ENGLAND.

IN ERROR FROM THE EXCHEQUER CHAMBER.

BURDETT (Bart.)—*Plaintiff in Error.*
ABBOT (Speaker, H. C.)—*Defendant in Error.*

AND

BURDETT (Bart.)—*Plaintiff in Error.*
COLMAN (Serjeant at Arms)—*Defendant in Error.*

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To an action of trespass against the Speaker of the House of Commons for forcibly, and with the assistance of armed soldiers, breaking into the messuage of the Plaintiff (the outer door being shut and fastened), and arresting him there, and taking him to the Tower of London, and imprisoning him there: it is a legal justification to plead that a Parliament was held which was sitting during the period of the trespasses complained of: that the Plaintiff was a member of the House of Commons: and that the House having resolved, "that a "certain letter, &c. in Cobbett's Weekly Register, was "a libellous and scandalous paper, *reflecting* on the just "rights and privileges of the House, and that the "Plaintiff, who had *admitted* that the said letter, &c. "was *printed* by his authority, had been *thereby* guilty of "a breach of the privileges of that House;" and having ordered that, for his said offence, he should be committed to the Tower, and that the Speaker should issue his warrant accordingly; the Defendant as Speaker, in execution of the said order, issued his warrant to the Serjeant at Arms, to whom the execution of such warrant belonged, to arrest the Plaintiff, and to commit him to the custody of the Lieutenant of the Tower: and issued another warrant to the Lieutenant of the Tower to receive and detain the Plaintiff in custody during the pleasure of the House; by virtue of which first warrant the Serjeant at Arms went to the messuage of the Plaintiff, where he then was, to execute it; and because the outer door was fastened, and he could not enter, after audible notification of his purpose and demand made of admission, he,

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by the assistance of the said soldiers, broke and entered the Plaintiff's messuage, and arrested and conveyed him to the Tower, where he was received and detained in custody under the other warrant by the Lieutenant of the Tower.

And to a similar action against the Serjeant at Arms, a similar plea, with variations, however, adapted to his situation, is a legal justification.—(*Vid.* 14 East. 163.)

The Lord Chancellor considering it as clear in law that the House of Commons have the power of committing for contempt, and that this was a commitment for contempt.—(Lord Erskine concurring.)

FIRST CAUSE.

THIS was an action of tresspass by Sir F. Burdett against the Speaker of the Commons. The declaration was as follows.

Declaration. 1st Count.

Sir Francis Burdett complains of the Right Honourable Charles Abbot (having privilege of Parliament) of a plea of trespass; for that the said Charles heretofore, to wit on the 6th April, 1810, and on divers other days and times between that day and the day of exhibiting this bill, with force and arms, &c. broke and entered a certain messuage of the said Sir Francis, situate in the parish of St. George, Hanover-square, in the county of Middlesex; and on one of those days, to wit on the 9th of April, in the year aforesaid (the outer door of the said messuage being then, and there shut, and fastened), with divers soldiers, and men armed with offensive weapons, forcibly, and with strong hands, broke open a certain window, and two window-shutters of and belonging to the said messuage of the said Sir Francis, and through the same broke

That Defendant broke into Plaintiff's house (the outer door being shut and fastened) with soldiers, &c. and made a noise in the house, and

into and entered the said messuage, and made a great noise, disturbance, and affray, in the said messuage: and with force and arms made an assault on the said Sir Francis, and laid hands upon him, and forced and compelled him to go from and out of his said messuage, into a certain public street there, and also then and there forced and obliged him to go into a certain coach, in, and through, and along divers other public streets and highways to a certain prison, called the Tower of London, and there imprisoned the said Sir Francis, and kept and detained him in prison there, without any reasonable or probable cause whatsoever for a long space of time, to wit from thence hitherto; contrary to the laws of this realm, and against the will of the said Sir Francis: whereby, he, the said Sir Francis, during all the time aforesaid was, and still is hindered from transacting his lawful affairs, &c. to wit at the parish aforesaid and county aforesaid. AND ALSO for that the said Charles heretofore, to wit on the day and year last aforesaid, with force, and arms, &c. made another assault upon the said Sir Francis, to wit at the parish, &c. and then and there seized and laid hold of the said Sir Francis with violence, and forced and compelled him to go in, through, and along, divers public streets to a certain prison, called the Tower of London, and then and there imprisoned the said Sir Francis, and kept and detained him in prison there without any reasonable or probable cause whatsoever, for a long space of time, to wit from thence hitherto; contrary to the laws of this realm, and against the will of the said Sir Francis, whereby, &c. AND ALSO for that the said Charles heretofore, to wit on

