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COURT OF QUEEN'S BENCH,

Friday, May 31.

STOCKDALE *v.* HANSARD.

The Court this morning delivered judgment in this case.

Lord DENMAN said, this was an action for publishing and defaming the plaintiff's character, by imputing to the plaintiff that he had been guilty of publishing obscene libels. The plea of the defendant was that the inspectors of prisons had made a report to the Secretary of State, alleging, among other things that improper books were found in the cells of the prisoners at Newgate.—That in answer to this statement the aldermen had written an answer which was replied to by the inspectors, who repeated their allegation, and that the books were published by Stockdale, and added that the reports of the inspectors were printed pursuant to the order of the House of Commons for the use of its members, the house having come to a resolution to print papers for the use of the members. That they were of public interest, and the publication was essentially incident to the due performance of the functions of the House of Commons. This plea, it was contended, established a good defence to the action: first, because the grievance was an act done by order of the House of Commons, which order could not be called in question in any court of law. This principle the counsel for the defendant avowed in an argument which was long and laboured, but no such principle had been asserted in any former House of Commons. This was a claim for arbitrary power, asserted by a body who immediately afterwards admitted that it was not the supreme authority of the state, and this power was claimed on the supremacy of Parliament, which, however, was not favourable to the argument, because the House of Commons was not Parliament, but only a component part of the Parliament. The sovereign power could make and unmake law, but the concurrence of the three estates was necessary to effect that purpose. The resolution of any one of them could not alter the law, or place any one beyond its control. It was untenable to suppose that it could do so, and was abhorrent to the first principle of the constitution of England. The next defence involved in the plea was, that the defendant committed the grievance by order of the House of Commons in a case of privilege, and that each house was the supreme judge of its own privilege. This last proposition might be considered first, for the Attorney-General had been right in contending that the House of Commons could constitute the privilege. So far, no doubt, the argument was in favour of the defendant, and then the court would not proceed further in the inquiry, and would merely have to declare that it was a case of privilege, and give judgment accordingly.—The recent resolution of the House of Commons had put the case in this form, and although a jury had adopted that resolution. It was not without the greatest respect and deference for the body adopting that resolution that he entered into a discussion with that body. He would willingly have declined entering into contest with that great and powerful assembly, could he have avoided it; but when one of his fellow-subjects presented himself before him demanding redress in the court to which he had been appointed and sworn, for an injury that party had received, he had no option to grant or withhold redress, but he was bound to afford that redress, and he must ascertain how the law stood, and whatever defence the wrong doer made, that defence he must examine, and give judgment upon its validity.—The learned counsel for the defendant had contended for his right to be protected against all consequences of acting under an order issued by the House of Commons in anything concerning the privilege of that house could he avoid the question, whether the defendant possessed that right or not. Parliament was said to be supreme. He acknowledged its supremacy; but it did not follow that one entire branch of it was supreme of itself. But it was said that either branch was supreme for certain purposes. To that proposition he agreed to this extent, that in whatever matter the performance of the duties of either branch of the legislature, it was supreme for removing the inconvenience. Then it was said, that the two houses in point of principle never would have left their privileges to be decided by an inferior tribunal. It was not proved that the institution of the courts had been framed upon abstract principles, for he believed on the contrary that it had been adopted by themselves, according to the circumstances of the times and by degrees. While he disputed the fact of principle settled in the *Aula Regia*, asserting the supremacy of Parliament, he did not mean to say that the judges possessed any power over Parliament. He was always ready to express his deep conviction that the freedom of Parliament was the corner-stone of English liberty. It was true that the judges in the times of Charles and James II., and those who abetted in the design to make ship money recoverable without the authority of Parliament, were held in abhorrence by their country as amongst the worst invaders of the rights of a free people; but it was shown by the *History of England* that it was not the judges, alone who had been thus guilty, for no one could read the sentence passed by the House of Commons upon Floyd without seeing that Parliament was sometimes as forgetful of the rights of the subject as the very worst and most corrupt judges had been, and that the House of parliament had as little sense of justice as other persons. The House of Commons had thought fit to pronounce Floyd guilty of an offence towards the Crown, and adjudged