

Burdett vs. Abbott, (and which has been used here) that independent of recognised precedents, the power of commitment is essentially inherent in parliament from its very nature and constitution, is applicable to Parliament alone, and we must bear in mind that the Court there did not decide the question before them upon this ground, but upon Law as ancient and binding as Magna Carta—upon precedent and usage, recognised and practical, time out of mind.

If however it be conceded that the House of Assembly by lawful authority possess the power of punishing summarily by imprisonment for contempt, as in the nature of a breach of their privileges, and as exercised in the manner complained of in this action;—whether they possess it as a Court of Record, or as inherent in them by analogy to the House of Commons—it would seem to be a necessary consequence that this Court cannot interfere in any manner with the exercise of such a power. That although the facts which constitute the alleged contempt should be set forth on the Record, the Court is entirely precluded from determining whether those facts do or do not amount to a breach of their privileges. In short, that they are the sole and wholly proper of their privileges and that it is not a breach of them. That this is part of the power which the Assembly consider to belong to them, is evidenced by the fact of their having arrested and imprisoned myself, as being guilty, in their opinion, of a contempt and breach of their privileges, for having in the performance of my duty as a Judge of this Court discharged the present Plaintiff when brought before me under a Habeas Corpus, and to which circumstance I now allude for this purpose only.—It follows then that this Court, which is styled the Supreme Court, and is the highest Court of judicature in the Island—by the express words of an Act of the Imperial Parliament possess within this government all the powers of the Courts of Queen's Bench, Common Pleas, Exchequer, and High Court of Chancery in England,—from which no appeal lies to any other body in this Island, but only to the Queen in Council—the jurisdiction of which is more extensive than that of the Assembly, and which was erected and established years before the Assembly came into existence is not, in any case where the Assembly may construe a particular transaction to be a breach of their privileges, and such transaction may come incidentally before the Court upon a plea of justification, to exercise any judgment whatever upon the question whether the facts set forth in the justification amount to a breach of the privileges of the Assembly or not. It amounts to this, that the Assembly may construe any thing which they consider a breach of their privileges, to be such, and punish for the same by imprisonment, and that the matter shall be wholly unappealable and unredressable in any other Court or place.

This is a doctrine to which I by no means subscribe; but, if it could be established, the imprisonment of one or all of the Judges of this Court, for any judicial act of theirs, which the Assembly might construe to be a contempt, would be just as much within the scope of their authority as the imprisonment of any private individual.

In the present case the Plaintiff who is not a Member of the Assembly, was in the first instance arrested for a constructive contempt only. The Warrant set out in the pleadings does not positively recite his having been adjudged guilty of a contempt, but his having been guilty of certain violent acts and expressions the tendency of which was to seditious, &c. The individual Member of the Assembly aggrieved, if he sustained any wrong, was clearly capable of obtaining the most ample redress in the ordinary Courts of Law, and there was not, in fact, any necessity whatever for the Assembly taking the law into their own hands, and determining what punishment should be inflicted upon the party.

As to the Warrant which is said, in the pleadings, to have been issued according to the laws, customs and usages of the House of Assembly, but which however forms its own precedent, I am of opinion it is invalid. It is not only think entitled to be considered as the process of a Court of Justice, and as it has happened to be a warrant of the Speaker of the House of Commons, I know not by what rule of reason it can be claimed to come under the law applicable peculiarly to the Imperial Parliament—21 Inst. 52, 591, H. P. C. 94. It is the first instance of the exercise of such an authority by a novel and limited jurisdiction, and as it operates to deprive a subject of his liberty, it must be construed strictly.

The Council for the defendants has argued throughout, not so much that the powers, or rather to use the words of the plea what the laws usages and customs