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assaulted Plaintiff, and compelled him to go to a prison.

And there imprisoned him without reasonable cause.

2d Count.

3d Count.

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the day and year last aforesaid, with force and arms, &c. made another assault upon the said Sir Francis, to wit at the parish aforesaid, &c. and then and there imprisoned the said Sir Francis, and kept and detained him in prison there, without any reasonable or probable cause whatsoever, for a long time, to wit from thence hitherto; contrary to the laws of this realm, and against the will of the said Sir Francis. There was a fourth count for a common assault.

1st. Plea. General issue. 2d Plea. Justification.

The Defendant pleaded, *first*, not guilty, to the whole trespasses charged. And *secondly*, he justified the breaking and entering of the Plaintiff's house by the proper officer (whilst the outer door was shut and fastened), for the purpose of arresting and imprisoning the Plaintiff, under the Speaker's warrant of commitment, for a breach of the privileges of the House of Commons, after audible notification of the purpose, and demand of admission, without effect: and the subsequent arrest and imprisonment of the Plaintiff, in execution of such warrant, stating that a Parliament was held, and was sitting at the time of the trespasses complained of, and that he, the Defendant, and the Plaintiff,

Resolution.

were members of the Commons House of the said parliament; that the House resolved, "that a letter "signed, 'Francis Burdett,' and a further part of "a paper entitled, 'Argument,' in Cobbett's Weekly "Register, of March 24, 1810, was a libellous "and scandalous paper, reflecting on the just rights "and privileges of that House; and that Sir "Francis Burdett, who had admitted the letter "and argument to have been printed by his autho-"rity, had been thereby guilty of a breach of the

"privileges of that House;" and it was thereupon ordered by the House "that the Plaintiff be for his "said offence committed to the Tower; and that "Mr. Speaker do issue his warrants accordingly;" that the Defendant being such Speaker, in pursuance of the resolutions and order aforesaid, issued his warrant, reciting the resolution and order of the House to the Serjeant at Arms to arrest the Plaintiff, and deliver him to the custody of the Lieutenant of the Tower; such warrant requiring all peace officers and others to assist in the execution thereof; which warrant was delivered to the Serjeant at Arms to be executed in due form of law; that he, as such Speaker, issued another warrant, reciting the resolutions and order of the House to the Lieutenant of the Tower, therefore requiring "that the said Lieutenant of his Majesty's said "Tower, or his deputy, should receive into his "custody the body of the said Sir Francis Burdett, "and him safely keep during the pleasure of the "said House:" which warrant was delivered to the said Lieutenant to be executed in due form of law; that the Serjeant at Arms went to the Plaintiff's house, where he then was, to execute the warrant, and with an audible voice notified his purpose, and demanded admittance to execute his warrant; and, because the outer door was kept shut and fastened against him, and was refused by the Plaintiff to be opened, he, with the assistance of soldiers and armed men, broke into the house and arrested the Plaintiff, and conveyed him to the Tower, in execution of the first mentioned warrant; that the Lieutenant of the Tower received and detained the

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Order.

Warrant to arrest.

Warrant to receive and keep.

Arrest.

Imprisonment.

