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(From the Morning Herald, June 3)

The judgment pronounced by the Court of Queen's Bench in the case of *Stratford v. Wilson*, is, however, unpalatable to the House of Commons, and it is not surprising, therefore, that they should have endeavoured to overthrow the law and the constitution.

The House, by directing its officer to plead the assumed privilege, put itself on the judgment of the Court of Queen's Bench in reference to such assumed privilege, and it is now too late for the House or the Attorney-General, its advocate, to deny the right of the court of law to determine a question of privilege which those who now dispute that right had thus referred to their jurisdiction.

Did the House of Commons, when it directed its officer to plead the assumed privilege as an answer to an action at law, notify to the judges through its speaker, that they must not allow it to be made a matter of argument? No; for the Attorney-General, as their advocate, treated the privilege as an *outrage*, by actually arguing it. If the judges, then, are delinquent for pronouncing judgment against the privilege, the Attorney-General is still more delinquent for submitting it as an arguable matter to their decision. But if, in so doing, the Attorney-General only obeyed the instruction of his client—the House of Commons—then the House of Commons is most delinquent of all, for asking a court of law to decide upon a claim of privilege, which, according to its own showing, that court had no right to determine.

The House of Commons has originally taken a very high ground indeed in regard to this question. The public cannot have forgotten in what angry and insulting terms Lord Denman's decision at *not propter* was alluded to in that House, when he ruled that the claim lately set up by the House of Commons to privilege the sale of libels was contrary to the Laws of England. Then a select committee of the House was appointed to report on the subject, and their report was tantamount to a claim on the part of the House of Commons to give its own resolutions the force of law, and to take away, if it pleased, the protection of the law from every man in England. If that report was good for anything it was good to show that the House of Commons might privilege the commissions of any crime, even murder or treason, and the courts of common law could have no right to interfere!

If the resolutions founded on that report were to have the validity of law, England would have been placed under the most terrific democratic tyranny that ever afflicted and oppressed any nation, and, henceforth, it would have been utterly ridiculous to call this country a free state. Life, property, and liberty, would have been held entirely at the sufferance of one branch of the legislature exercising an absolute power and subjecting all law to the caprices of its arbitrary will.

Under such a tyranny the crown would have become a bubble, the aristocracy a shadow, the people slaves, and nothing short of a revolution would have restored the equilibrium of the constitution—and it is just this tyranny which the Whig ministers have wished, and still do wish, to establish. This is one of the patriotic efforts of the Whig liberals in office which Mr. Macaulay has forgotten to enumerate in his magnificent eulogium of Whig merits. The endeavour to enforce the new poor law by a Bourbon system of centralised police is another.

It was at one time thought that the House of Commons would have summoned Lord Denman to the bar, and at that time the tone of the Attorney-General was high enough. Ten, though with evident peril to our own liberty, we did not shrink from coming forward and denouncing the assumed privilege of the House of Commons as incompatible with the safety of a free state, and essentially tyrannical. In a series of articles we gave our reasons for that opinion, and we need not repeat them now. We cited authorities enough to prove that this is not the first time in which the courts of law have resisted, and successfully resisted, claims of privileges, set up by the arbitrary will of the House of Commons. The public mind felt the appeal made to its reason by others as well as ourselves against this doctrine of inherent power in the House of Commons to make its own declarations of law. The voice of public opinion, calm, enlightend and determined, backed the judicial decision of Lord Denman. The House of Commons, instead of calling the Lord Chief Justice to its bar, or sending him to the Tower, chose to desert its officer, as we have stated, to plead the alleged privilege, and the Attorney-General to argue it. The court listened with exemplary patience to his reasoning in support of the plea, and to that of Mr. Curwood on the other side, and having taken time to consider their judgment, unanimously decided that the plea was not sustainable in law.

The *Standard* has only done justice to Mr. Curwood by its warm commendation of his learned, well-reasoned, and perspicacious argument. This is the barrister who some years ago a candidate for the Recordship of a western borough, and had the recommendation of the majority of the burgesses. But Mr. Curwood, though a Whig or liberal, had the misfortune to be a Churchman, and so Lord John Russell gave the appointment to a young gentleman not as

many months at the bar, as Mr. Curwood was years, but who had the eminent merit, in Lord John's eyes, of being an Unitarian. Such is Whig justice—whig religious toleration—and whig liberality.