of the House of Assembly are, as what they ought to be; but the province of this Court is to pronounce the law not to supply its deficiency. It is said the Assembly cannot be presumed capable of assuming or exercising any privileges or powers, which are not reasonable or proper, but I say, that if the principle be once admitted that they can, without the sanction of a sufficient law or usage, assume the right of exercising any one power which is contrary to the common law then are they equally entitled to dispense at pleasure with every established law for the protection of the liberties and properties of her Majesty's subjects. The language of Lord Denham in the case of Stockdale vs. Hansard, 7 Car. & P. in which the House of Commons attempted to justify the exercise of a privilege which might be prejudicial to the character and reputation of individuals, is very strong, and as it is quite applicable to the present case. I cannot do better than quote it. Denying to the House of Commons the lawful right to exercise any such privilege, he proceeds "and I wish to say so now most emphatically, and distinctly, because I think that if on the first opportunity that arose in a Court of Justice, on a point of this kind being stated, the points were left unsatisfactorily explained, the Judge who sat in that Court might become an accomplice to the destruction of the liberties of the country, and expose every individual in it to a tyranny to which no man ought to be called upon to submit." The law given no authority to apprehend any one upon the command of the King, even though it be in the King's presence, 2 Inst. 130, and there are in the state very many bodies, politic and corporate, from the Sovereign downwards, of equal importance with the House of Assembly, but not one of them can justifiably do any act by which the liberty, reputation, or property of the poorest subject in the realm may be restrained or injured, without the clear and express authority of Law,—and I do not see how the House of Assembly is to be excepted from the general rule. It is not because the House of Assembly is a component part of a subordinate Legislature that it is for that reason entitled to usurp the functions of the Courts of Law and to dispense at pleasure with the established forms, and set at naught the settled course of justice.

Nothing is so abhorrent to the spirit of our Constitution and Laws, as arbitrary and undefined power, and when for the first time such a power as deprives the subject of his liberty,—of his birth-right, trial by jury,—and of the benefit of appeal, is claimed to be exercised in hostility to Magna Carta and the Common Law, so I say with Mr. Hargrave, in speaking of the exercise of a like power by the House of Lords "the legal existence of such power should be made to appear by proofs, and sanctions of the most incontestable kind."

I am far from denying to the House of Assembly, relatively with the other branches of the Legislature, the existence of certain privileges, as incident to their condition, but surely if it be deemed desirable or expedient that they should possess further powers and privileges, and especially vindictive ones, they have in their own hands the means of legally acquiring them. It is quite competent for the Assembly, by an enactment in which the different Branches of the Legislature may concur to define and establish by law such powers, and privileges; and in doing so, regard could be had to the peculiar constitution of our Legislature, and the vast difference between it and the Imperial Parliament, and the Legislatures of other Colonies, founded upon a very different franchise.—The laws and rules of Parliament as modified by the exigency of the case might then, in the terms of the recommendation of the Secretary of State, be adopted for the conduct of the Council and Assembly. I see nothing derogatory to the Assembly in this course, for many of the highest privileges of Parliament have from time to time been established, defined, and confirmed and others again abolished by Legislative Enactments;—and it is very probable that a great part of their peculiar powers originated in statutes or ordinances having the force of law, but of which all traces have long since been lost.—Wilkins Leges Anglo-Saxonas Dwaris 105 and 106.

But as respects the case under consideration, since the power assumed by the Assembly is not claimed to be exercised upon the foundation of any statute, usage, or precedent,—since it is in direct opposition to the Common Law, and the process by which it has been carried into effect is in my judgment invalid, I am of opinion that the plea of justification has not been made out and that the Plaintiff should have judgment on the demurrer.

[We shall insert in our next, the Judgments of Mr. Justice DESBARRES and Mr. Chief Justice BOURNE on the above case.—ED. STAR.]

MAYO ANTI-TITHE MEETING.

(From the Dublin Evening Mail)

THE DEMAGOGUE FEATHER ON THE WANE.

The Pope's leges have held another very imposing mobbery against tithes in the country of Mayo. The place selected for the meeting—a ruined monastery—the associations awakened by the scene as well as suggested by the orators—the activity and zeal of the priests who managed the whole proceedings, were all well calculated to add to the fraudulent resistance of a just debt, the bitter fanaticism of a superstition stripped of her ancient gods, and disarmed of her intolerant power.

