

means, other business would not be impeded or delayed.

But while we study to prevent the proceedings from creating any delay, we must take care at the same time, not to suffer the courts themselves to occasion it, by attending levees and parliamentary speeches instead of discharging the duties of their office, which is purely judiciary, and should not consist of any part of the legislature, when the life and liberty of the subject would be exposed to arbitrary controul ; for the judge would be then the legislator.* Therefore, neither the judges of this court, nor the Lord Chancellor, any more than those of other courts, though they might happen to be peers, should, for these reasons, be entitled to a seat in parliament.



CHAPTER III.

Of a Suit at Law—Wherein of the Doctrine of Arrest.

FOR the benefit of commerce the law of arrests was introduced. This perhaps might be useful in the infancy of foreign commerce, but not afterwards ; for if foreign merchants, by their breach of faith,

* Montesquieu, Sp. L. b. xi. c. 6.

had made it necessary to resort to this remedy, their credit would have been soon lost, since credit is never given to those who never pay. And with respect to the home trade or commerce, it must always prove unproductive, because if the debtor's effects are not sufficient to pay, it is certain that his person cannot. To which it is retorted by the partisans of bum bailiffs and sheriffs' officers, that it is intended only to oblige them to find security. But what security? that he will not abscond; for no other can be meant, since if payment be forced against his circumstance, this must be at the expense of his other creditors, and thus the only benefit of such a law is to favour one creditor at the expense of another, and enable Peter to rob Paul. If he has absconding in contemplation, he is quite as well aware as his creditor of the remedy by arrest, and nine times in ten will prove too vigilant, and give him only leg bail. But if the creditor arrest him, he cannot obtain payment without effects, and where the defendant is possessed of them, payment can be enforced without the arrest, and consequently the only advantage, instead of benefit, is, to compel him to account, under the Insolvent Act, or a commission of bankrupt. But this is a remedy almost as bad as the disease; the expense eats up the dividend in one case, and demoralizes the debtor in the other. Though if even this were not the case, and payment some-