But why did not the House of Commons send Mr. Curwood and his junior counsel, Mr. Carrington, to Newgate or the Tower? A former House of Commons established a precedent of that sort by committing counsel and solicitors to prison for daring to give their professional assistance to a subject of the Crown, in endeavouring to obtain a compensation in damages for having his vote wrongfully refused by returning officers at a contested election. Such are the lengths to which democratic tyranny can dare to go. A celebrated man in later times exclaimed, "Thank God, we have a House of Lords," and it was a House of Lords that at the period to which we allude stood the friend of the endangered rights and liberties of the people against a House of Commons not only asserting, but exercising, tyrannical power.

The first action ever brought against a returning officer for the notorious refusal of a vote for members of Parliament, was that of *Ashby v. White*, which arose out of a contested election for Aylesbury. The House of Commons considered the bringing such an action a breach of privilege, that House assuming to be the sole judges of all matters touching elections. Chief Justice Holt held that the action was maintainable, but the other three judges of the Queen's Bench differed, and judgment was given for the defendant. Upon that judgment a writ of *error* was brought in the Lords, and the Lords reversed the judgment of the Queen's Bench, and this was the substance of their Lordships' judgment.

That by the known laws of the kingdom every freeholder or other person having a right to give his vote at the election of members to serve in parliament, and being wilfully denied or hindered from doing so by the officer who ought to receive the same, may maintain an action in the Queen's Courts against such officer, to assert his right and recover damages for the injury.

Subsequently five persons, namely, John Patey, John Ovid, John Paton, Henry Basse, and Daniel Horne, electors of the same borough, brought a similar action against *White*, and other returning officers, whereupon the House of Commons passed the following resolution:—

That it appears to this House that JOHN PATEY, of Aylesbury, has been guilty of commencing and prosecuting an action at common law against the late constables of Aylesbury (the returning officers), for not allowing his vote in the election of members to serve in parliament, contrary to the DECLARATION, in high contempt of the jurisdiction, and in breach of the known privileges of the House.

Similar resolutions were passed in regard to the four other plaintiffs, and also against Robert Morda, the attorney-at-law who solicited the suits, and then a string of "orders" was made, of which the first was as follows:—

Ordered.—That the said JOHN PATEY be, for his said offence, committed prisoner to her Majesty's goal of Newgate, and that Mr. Speaker do issue his warrant accordingly.

Under these orders the five plaintiffs in those several actions, and *Morda*, their attorney, were all committed to Newgate, there to remain, without bail or mainprise, for alleged contempt and breach of privilege in daring to draw within the cognizance of a Court of Law, matters only determinable in Parliament.

These tyrannical proceedings on pretence of privilege occasioned writs of *habeas corpus* and writs of error to be sued out, the latter of which the House of Commons vainly endeavoured to debar the parties of by addressing the throne. Failing in that, the house appointed a committee to examine what persons had been concerned in soliciting, prosecuting or pleading on the writs of *habeas corpus* or writs of error, on behalf of the persons committed to Newgate for breach of the privileges of the House, or what other persons have promoted or abetted the same. The committee having reported, a series of resolutions were passed, the first of which was the following:—

That James Montague, in pleading upon the return to the writ of *habeas corpus* on behalf of the prisoners committed by this House, is guilty of a breach of the privilege of this House; and then it was ordered that "for the said breach of privilege he be taken into custody of the sergeant at arms."

Similar resolutions and orders were made with regard to Mr. Nicholas Lechmere, Mr. Alexander Denton, and Mr. Francis Page, counsellors-at-law; also with regard to Mr. Wm. Lee, and Mr. John Harris, attorneys-at-law—and they were all taken into custody accordingly.

Thus did a tyrannical House of Commons not only imprison the subject for daring to seek at law a remedy for a legal wrong, but also incarcerated every barrister and attorney who afforded professional assistance in trying the legality of such imprisonment!

In these proceedings the British public may see a sample of democratic tyranny, arising out of the assertion of an unfounded claim of privilege, such as no people could endure and continue free.

What power interposed between the people and this monstrous tyranny of the House of Commons? The answer will be found in the following admirable resolutions of the House of Lords:—

It is resolved by the Lords spiritual and temporal, in parliament assembled, that neither house of parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of parliament.

That every freeman of England who apprehends himself to be injured, has a right to seek a redress by action at law, and that the committing and imprisoning an action at common law against any person (not entitled to the privileges of parliament) is no breach of the privileges of parliament.

That the House of Commons in committing to Newgate Daniel Horne, Henry Basse, John Patey, John Ovid, and John Paton, for commencing and prosecuting an action at common law against the late constables of Aylesbury, for not allowing their votes in election to members to arrive in parliament, upon the pretence that their so-doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privileges of that house, have assumed to themselves a legislative authority, by pretending to attribute the force of law to their declaration—have claimed a jurisdiction not warranted by the constitution—and have assumed a new privilege to which they can show no title by the law and custom of parliament, and have thereby, as far as in them lies, subjected the RIGHTS OF ENGLISHMEN and the FREEDOM OF THEIR PERSONS TO THE ARBITRARY VOTES OF THE HOUSE OF COMMONS.