The gathering, it is said, consisted of 40,000 people. The chair was taken by a gentleman whose residence at Breezee Hill portends a coming storm; and the meeting was addressed, in their usual tone of political morality and civil honesty, by at least half-a-dozen priests. Their ordinary diatribes against the "gorgeous nuisance"—their customary invectives against tithes—and their ferocious intolerance against Protestantism, it were needless to repeat or discuss. They have neither the merit of truth nor the attraction of novelty. There was, however, a theme both new and true discussed at this meeting, which is making rapid and prodigious way in the public mind—we mean the detected treachery of Mr. O'Connell towards his countrymen in the matter of the Tithe Bill. When Father Davern stood forth single-handed (as it appeared) to denounce the impostor, we said that he stood not alone, and that a little time would exhibit the Roman Catholic priesthood of Ireland arrayed on his flanks, and bearing down with destructive vehemence on the power which, for the own uses, they had created. How quickly have our words been verified.—At this Mayo gathering the Reverend Father Fergus gives vent to his own indignation, and that of all his ecclesiastical brethren; and, though he included her Majesty's ministers in the censure, yet from the precise and pointed wording of his speech, it is evident that Mr. O'Connell himself is the principal object of denunciation:—

"But now," saith this vehement accuser, "when those who pretend to be their friends, and who on the people's shoulders have ascended to their political elevation, have carried measures evidently injurious to their best interests, and which is to be dreaded more than all, having a necessary tendency to implicate, embroil, and render mutually obnoxious the landlord and tenant, and thus disturb the peace of the community, what bounds can be set to our indignation, and what contempt for their vacillating imbecility? (Loud cheers.) They have violated their solemn pledge, and attempt to justify themselves on the plea of expediency, which dastardly and temporising conduct, if not condemned by marked and timely reprobation, every selfish, knavish, and ambitious ministry will, on the same grounds, cling to office, and sport with the feelings as well as insult the judgment of the public (Continued cheers.) Yes, but if the Whigs went out of office, the Tories would come in—perhaps so. But I defy any Tory government, even of the deepest Orange hue, considering the state of Ireland, and not altogether disregarding public opinion, which should be the guiding star in politics, to have the hardihood and effrontery to force upon the country a worse Tithe Bill than our friends the Whigs have given us. (Hear, hear.) Aye, but to sweeten the pill in order to swallow it the more easily, and to make the burden the lighter, tithes shall be no longer called tithes, but a rent-charge (hear, hear), with a miserable percentage reduction, which never will benefit the poor."

This is much in the manner, and not far from the matter of Father Davern's correspondence, who exclaims—

"What faith can they (the Roman Catholic clergy and people) any longer feel in the leader who, on Wednesday, wrote a letter from London denouncing the ministerial bill 'as worse than ever was imposed by Mohamedan sword on Grecian vassals,' and on the following evening, with protests from five Irish counties in his pocket, made a speech in support of it, and recorded a vote in its favour? On, Sir, believe me the people are sick of this blowing hot and cold."

The Rev. gentleman declines to examine the motives which gave rise to this tergiversation; he leaves them to the development of time. We may help him to a more immediate interpreter; for we find, in the address of Mr. Ward to his constituents at Sheffield, last week, a solution so clear and so adequate as to preclude a doubt of its being the true one. It has this further value, that it is the evidence of an eye and ear witness of the whole proceeding.

"I know," said Mr. Ward, "that these views have been forced upon the government (and this is their only excuse) by the Irish members. So long as the peasantry bore the brunt of the tithe war they cared little about it; but they succumbed immediately when the Exchequer processes were directed against themselves. I am happy to find that the course Mr. O'Connell pursued (for he and Mr. Sheil were mainly instrumental in determining the course of the government) has been repudiated by the people of Ireland, who regret that their members have taken the million bribe, and compromised their principles."

And here, O Father Davern—and thou, too, Father Fergus of Mayo—here is the reason—here the motive why Mr. O'Connell, with the protests of five Irish counties in his pocket, voted for the Tithe Bill, against which he levelled the heaviest denunciations the day before; and against which he renewed his denunciations the day after;—as long as the peasantry bore the brunt of the tithe war, Mr. O'Connell and Mr. Sheil cared little about it; but the moment the Exchequer process was brought to bear against themselves—and they were compelled to pay their tithes, with costs and trouble—they struck their colours; and for their own security abandoned the cause of the people. The rest of the Mayo priests coincided in the

views of Father Fergus; they openly denounced the leader; and appear determined to take the leadership on themselves. The Very Rev. James M'Gale—brother of "John of Tuam," condemned in the strongest terms the conduct of the ministry, and exhorting the people to be no more misled, but to rely upon themselves, "concluded with the sacred words of the Father of the Maccabees, 'Remember your ancestors [of 1641 and 1688] and the deeds they have done in their day, and be ye like unto them.'"