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Plaintiff there, by virtue of the last mentioned warrant, &c. There was a third plea, the same as the second, only omitting to justify the breaking open the door, and, at the conclusion of this plea there was a traverse of guilty in any other manner than by the making, signing, issuing, and delivering, of the said warrants as such Speaker as aforesaid, in pursuance of the resolutions and order aforesaid, in manner and form as is in this plea before alleged, &c.

Replication. Demurrer.

The Plaintiff joined issue to the country on the first plea of not guilty, and demurred generally to the second and third pleas; and the Defendant joined in the demurrers. Judgment, in E. T. 1811, for the Defendant.

SECOND CAUSE.

Action against Serjeant at Arms.

There was another action against Colman, the Serjeant at Arms. The declaration was in trespass for an assault and false imprisonment of the Plaintiff, by the Defendant, acting in execution of the Speaker's warrant, and the form of the counts was the same as in the action against the Speaker.

Pleas.

The pleas also were, like those in the former action, the general issue of not guilty, and two special pleas of justification; the one justifying the arrest and imprisonment of the Plaintiff, under the Speaker's warrant, and the breaking of the house, the outer door being shut and fastened against the officer, for the purpose of executing such warrant, and the execution of it by the assistance of soldiers and armed men; the other similar to it, only omitting to justify the breaking of the house; the

only difference between the justification pleaded by this Defendant, and that pleaded by the Speaker, being that these justificatory pleas contained a distinct allegation, that the Defendant at the time of the trespasses complained of, was Serjeant at Arms of the House, and omitted so much of the former pleas as related to the warrant addressed to the Lieutenant of the Tower.

The Plaintiff, after joining issue to the country on the plea of not guilty, instead of demurring as before, replied specially to the second plea, that the Serjeant at Arms executed the warrant by breaking the Plaintiff's house and arresting him "*with a* "*large military force of our said Lord the King*, "then and there armed with dangerous and offen- "sive weapons, to wit, &c. the same military force "being then and there used by him the said "Francis John, against the said Sir Francis, in and "for the execution of the said first mentioned "warrant in the same plea mentioned, and with "such military force so armed aud used as afore- "said, *as was improper, excessive, and unnecessary*, "for that purpose, &c., and in an unreasonable "manner, and more violently than was necessary "or proper," &c. There was a similar replication to the third plea, omitting the breaking and entering the house.

Replication.

Military force.

The Defendant rejoined to the replications to the second and third pleas, taking issue *on the excess*, and issues were joined on both these rejoinders.

The cause was tried at bar before the Court of King's Bench, in E. T. 1811, when a verdict was found for the Plaintiff on the general issue, and

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for the Defendant on the two other issues; and judgment was given for the Defendant.

The Plaintiff brought his writs of error in the Exchequer Chamber, assigning for error in both cases that the justificatory pleas were not sufficient in law to bar the action, and that judgment ought to have been given for the Plaintiff, or a *venire de novo* awarded to try the first issue. The judgments having been affirmed in the Exchequer Chamber, in E. T. 1812, the Plaintiff brought writs of error in *Dom. Proc.* assigning the same errors. The verdict in the second cause, it was alleged, had only negatived the fact of excess of military force, and the question of law still remained, whether it was lawful to employ a military force without a necessity, and the circumstances from which it arose, stated in pleading.

Mr. Brougham, for Plaintiff in error (after stating the pleadings generally). I am relieved from much of the argument, not only by the fulness of the discussions below, but also by the admissions of the Judges, which amount to a recognition of the fundamental principle contended for by the Plaintiff, viz. that where another matter comes before a court of law, and a question of privilege arises incidentally, the Court must deal generally with the question of privilege. But it is said that when the House of Commons has resolved that a publication is a libel and a breach of privilege, and has committed the individual, and an action is brought, and the resolution and order of commitment are pleaded, the Court cannot call on the House of

Commons to set forth the alleged libel, that it may judge whether it is a libel or breach of privilege. I mean to contend that courts of law, if they deal with questions of privilege at all, must go to the full extent.