that his fortune should be confiscated, his body tortured, his name disgraced, and himself imprisoned for life. This invasion of the judicial proceedings of the House of Lords had been rebutted by that house, and the Commons had most humbly apologized, but still the sentence was carried into effect. But was it to be believed that the two houses, thus vieing in obsequiousness towards the Crown, could be good judges of the law, or vindicators of the rights of the subject. Then it was supposed that the asserted jealousy of the house of Commons, its refusal to allow an inferior tribunal to deal with its privileges, arose from its proper jealousy of the Crown and of the other house, before the latter of which the judgments of the courts of law in the country might ultimately come by appeal, and thus indirectly the privilege of the one house might be submitted to the decision of the co-ordinate and rival assembly. Still, in the same breath the Attorney-General informed the Court that the power of the supreme tribunal of appeal took its origin when both houses sat together, and when of course it was impossible that any such jealousy could have existed. This showed that this immemorial claim to have the sole right of judging of its privileges could not exist. Then it was urged that the judges could not have a power of deciding upon parliamentary privileges, for that these were *a paucis cognita, a multis ignorata*. This argument, was that they were well known to every member of Parliament so long as he remained a member, but that the knowledge was as incommunicable as the privilege; and a man ceased to be acquainted with the one, when he ceased to possess the other.—But it was said that these privileges were part of the law of the land. If they were they must be known to those who knew the law of the land, and if they were not the law of the land, or were against the law of the land, they would hardly expect to be recognized or respected in those tribunals whose bounden duty it was to administer that law. Lord Holt had disputed and denied this name of parliamentary privileges, and had asserted that they were part of the law of the land, and as such were subject to that law. It seemed also clear, that in principle Lord Holt's view of the matter was the right one. These privileges were common to both houses, and were such as were necessary to the performance of their duties. That there was an undoubted privilege to have a perfect freedom of debate, though that had been denied in the time of Elizabeth, and punished in those of her two successors, whenever a member thought proper to censure the proceedings of the Government, or to assert the rights of the people. Yet, though thus denied and punished, it was soon seen clearly that this right of free debate was indispensable to legislative assemblies, and the right was then acknowledged. By consequence, therefore, whatever was done within the walls of Parliament was free from inquiry elsewhere. A member might in his speech state things the most injurious to private persons, or the most dangerous to the public peace with perfect impunity. A paper signed by the Speaker, though to the last degree calumnious, could not be made the subject of a civil or criminal proceeding. But if this speech was reported in the paper, then the ordinary law attached upon those who made them public; and in the same manner, though the Speaker might with impunity give any order to seize the property or the person, of a subject of the realm, his order would not of itself be a sufficient justification to the messenger who executed it any more than King Charles's warrant for the levy of ship-money protected the officers who attempted to enforce it. The privilege of committing for contempt was one which was inherent in every court, but with regard to the House of Commons that power of committing could only be reserved to the end of the existing session of Parliament; that was known to everybody, and if the offence was committed the day before a prorogation, the offender would, on the day after, be entitled to his liberty, and however grievous the offence and however deserving of severe punishment, any court in Westminster-hall, or any judge of any of the courts would be bound to release the offender. This showed that even with respect to the most unbounted privilege of the house, that the court could and did judge of the extent of the privilege, and applied to their exercise the recognised principles of the common law. Again, it was the undoubted privilege of the House of commons to take care of the money of the people; but if in the care of that money the house should issue an order, or pass a resolution authorizing the exciseman to enter at pleasure into the cellar of any man in London, it could not be said that a person whose cellar was thus invaded would not have a full right to bring his action of trespass. Again, the Commons possessed undoubted power as the grand inquest of the nation. All admitted their power in this respect without a murmur and without a doubt. But if in the exercise of that power the Commons did not investigate but condemned—if instead of examining they proceeded to execution, it could not be doubted that the agent who executed their order would be guilty of murder. Examples of this kind might easily be multiplied, but he thought that he had said enough on the head of the subject. It was then argued, that the asserted liability of the printer of the house to an action for libel rested on the assumption that the house would order the publication of libels, an assumption which it was said could not be made with respect to the House of Commons. He answered that cases of the