

bankrupt may be issued against such privileged traders, in like manner as against any other.

THE only way by which courts of justice could antiently take cognizance of privilege of parliament was by writ of privilege, in the nature of a *superfedeas*, to deliver the party out of custody when arrested in a civil suit<sup>a</sup>. For when a letter was written by the speaker to the judges, to stay proceedings against a privileged person, they rejected it as contrary to their oath of office<sup>b</sup>. But since the statute 12 W. III. c. 3. which enacts, that no privileged person shall be subject to arrest or imprisonment, it hath been held that such arrest is irregular *ab initio*, and that the party may be discharged upon motion<sup>c</sup>. It is to be observed, that there is no precedent of any such writ of privilege, but only in civil suits; and that the statute of 1 Jac. I. c. 13. and that of king William (which remedy some inconveniences arising from privilege of parliament) speak only of civil actions. And therefore the claim of privilege hath been usually guarded with an exception as to the case of indictable crimes<sup>d</sup>; or, as it hath been frequently expressed, of treason, felony, and breach (or surety) of the peace<sup>e</sup>. Whereby it seems to have been understood that no privilege was allowable to the members, their families, or servants in any crime whatsoever; for all crimes are treated by the law as being *contra pacem domini regis*. And instances have not been wanting, wherein privileged persons have been convicted of misdemeanors, and committed, or prosecuted to outlawry, even in the middle of a session<sup>f</sup>; which proceeding has afterwards received the sanction and approbation of parliament<sup>g</sup>. To which may be added, that, a few years ago, the case of writing and publishing seditious libels was resolved by both houses<sup>h</sup> not to be intitled to privilege; and that the reasons, upon which that case

<sup>a</sup> Dyer. 59. 4 Pryn. Brev. Parl. 757.

<sup>b</sup> Latch. 48. Noy. 83.

<sup>c</sup> Stra. 989.

<sup>d</sup> Com. Journ. 17 Aug. 1641.

<sup>e</sup> 4 Inst. 25. Com. Journ. 20 May. 1675. 29 Nov. 1763.

<sup>f</sup> Mich. 16 Edw. IV. in *Seacch.* — Lord Raym. 1461.

<sup>g</sup> Com. Journ. 16 May. 1726.

<sup>h</sup> Com. Journ. 24 Nov. Lords Journ.

proceeded<sup>z</sup>,