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That courts of law have some jurisdiction over these questions of privilege appears from the case of *Donne v. Walsh*, 4 Pryn. Parl. Writs, 743. in which the Court not only took cognizance of privilege of parliament, but decided against the privilege claimed for the members, of not being impleaded during the sitting of parliament: and also from the case of *Rivers v. Cossins*, 4 Pryn. Parl. Wr. 755, in which the Court of Exchequer, with the advice of all the other judges, agreed that a member might be impleaded, though, as appears from *Atwell's* case, Rot. Parl. No. 35. the House of Commons still persisted in their claim of exemption from being impleaded. But in the next claim of privilege, *Roo v. Sadcliffe*, 1 Hats. 51. the claim was confined to freedom from arrest or imprisonment, the exemption from being impleaded being given up. In these cases the House of Commons proceeded by writ of *supersedeas*.

Jurisdiction of courts of law, in questions of privilege of Parliament.

Donne v. Walsh. Exch. of Pleas. 12 Ed. 4.

Atwell's case. 17 Ed. 4. 5 vol. Rolls, Parl. 131. Hat. 48.—Roo v. Sadcliffe, 1 H. 7. Parl. Roll. 104.

There are other cases in which the courts examined whether the privilege claimed really existed, as in the cases of the *Duchess of Somerset v. Earl of Manchester*, 4th Pryn. Reg. 1214.; and *Benyon v. Evelyn*, 14 Car. 2. Roll. 2558. It is well known that the celebrated judgment of Sir Orlando Bridgeman, in the latter case, is in favour of my argument. He says, "that resolutions or "votes, in either House of Parliament, in the ab-

Duchess of Somerset, v. Earl of Manchester, 16 Car. 2.—Benyon v. Evelyn, 14 Car. 2.—1 Show, P. C. Oarth. 137.

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Admissions.

14 East. 128.

"sence of the parties concerned, are not so con-
"clusive in courts of law; but we *may*, with due
"respect, notwithstanding these resolutions, nay
"we *must* give our judgment according, as we
"upon our oaths, conceive the law to be, though
"our opinion shall fall out to be contrary to those
"resolutions or votes of either House." In the case of the *King v. Knollys*, Lord Holt says, "but "admitting that it," viz. *lex parliamenti*, "were a "particular law, yet if a question arise determinable "in the King's Bench, the Court of King's Bench "must determine it;" and then he cites Benyon's case. This is admitted by the Cousel for the Defendants, and by the Judges, particularly by the Chief Justice of the King's Bench. An extreme case had been put, and such may be properly put in a question like this *inter apices juris*. Suppose the House of Commons were to direct the Speaker to issue his warrant to put a man to death. The Chief Justice says, "the question in all cases "would be whether the House of Commons were a "court of competent jurisdiction for the purpose of "issuing a warrant to do the act. You are putting "an extravagant case. It is not pretended that the "exercise of a general criminal jurisdiction is any "part of their privileges." And then he says, not blinking the question, "When that case occurs, "which it never will, the question would be, "whether they had general jurisdiction to issue "such an order, and no doubt the courts of justice "would do their duty;" and that cannot be denied if there remains any settled law in the country. He afterwards says, after stating the opinions of Wright

and Dennison, justices, in Murray's case: "I "agree with Wright, and Dennison, that it need "not appear what the contempt was; but I am not "prepared to say, with them, that we could in *no* "*case* judge of it, or that there might not appear "such cause of commitment as, coming collaterally "before the Court in the way of a justification "pleaded to an action of trespass:" the way in which this question comes—"the Court might not "be obliged to consider and to pronounce to be de-"fective." This distinction, by the way, between a question coming directly and coming collaterally before the Court is one which we take in our argument. The Chief Justice afterwards says, "but if "it" viz. the House of Commons, "did not pro-"fess to commit for a contempt, but for some "matter appearing on the return, which could by "no reasonable intendment be considered as a con-"tempt of the Court committing, but a ground of "commitment palpably and evidently arbitrary, "unjust, and contrary to every principle of posi-"tive law, or national justice; I say that in the "case of such a commitment, (if it ever should "occur, but which I cannot possibly anticipate as "ever likely to occur,) we must look at it and act "upon it as justice may require."