That every Englishman who is imprisoned by any authority whatever, has an undoubted right, by his agents or friends to apply for and obtain a writ of *habeas corpus*, in order to procure his liberty by due course of law.

That for the House of Commons to censure or punish any person for assisting a prisoner to procure a writ of *habeas corpus*, or by vote or otherwise, to deter men from soliciting, pleading, and prosecuting upon such writ of *habeas corpus* in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example by denying the necessary assistance to the prisoner, upon a commitment of the House of Commons, which has ever been allowed on all commitments by any authority whatsoever.

That a writ of error is not a writ of grace, but of right, and ought not to be denied to the subject when duly applied for (though at the request of either House of Parliament), the denial thereof being an obstruction of justice, contrary to Magna Charta.

In those resolutions the descendants and representatives of the founders of

the GREAT CHARTER of English liberty evinced a spirit and determination worthy the successors of the ancient barons. A collision between the two houses was, of course, the consequence, which, after many unavailing conferences, was put an end to by a dissolution of parliament.—But the cause and the principles which the Lords supported against the usurping tyranny of their democratic branch of the legislature triumphed, and it is now the acknowledged law of the land that any person, whose vote has been wilfully and tortiously refused at an election, may have an action on the case at common law against the returning officer.

In the case *Ashby and White*, and the other five cases arising out of the same transaction, we have seen what a monstrous power the House of Commons dared to exercise upon an erroneous impression of privilege; and we venture to say that which possesses it at the present day in reference to the alleged right of privileging the sale of libels—a privilege certainly not supported by prescription, nor confirmed by statute, nor authorised by the ancient known customs and usages of parliament.

It is true the House of Commons, in its assertion of assumed privilege, does not dare to go the same lengths to-day that it did in the reign of Queen Anne, or it would have committed to Newgate Messrs. Curwood and Carrington, and also the plaintiff, and whoever was attorney in the cause. This omission, however, Mr. Daniel O'Connell has endeavoured to make atonement for by suggesting that Lord Denman and his learned brethren should be dragged to the bar of the House! This suggestion was worthy of the tyrant demagogue who formerly sought to have the late learned and venerable Baron Smith impeached or disgraced, because he referred much of the crime which he was in the habit of trying to that prolific source of violence and bloodshed in Ireland, political Agitation. We tell such members of the House of Commons as would, if they dared, repeat the scenes of the days of Queen Anne, that the judges of the Queen's Bench will have the sympathy and support of the people of England, and that they who assail them for their righteous judgment will have to struggle against the LAW, the CONSTITUTION, and the irresistible power of PUBLIC OPINION!

FAMILY NAME OF THE WELLSBEVY.—Cowley.—The name has been written Cowley, and Colley, which last is the modern mode of spelling it in Ireland; but with regard to its English descent there can be no doubt, from many well authenticated facts. In Glendon church there is a monument to Walter Colley, and Agnes, his wife. This Walter was lord of the manor in 1180.—Alexander's *Life of the Duke of Wellington*.

Lieut. Col. W. of the 74th regiment, has been appointed acting Lieut. Governor of Trinidad, in the room of the late right hon. Sir George Fitzgibbon Hill, Bart.

The Earl of Dartmouth has most liberally offered a site of land near Hill Top, in the parish of West Bromwich, for the erection of a new Church, and has also given of £1,000 towards the building of the edifice, and £500 to be invested as a fund for keeping it in repair. His lordship's offer has been accepted, and a subscription has been entered into to carry this desirable object into effect. *Wales and Northampton Chron.*

Bay Packets... Harbour Grace Packets... Packet being now undergoing such repairs... Passengers can post-ponement suggest... WEDNESDAY, and at 9 o'Clock, and Porting days.

returning his best... will, until further notice... on the Mornings of... on SATURDAY, at 9... on each of those...

PATRIOTIC... N, begs most respect... Public, that the... CARONEAR... VE, as a PACKET... with two sleeping... The fore-fitted up for Gentle... which will give them... leave CARONEAR... on Mondays, and Packet, at 8 o'clock on those days.

LET for a Term of... situated on the... Street, bounded on... by the Subscriber's...

MARY TAYLOR... Widom... at the Office of



GRAND REAL ESTATE AND BANK STOCK LOTTERY OF PROPERTY SITUATED IN NEW ORLEANS. The richest and most magnificent scheme ever presented to the public in this or any other country. Tickets only Twenty dollars.

