

it. It is argued that "there is privilege of Parliament from arrest for treasonable practices," and to support this assertion it is contended that this privilege extends to all offences except treason, felony and breach of the peace, (which may be admitted) and that treasonable practices do not amount either to treason, to felony, or to breach of the peace. The Court is of opinion that "*treasonable practices*" are within the meaning of the words "*breach of the peace*," and that the privilege from arrest does not extend to cases of this description. All indictable crimes (and all treasonable practices must be indictable) are held in law to be *contra pacem domini regis*; and upon this ground, in England, it is now understood that the claim or privilege does not comprehend the case of any indictable crime. Such being the opinion of the Court, we are not called upon to make any enquiry as to the distinction between treason and treasonable practices. It may be well, however, to observe, after what has been argued, that the precise import of the phrase "treasonable practices" has never been settled by any legal decision; and if by the word "*practices*" we are to understand "*Acts*," it certainly will be difficult to mark the line of distinction. In the course of the argument, to shew that "treasonable practices" are entitled to privilege, the case of *John Wilkes* has been entirely relied on. It has been said, that by this decision it was settled that a Member of Parliament charged with having written and published a seditious libel was entitled to privilege; and from thence it has been inferred that a Member, charged with "treasonable practices," must also be entitled to his privilege. Now, admitting this case for the present, to be law, it by no means follows because a seditious libel is entitled to privilege, that treasonable practices must also be entitled to it. If indeed, the latter was the minor offence of the two, it might be inferred; but this is not the case, for in point of fact, it is the major and not the minor offence. To constitute treason, there must be an actual design against the King or his Government in contemplation; and it is in this that it is distinguishable from sedition, which comprehends such offences (not being capital) as are of like tendency, but without any actual design against the King or his Government. A charge therefore, of doing a thing *seditionously* cannot amount to a charge of *high treason*; since that which is seditious, and no more, can only partake of the nature of sedition. But, for the same reason, that which is treasonable must partake of the nature of treason, and consequently be a crime of greater magnitude than any act which is merely seditious. The case of *Wilkes* then, if admitted to be law, proves that the privilege of Parliament extends thus far, that is, to *sedition acts*, but affords no proof whatever that it extends beyond them to "*treasonable practices*." But the decision in the case of *John Wilkes* the Court cannot receive as law, because it has been solemnly disclaimed by both Houses of the British Parliament. The Judgment, in this well known case, (pronounced May 3rd, 1763,) at the first meeting of Parliament afterwards, was taken into the consideration of both Houses, and the discussion ended on the 29th Nov. 1763, in a joint vote, by which it was resolved, "That the privilege of Parliament doth not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of the laws in the speedy and effectual prosecution of so heinous and dangerous an offence." (a) Let the order therefore be, "that he take nothing by his motion."

WILLIAMS, J. I shall not touch upon all the points that have been so ably stated by the Chief Justice. In the case of *Wilkes*, it was the admission of the Counsel for the Crown, that established the fact of his being a Member. In the present case there is no such admission; nor is there any evidence before the Court that *Mr. Bedard* either was, or is, a Member of the Provincial Legislature. The decision of Lord *Camden* was, certainly not correct; nor can it be received as legal authority;—for the offence with which *Mr. Wilkes* was charged was clearly an indictable offence.—

(a) Comm. Journ. 24th Nov. 1763.  
Lords' Journ. 29th Nov. 1763.  
Almon's Deb. Com. for 1763.