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Murray's case, 1 Wils. 299. 14 East. 148.

14 East. 150.

These may suffice as to the concessions in point of principle, admitted also by the Defendant, and the course of defence which he has adopted. If the House of Commons, which for the purposes of this argument I may identify with the Defendants, had pursued a consistent course, they would have said, this is a matter of privilege which we alone are

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competent to determine. We will not answer any charge, we will not appear, much less plead to any action, because, if we do, we are compelled to put our privileges before the Court below. But they have taken another course, and involved the matter in inextricable difficulty. Whether the individual has been rightly punished is a question which they refuse to try; but the question they raise is, whether the Commons' House of Parliament has privilege, or a certain class of privileges. What has happened upon this? The Court of King's Bench has considered the subject of privilege, and decided in their favour: and the judgment has been affirmed in the Exchequer Chamber, and now the matter is brought here; so that the House of Commons, which denies that the courts of law can determine upon a question of privilege, carries the question through all the courts, and now before the other House, whose supremacy is denied, except as to the precedence of individual members. It is something in a question of this kind *inter apices juris* to show that every step they take leads to absurdity.

It is admitted then that courts of law may discuss and decide whether a general class of privileges belongs to the House of Commons or not; that they may discuss whether the House has the power to commit for all contempts, for all breaches of privilege, for all libels. And I may go a step farther, and take it from the admissions, that the resolution of the House of Commons is not in all cases conclusive, that such a class of acts is a breach; and if so, the courts must deal with the question, not

only whether the House has the class generally, but must inquire into the particular case, so far at least as to enable them to judge whether it is right in the House of Commons to claim the class. The House of Commons at one time claimed for its members and their servants the privilege of being exempt from being impleaded, which was denied by the courts. Suppose that claim were revived, the courts would deny it. And if, on the face of a warrant of commitment, any thing should appear obviously absurd, or contrary to law, or beyond the jurisdiction of the House of Commons, as that a person was committed because he trespassed on the fishery of a member of parliament, a case not likely to have occurred, but which did occur; or that A. B. and C. D. should be put back to back on a horse, and, with a label specifying the offence, ride in this manner round Charing Cross, which also did happen; or, which did not happen, if the House of Commons should order A. B. to be put to death; if these things should appear on a return to a writ of *habeas corpus*, the Court would take cognizance of the case, and give relief or redress. This follows from the admissions. Another conclusion from the admissions is, that privilege is not so delicate a subject that it must not be mentioned out of doors, and that the courts have dealt with them sometimes rather roughly. Then if the courts would so deal with them, on account of any thing appearing on the face of the warrant, it would be manifestly absurd to say that the Commons could defend by involving themselves in obscurity. If it is possible that the Court would deny the claim, if it appeared

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Grounds on which it is contended that the H. C. has the power to determine what is a libel, and to punish by imprisonment. Necessity.

on the face of the warrant and return, then the particular matter must be set forth, lest the House of Commons should do that, *per indirectum*, which they could not do directly.

I now come to inquire into the grounds on which it is contended that the House of Commons have the privilege now in question, of determining whether a particular act amounts to a libel, and such a libel as entitles the House of Commons to punish by imprisonment. They say that it is necessary for self-protection, to enable them to perform their functions, and to remove obstructions; and that this can be effected in no other way than this, that the House itself should have the power to punish; and it is relied on that the House of Commons is a court of record. That the House of Commons is not a court of record I shall afterwards show. At present I apply myself to the question of necessity generally. And, first, if it be inconvenient that they should not have this power, the inconvenience is not all on one side. There is no redress against their wrong, no impeachment against them, nor can any of their members be questioned in any other court for what he has done in parliament. That is not the case with the courts below. Their judgments are liable to be reversed, not, I admit, in cases of contempt. But then, if the judges abuse the power, they are cognizable in another way: they may be impeached; they may be removed by address of the two Houses of Parliament; and before the Revolution they might be removed by the Crown; so that the House of Commons is above controul, the judges are not. Besides, the courts proceed by

