

Eng. Rep.]

REG. V. CASTRO.

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a contempt of court. BLACKBURN, J.—Unduly to interfere with a fair trial is not the less a contempt because it is done to get subscriptions for one side.] This is a “constructive contempt,” and is, therefore, to be regarded with some jealousy. [BLACKBURN, J.—Where is the distinction between an actual contempt and a “constructive” contempt?] The distinction is very obvious: one is a direct attack upon the Court, and the other is only an indirect attack upon some of the parties or witnesses. [BLACKBURN, J.—Lord Tottenham said in *Mr. Lechmere Charlton's case* (2 Myl. & Cr. 316, 342), “It is immaterial what means are adopted, if the object is to taint the source of justice, and to obtain a result of legal proceedings different from that which would follow in the ordinary course. It is a contempt of the highest order.”] That was a very different case from the present. But even adopting that definition here, that was not Mr. Whalley's object. This was a constructive contempt, and a novel case, and would carry the doctrine of contempt further than any case which has yet occurred. Mr. Whalley disclaimed any intention to pervert the course of justice, or interfere with a fair trial; and if he had been guilty of a contempt, it had been unwittingly, and in the conscientious discharge of what he believed to be a public duty. He apologised to the Court, and promised not to attend any such meetings in future.

*Hawkins*, Q.C. (with him *Bowen*) appeared for the prosecution, and read extracts of the speeches made at the public meetings. He left the matter in the hands of the Court.

COCKBURN, C. J. addressed Mr. Guildford Onslow and Mr. Whalley:—I have to express the unanimous opinion of the court (Cockburn, C. J., Blackburn, Mellor, and Lush, J.J.) that in the proceedings set forth in these affidavits to which you have been called upon to give an answer you have been guilty of a gross and aggravated contempt of the authority of the court. We are far from saying that when persons believe that a man who is under a prosecution on a criminal charge is innocent, they may not legitimately unite for the purpose of providing him with the means of making an effectual defence; and any expressions intended only as an appeal to others to unite in that object, though, perhaps, not strictly regular, would not be fit matter for complaint and punishment. We quite agree that it would be harsh and unnecessary to interfere with the expression of opinion honestly entertained, and expressed only for a legitimate purpose. But it

is no excuse to urge when—at a meeting held for the purpose of providing funds—language is used which amounts to an offence against the law—and a contempt against the court—that the motive or the purpose for which the meeting was held was justifiable. And when we find that at a former trial the jury before whom the claimant gave his evidence declared that they disbelieved that evidence, and that the learned judge, who presided at the trial, directed his prosecution, and that a grand jury—the proper and constitutional tribunal—have found true bills against him on the serious charges of forgery and perjury—that such a man should be paraded through the country and exhibited as a sort of show at public assemblies as the victim of injustice and oppression, and that at these meetings—in violent and inflammatory language—witnesses who had given evidence against him on the former trial should be held up to public odium as having been guilty of conspiracy and perjury; that the counsel engaged against him, and even the judge who presided at the trial, should be reviled in terms of opprobrium and contumely; and, what is still more immediately to the present purpose, that the events of the pending prosecution should be discussed and the evidence assumed to be false; and that all this should occur, not merely in the provinces, but in the metropolis, almost in the precincts of the court and within the very district from which the persons are to come who are to pass in judgment between the Crown and the accused in the coming trial—how can we shut our eyes to the fact that there is here an outrage upon public decency and a great public scandal, and that the even and ordinary course of justice has here been unwarrantably interfered with? This court, therefore, cannot, under such circumstances, hesitate to exercise the authority which it undoubtedly possesses, for preventing the public discussion of any trial pending in the court. It has been attempted to be contended on your behalf that the meetings in question were convened solely for the purpose of obtaining money in order to enable the accused to carry on his defence, and with the additional purpose of removing any prejudice which the result of the former trial may have produced against him. But that can be no excuse if the language used amounts to an unwarrantable interference with the course of justice. And when we find that gentlemen of your station and position, gentlemen of education, members of the Legislature, have condescended to lend themselves to proceedings of this character, and to hold such language as