SPLENDID SCHEME! One Prize—the Arcade, 288 feet, five inches, 4 lines on Magazine street, 101 feet, 21 inches on Natchez street, 126 feet, 6 inches, on Gravier street—Rented at about 37,000 dols. per annum, valued at 700,000 dols.

One Prize—City Hotel, 162 feet on Common street, 146 feet six inches on Camp street—Rented at 25,000 dols., valued at 500,000 dols. One Prize—Dwelling House, (adjoining the Arcade) No. 18, 24 feet, 7 inches, front on Natchez street—Rented at 1,200 dols., valued at 20,000 dols.

Tickets 20 Dollars—No Shares. The whole of the Tickets, with their numbers, as also those containing the Prizes, will be examined and sealed by the Commissioners appointed under the Act, previously to their being put into the wheels.

On Sale. NOW LANDING AT THE WHARF OF The Subscribers From the brig Ann, from Miramichi, 8,000 Feet Birch Plank, 3 inch & 2 1-2 6 M. Pine Decking 3 inch, 30 M. Merchantable Board 30 M. Shingles 12 Spars.

Plans, Specifications, &c. THE Inhabitants of the Island are respectfully informed that the Subscriber will furnish Plans, Specifications, &c. and inspect Public and Private Buildings.

FOR SALE BY THE SUBSCRIBERS, Ex NAPOLEON from HAMBURG, BREAD, FLOUR and 4000 Bricks

ALSO, 90 Tons SALT, And, 20 Tons Best House Coals, Ex APOLLO, Captain BUTLER from LIVERPOOL.

Eligible Premises!! To be Let FOR A TERM OF YEARS Those conveniently situated STORES, WHARF, SHOP, &c., adjoining Mr. TIMOTHY HOGAN'S PREMISES, at present in the occupation of Mr. LAWRENCE O'BRIEN, and Mr. JOHN OMARA, but whose Lease expires on 10th October next.

For FREIGHT or CHARTER THE BRIG ROWENA, Burthen 108 Tons. Apply to THOS. GAMBLE, Carbonear, June 12, 1839.

New Goods! JUST LANDED Ex ANN, from Bristol, AND ON SALE BY THE SUBSCRIBERS At Low Prices for Cash or Produce.

500 Bags 1st, 2nd & 3rd quality BREAD 72 Barrels Prime Mince PORK 30 Boils East Croker CANVAS 20 Pieces Flat Ditto, No 1 to 7 43 Kegs White, Green & Black PAINT Hogheads LIME Bags 1 1/2 to 9 inch assorted NAILS Horse and Shingle Ditto

FOR SALE BY THE SUBSCRIBERS, Ex APOLLO, Captain BUTLER from LIVERPOOL. RIDLEY, HARRISON & Co. Harbor Grace, July 3, 1839.

30 Tons Best Red Ash NEWPORT Coals. THORNE, HOOPER & Co. Harbor Grace, May 8, 1839.

On Sale Just Landed Ex Jane Elizabeth, Nathaniel Mendon, Master. FROM HAMBURG, Prime Mince PORK Bread Flour Oatmeal Peas Butter.

15 Tons BLUBBER. For Sale by THOMAS GAMBLE Carbonear, Jan 9, 1839.

Molasses. FOR SALE BY RIDLEY, HARRISON & Co. 244 Packages Being the CARGO of the Brig ALVA, Capt. McNABON, Just arrived from Cuba. For which Cash, Cod Oil, Cod Fish, Salmon, or Herring will be received in Payment.

20 Guineas REWARD. Whereas some wicked and profane Person did on the Night of Monday last, break into the WESLEYAN CHAPEL in this Town, and stole from hence the Holy Bible, out of the Pulpit, and Two HYMN BOOKS. The above Reward of Twenty Guineas, is hereby offered to any Person or Persons who will give such information as will lead to the prosecution and conviction of the perpetrators of the above Sacrilege.

Capt. THOMAS GADEN TO inform the Public in general that he intends employing his Ketch BEAUFORT, the ensuing Season in the COASTING TRADE, between St. John's, Harbor Grace, Carbonear, and Brigot, as Freights may occasionally offer. He will warrant the greatest care and attention shall be paid to the Property committed to his charge.

For Portugal Cove. The fine first-class Packet Boat NATIVE LASS, James Doyle, Master. Burthen 28 tons, coppered and copper fastened. The following days of sailing have been determined on:—from CARBONEAR, every MONDAY, WEDNESDAY and FRIDAY morning, precisely at 9 o'clock; and PORTUGAL COVE on the mornings of TUESDAY, THURSDAY and SATURDAY, at 12.

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