known forms, and the accused is heard on the same terms as the accuser. But in the House of Commons the accused is judged in his absence. A vague accusation is preferred. The accused is heard and ordered to withdraw; and then, after he is withdrawn, the greater part of the charge is brought forward against him; and then they give judgment, and execute it by their own officers. The prerogatives of the Crown are defended in the courts, and its servants have no privilege in that respect more than any other subject. Where, then, would be the inconvenience, though the House of Commons should be compelled to say yea or nay to the particular charge, when they admit that they are bound to answer generally? No inconvenience would result from it, except by a failure of the Court to do them justice, and then error might be brought. But the judgment might be affirmed in the House of Lords. I say it is not in their mouths to use that argument; for they accuse us of putting extreme cases. And besides, I can show that the abuse on their part has existed, while no instance can be shown in which the courts have been remiss in maintaining their privileges; and this leads me to the authorities on which the claim rests.

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They rely upon an uninterrupted train of precedents, a long course of practice, and the enjoyment of the right. Now the earliest case of commitment for libel on the whole House is that of Hall, in the 23d of Eliz. 1 Hats. 93. He was imprisoned, fined, and expelled. The commitment was for six months, and further, till a revocation and retraction of the slander. But as this was thought too inde-

Authorities.—Precedents from Journals, &c.

Case of Hall, D'Ewes Journ. 291. 4 Inst. 23.

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finite, they added, after sentence, such a retraction as should satisfy six members, &c. So much for this doctrine of privilege, which is to be used only as a shield against the crown and the subject. Then there is a *hiatus*, and this uniform stream of decision stops for three-fourths of a century. And then come the long parliament privileges, which I suppose will not be quoted as precedents. They called any power they chose to assume a branch of their privileges. They assumed the King's authority over the army, and made use of it against his person; and whoever questioned their power was dealt with as Hall was.

Clar. Hist. Rebel. vol. i. 212.

Then came the case of Pitman, and the riding round Charing Cross, for arresting a member's servant in violation of a privilege not now claimed. It appears that after the Restoration the same notion of privilege prevailed in the House of Commons. I refer to the proceedings of the two Houses with respect to the case of *Shirley v. Fagg*, upon the occasion of an appeal from the Court of Chancery to the House of Lords, by Dr. Shirley against Sir John Fagg, a member of the House of Commons. A multitude of conferences took place. The House of Commons maintained that the appeal was a breach of their privileges, and denied that appeals lay from courts of equity to the House of Lords. They imprisoned the serjeants and barristers who had, contrary to an order of the House of Commons, pleaded for Crispe in an appeal by Crispe against Dalmahoy, a member of the House, for a breach of privilege. The House of Lords decided the cause, notwithstanding this claim of

Shirley v. Fagg, 27 Car. 2. 6 How. St. Tr. 1121.

Crispe v. Dalmahoy. Vid. 6 How. St. Tr. 1144. Vid. also Hale v. Slingsby, ib. 1130. 1187.

privilege. It may be said that there the question was decided only by the other House. But why then did they plead in this instance? For, by the course which they have adopted, they have brought the subject under the cognizance of the courts below before it came to you. When it was contended that the present claim of privilege was contrary to Magna Charta, which provides that no one shall be imprisoned, unless by the lawful judgment of his peers, or by the law of the land, it has been said that none but fanatics and drivellers in law could argue in this way, since the law of parliament was part of the law of the land. But that can hardly appear so wild and fanciful, when it is considered that your Lordships then, taking notice of the imprisonment of the counsellors at law, and the attempt of the Commons to controul your judgments, and obstruct the execution of them, represented this as "a transcendent invasion on the right "and liberty of the subject, and against Magna "Charta, the Petition of Right, and many other "laws which have provided that no freeman shall "be imprisoned, or otherwise restrained of his li-"berty, but by due process of law. This tends to "the subversion of the government of this king-"dom, and to the introducing of arbitrariness and "disorder."