abuse of a principle might always be supposed, in order to test the truth of a principle, but that besides this, he thought that the cases cited at the bar showed enough of abuse in the exercise of privileges formerly claimed by the House of Commons to show that with respect to such uncontrolled privileges, abuses might always be anticipated. He now came to the case. His Lordship then went into an elaborate examination of the various cases cited at the bar, and declared that, in his opinion, they either showed too much, by proving an acquiescence in what was an undoubted abuse of privilege, or that they did not establish the existence of the privilege, to prove the legality of which they had been cited. Above all, he denied that in Thorpe's case the judges had disclaimed the general rights to examine the question of privilege, but insisted that they only meant that they could not examine those particular privileges which were to be examined within the walls of Parliament. He observed that the right of determining on the election of members of Parliament clearly belonged to the House of Commons alone, and as to this of course the judges of the present day would decline to give an opinion; but there were many matters connected with such elections which incidentally came before the courts, and into which the courts every day examined without the slightest doubt as to their jurisdiction.—As to Mr. Speaker Williams's case, which had been so much relied on, it did not seem to him that it bore the least analogy to the present; for the sale here was no act of the Speaker's, nor was this action brought in respect of anything done by a member within the walls of Parliament, but from something done by a person out of Parliament, namely, the selling of something which contained matter defamatory of the plaintiff's character. It was said that this court was to be bound by the journals as authorities. But if that has always been the case it would not have been so well for the claim of privilege. In Wilkes's case the House of Commons again and again denied the privilege which the courts of law then successfully assered on behalf of a member of the House of Commons. When the court of Common Pleas had released Mr. Wilkes by reason of his being privileged as a member of the House of Commons, that house came to a vote that it possessed no such privilege. By what authority were the courts to be bound?—by law books, which stated principles without reference to party occasions or party purposes, or by the journals of Parliament, which in some instances at least gave evidence of the influence of such causes? Again, in the case of Wilkes v. Luttrell, the courts laid down the law in a sense opposed to that of the House of Commons of that day, and the courts were now admitted to have been in the right. The assertion of the claim rested chiefly on three points—necessity, practice, and acquiescence. If the first was clearly made out, all the rest would follow, but he did not think it had been established; all the cases which had been cited for the purpose of showing the existence of a recognised necessity, were cases which limited that necessity to the printing for the use of members. But then it was contended that the necessity of printing for the use of members being considered, the necessity of distributing copies, or at least the inevitable consequences of so doing, clearly followed. If the necessity rested on the propriety of affording general instruction to the people, that object ought to be obtained by the act of the whole legislature, not by the resolution of any one branch of it. It could not be doubted that he wishes to guard himself against being supposed to assert that it was inexpedient to alter the law on this subject. It might, no doubt, be amended, but the two functions of administering the law and altering the law could not be mixed together, otherwise a judgment of a court would be the enactment of a law, not the declaration of what was law; and the introduction of the word adjudge into the proceeding would not alter its nature. He thought that the law was as he had now stated it, and, so thinking, whatever might be his opinion as to other matters, he was bound to declare the law as it was, not to pretend to make it what he thought it might properly be made. Practice, long uniform practice, was the second ground on which the defence of the privilege was rested, and the Attorney-General had said that he had even the warrant of an act of Parliament for that argument. He referred to the Postage Act, which directed that Parliamentary papers, should go free of postage, and he contended that the Parliament would not have given that advantage to libellous publications. The argument was worth nothing, for the same act enabled newspapers to go free of postage, and yet it was not pretended that newspapers were necessarily free from libels. The truth was, that act left the question of libel or no libel in the same state as if that act never had existed. But then it was said that the practice had existed from time immemorial. If that was so, it was strange that the first example produced was that of 1640, when the House of Commons set up claims which ended in absorbing for that house all the power of the state.—The house became repentant on the return of Charles II., and then in return for its overthrowing the kingly power, exhibited but too great a readiness to concede to the Crown a mastery over the liberties of the people. The origin of the claim being so well known, its alleged antiquity was completely disproved.—And the same proof also affected the question of the necessity of the practice; for such a necessity was never thought