus by one Iustice I know no Presidents, th^o. I must acknowledge the Iudges of the said Courts of Co^mon Law have resolved to bayle on contempts in not obeying Injunctions and Especiall where the Complain^{ts} had remedy at Co^mon Law or where barred by Stat. of premunire to re-examine their Iudgm^t given in the Kings Courts. Yet note that where any such Enlargments have been It was p tot. Cur. & non p mo Capital Justit.

As to this perticular case surely M^r Smithson never understood its Circumstances, for when I reflect that the Court of Chancery in England has power to relieve in any case where the Co^mon Law is defective, certainly this new Settled province where there is no Stat. to prohibite her Majestys being also Supreme as well in Spiritualls as Temporalls and