We have striven to follow the advice of his reverence, and for our lives can remember nothing of the glories of our ancestors but the rebellion in 1641; the pro-Popery war of 1688, and the battle of the Boyne; and the insurrection of 1798, and the flames of Scullabogue-barn. But Perchance his reverence refers to

"The days of old,
When Malachi wore the collar of gold;"
and if so, we must consult that most authentic History of Ireland, "Tom Moore's—Melodies."

The accounts just received from the West Indies, the Cape, and from Australia, completely confirm our previous statement that an augmentation to our military strength is called for in all these colonies, but from whence that augmentation is to come it is impossible for us to say, as the 96th (by right the last for service in 1839, being only three years, at home) is now under orders for new South Wales; nor is it supposed we can replace more than one of the four regiments now about to leave Ireland by another from England, the duty at present being quite enough for those stationed here, crippled as the depots are by the large drafts sent to Canada.

"The Liverpool." This splendid new steam ship, of which we gave a description in a recent number of our publication, intended to convey passengers between Liverpool and New York, made her trial trip on Saturday last to Dublin. She was intended to have started on Friday, but owing to the boisterous weather and not being insured, she did not sail till Saturday morning at 4 o'clock. She anchored at Kingston at four o'clock in the afternoon, having been 12 hours 21 min. on her passage, beating the mail boat three hours. Her average speed was found to be 10 knots per hour in the teeth of a strong head wind. A very large party of gentlemen, proprietors and their friends, were on board, who greatly enjoyed themselves and were much gratified with the splendour of the vessel, her speed, and the performance of her engines. She started on her return on Sunday night, at a quarter before eleven o'clock and arrived at Prince's Pierhead at a quarter past 9 yesterday morning, thus performing the voyage in 10 hours and a half, and again beating the mail boat four hours. She encountered a heavy sea off Holy head. Her average speed through the water, on her return, was 11 knots per hour. A calculation was made by which it was ascertained that with the same opposing difficulties to contend with as she had on her voyage out, namely a head wind and a rough sea, she would steam to New York in 13 days! What, therefore, may be expected from her with ordinary or favorable weather. We can only add that this vessel bids fair to realise all the expectations that have been raised about her, and that she does credit to the town where she has been built and completed and whose name she bears.

French Treatment of Quacks.—"They manage these things better in France," we observe—that is, in reference to quackery. Two or three vagabond empirics have been traversing the country with a nostrum which they distinguished as the *Sucre Mexique*, being nothing else than jalap and molasses.

These fellows by the police, prisoned on their money and having guaranteed cases, and pro remedy. Quack swindling, *qui culti deipi* creditors ought der the protect every common medicine should swindler.

It is a fact, late prevalent and the absence to meet the Thames, together spring tides of water in the brackish, as at Bernouisey, who obtain the Thames, have rably inconvertible hith, where the river, the days was of domestic purpose holders were cisterns from is seldom the Thames is here were for four days last.

At a recent Club resolved as we are pleased conduct of we cannot re our bitter efforts to sup have been w

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The news conveyed is indeed alluring, consisting of 35 Indians instantly and shot them to death, every one of us had no doubt, captured by the Carles in Argentin, suit of cold and a terror in the best to excite trouble, able to conquer, nearly one and a half, directly denounce the moderate and the deep passion, must excite and formidable, but the constitution, which its mission, boarded but too s, their consequences, but her who is Viceroys of Don of any accord, of bars and the blood, his hands, garments dabb, ping in pore, the Spanish nation a God! has washed participation, in France, France, offering an end to would not, far we can tell; and to cile the tolerance, committed with which a word of abets Don Carlos, the Emperor of humane and enli, that the gold, but a whetstone, Cabrera is what theatre on which to struggle again moderate desires and even of a m of Spaniards, let as a condition of to fair and man, horrible, and be, harsa cry shame more than cry guilt on the co, statesmen who monstrosity. T Spain, France, a open, and Europ to this question, grounds than the set aside, or bli animated by Ch

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