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6 How. St. Tr. 1153.

It appears then that this current of decisions has not been uniform, and that the claims of privilege have not been regularly admitted: that the claim for the servants of members has been abandoned; so that privilege may be stretched a little on one day, and reduced on another; that there are no

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prescriptive privileges; that they may be lopped off, sometimes by the House itself, but more frequently by the courts to whose decisions the House of Commons has bowed. Other extravagant claims have been made. It was at one time claimed that the goods of members should not be taken in execution during the sitting of parliament. (Apsley's case, 17th Edw. 4.) That was abandoned. And, on the other hand, they have sometimes, doing what they would now consider as below their dignity, applied peaceably for a writ of privilege, which came from the Crown; and thus they made application to the Crown to support their own privileges against it.

In Hall's case they fined, and the Ch. J. of the King's Bench seems to think that they may yet fine. But in Bur. 1336. there is a *dictum* by Lord Mansfield that they could not fine, and that seems now passed from. Then as to the act 1 Jac. 1. cap. 13. so little was it clear that a member, even when arrested in execution, might legally be set at liberty by privilege of parliament, that it was thought necessary by that act to give security to the Sheriff against any action for delivering out of execution any such privileged person.

There are other cases on which perhaps the House of Commons may rely: but the only one I shall in this place mention, is a recent one from the Journals of the Commons, which is a very

Griffith's case, 1759.

great privilege curiosity. Admiral Griffith, a member, complained that certain persons had trespassed on his fishery. The House of Commons, having no doubt of its jurisdiction, proceeded to try the

cause like an action of trespass, though more clumsily than a court of law would have proceeded. The accused were found guilty, not of a trespass, but of a breach of privilege, and were ordered to stand committed; and afterwards, on their humble petition, after being reprimanded on their knees, they were discharged, paying their fees! So much for the *lex parliamenti, ab omnibus querenda, a multis ignorata, a paucis cognita:* of which law of parliament Ch. J. De Grey says, "I wish we had "some code of the law of parliament; but till we "have such a code, it is impossible we should be able "to judge of it." And another Judge (Gould) says, "the *lex et consuetudo parliamenti* is known to "parliament only." Thus then, from Admiral Griffith's case, it appears that so recently as the end of the last reign, the House of Commons carried notions of privilege so far as to hold plea of a trespass. I pass from these precedents to the decisions of the courts of law.

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Crosby's case, 1771. 3 Wils. 188. 2 Blac. R. 754.

Decisions.

The Aylesbury case is one on which they particularly rely; which is well known to have been decided in favour of the House of Commons, against the opinion of Lord Holt, Ch. J. The question arose on a return to a *habeas corpus*, sued out by Paty and others, who had been committed by the House of Commons for a breach of privilege, by bringing actions against the constables of Aylesbury for refusing their votes at an election. Holt thought they should be discharged, observing "that this was not such an imprisonment as the "freemen of England ought to be bound by; and "that it did highly concern the people of England

Aylesbury case. 2 Ld. Raym, 1105. 1111.

14 How. St. Tr. 857.

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" not to be bound by a declaration of the House of " Commons in a matter that before was lawful." That is the case of the Aylesbury men. They also rely upon Murray's case, and that of *Rex v. Flower*, 8 T. R. 314. for the acknowledgment of their power by the courts of law. I have this observation to make on all of them; that they brought the question of privilege directly before the Court upon returns to writs of *hab. corp.* so that if the Court had liberated, there would have been a direct and immediate conflict of jurisdictions. We do not contend that there ought to be such a contest. One court committing, another cannot liberate. But where the question of privilege comes incidentally before a court of law, the Court may determine it, and no conflict takes place. When an action of trespass is brought in the proper court, it must not be stopped by an incidental question of privilege. The principal part of the present case is trespass, which the Court of King's Bench may try, and the House of Commons cannot; and, if an incidental claim of privilege is set up, the Court must deal with it as it would with an incidental question of prize or marriage, though properly determinable in the Admiralty or Ecclesiastical Courts; and that disposes of all the cases upon returns to writs of *hab. corp.* in which, if the Court had interfered, there would have been a direct conflict of jurisdictions. Vaughan, Ch. J. in his judgment in Bushell's case, cites two cases from Moor, 839. in the 9th of Eliz. and 13th of James I. in which the Court of King's Bench, upon returns to writs of *hab. corp.* stating contempt of the Court of

Murray's case, 1 Wils. 299.

