

PRODUCTION OF TELEGRAMS FROM THE POST OFFICE.

tion made to the learned judge was of a very peculiar character. Mr. Charles Russell, as counsel for the petitioners at the pending trial of the Taunton Election Petition, asked the interference of the judge for the purpose of obtaining from the Post Office not any specific telegraphic message, but the telegrams *en masse*, which passed through the office at Taunton during a stated period of time. Mr. Justice Grove, though not doubting in his own mind what answer he ought to make to this request, consulted his brother election judges, and, having been fortified by their opinion, refused either to interfere to compel the production of these telegrams, or even to say anything to the officials at the Post Office to procure their production. Upon this application and the judgment thus given we must first observe that, apart altogether from the question of public policy involved, no judge and no Court of Law or Equity, could, in the face of the recent case of *Crowther v. Appelby*, 43 Law J. Rep. N. S. C. P. 7, on which we commented last week, venture to compel by threat of fine or imprisonment any servant of the Crown to produce any document contrary to the orders of the Crown as expressed through the proper officer. If the secretary of a railway company can refuse with impunity to produce a document because his masters have prohibited him from doing so, *a fortiori* would a servant of the Crown be protected. Probably, also, it would be held that copy telegrams in the custody of the State stand upon the same footing as secrets of State, State papers, and communications between Government and its officers. But it might be that the Post Office authorities would declare themselves ready to act exactly as the judge might in the exercise of his discretion direct, thus throwing the responsibility of production or non-production on the judge. Evidently this probability was in the mind of Mr. Justice Grove, when he expressed his opinion that he ought not even to say anything to the Post Office officials to procure the production of the copy telegrams. Assuming this to be the position taken up by the Post Office officials, we come to the question whether it is expedient or proper that copy telegrams *en masse* should be produced from the custody of the Post Office in a Court of Jus-

tice. We are not speaking of messages identified by the names of the parties by and to whom they have been sent, but of the whole lot of messages transmitted through a particular office in a given space of time. Telegraphy has opened up many new questions of law and policy, but such a question as this can be resolved on principles trite and familiar. Where the Government provides public means of communication open to all persons, and prohibits private enterprise directed to a similar object, the Government by implication pledges itself to the duty of keeping secret that which is entrusted to it for the purpose of communication. We need not recall the debates which arose on the conduct of Sir James Graham as Home Secretary in disregarding this rule, and disclosing the contents of the Mazzini letters seized during transmission through the Post Office. But between the interception and disclosure of a letter and the revelation of a telegram there is no sort of distinction. The Legislature also has expressed its opinion very clearly on the subject. By 26 & 27 Vict. c. 112, s. 45, a penalty not exceeding 20*l.* was imposed on any person in the employ of a telegraphic company improperly divulging the purport of a message; and by 31 & 32 Vict. c. 110, s. 20, any person in the Post Office disclosing the contents of a telegraphic message, contrary to his duty, is declared to be guilty of a misdemeanour punishable with twelve months' imprisonment. In reliance on the general principle already stated, and on the recognition of it by the Legislature, thousands of persons send telegraphic messages which could not be revealed to the public without damage to the feelings, the reputation, and the property of the senders, the receivers, or third parties; and it is manifestly better that election petitions should break down, actions at law fail, and honest defences collapse, than that such public mischiefs as these should be encountered. The proposition made at Taunton that the mass of telegraphic messages should be examined by one counsel on either side, betrays a very clear appreciation of the objectionable nature of the proposal made to the Court.

It is further to be observed that the application for the production of telegrams *en masse* is really an application not for evidence, but for discovery of evi-