Hab. Corp.

Question of privilege arising incidentally.

Bushell's case, Vau. R. 135. 6 How. St. Tr. 999. 1004. Cases of Astwich and Apsley. *Vid.* 14 East. 70.

Chancery, liberated the prisoners. But we admit that now, if one court commits for a contempt, another will not liberate. But does it follow that if a person is wrongfully committed he can have no redress? We admit that this is the first instance of such an action, but a case may be put where the distinction would be taken and acted upon. The Crown has the authority over the army, and delegates that authority to an officer; the officer arrests a soldier illegally, *ex. gr.* for that he refused to obey an illegal order. The soldier sues out a writ of *hab. corp.* and the return is—imprisoned for disobedience of orders. The Court would refuse to liberate. But might not the soldier bring an action for the false imprisonment? It would be his duty to disobey; he would have been punishable if he had obeyed: and for that false imprisonment he might maintain his action, though the Court would not on such a return order his liberation. This doctrine is recognised by Lord Kenyon in *Rex v. Suddis*, 1 East. 306. Now the case is stronger for the Crown, because the interference between officer and soldier is a matter of peculiar delicacy. Though the courts, therefore, will not interfere where their interference would produce a conflict of jurisdictions; why should not the wrong doer answer in damages? Let there be in this instance the same remedy as for the soldier. One might figure such an absurdity that it would be impossible to refuse redress. Suppose those men who were imprisoned in Admiral Griffith's case had brought an action against him for breaking and entering their close, and he pleaded the decision of the House of Com-

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mons. To be sure the House might imprison them for bringing the action, but how could the Court allow that sentence to be conclusive as to the right of property? It was said by one of the Judges* below, that if privilege of parliament were examinable in the Court of King's Bench in such a manner as that it ought to have been averred as a traversable fact, that the party had been guilty of the contempt or breach of privilege; the fact would be examinable, not merely in the King's Bench, but in every inferior court in which trespass could be brought, even in the County Court. That, however, is only *idem per idem*; for from the course actually adopted by the Commons, the inferior courts might have the cognizance of their privileges, and the County Court might have had to try this great cause.

* Bayley, J. *Vid.* 14. East. 129. 160.

Record.

This brings me to the argument founded upon the circumstance that the House of Commons is a court of record. I abandon the argument that the House cannot commit for contempt, as not being a court of record, or at least I do not push it so far as it has been carried. But the circumstance of its being a court of record has been relied on below, and I submit it is no court of record. It has no regular form of proceeding; and if its law is known to few, as Lord Coke said, its practice is known to none. In Oates's case the Court of King's Bench would not admit the House of Commons to be a court of record, and refused evidence which would have been admitted if that House had been a court of record. The entry in the journals of the House of Lords of the reversal of a judgment, is evidence of that reversal (*Jones v. Randall*, Cowp. 17); that

14 East. 159.

Oates's case, 10 How. St. Tr. 1163—4.

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being its record, as a court of judicature. But the House of Commons is no court of record: no writ of error can be brought in that House; and neither its journals nor those of the House of Lords are records (*Rex v. Arundel*, Hob. 110); for though, as Lord Holt says, the House of Lords be a supreme court of record, yet every vote there passed is not an act of judicature, unless the proceedings in order to it had been judicial (*Rex v. Knollys*). It is true Coke says in 4th Inst. 23. that in his opinion the parliamentary journals were entitled to the authority of records, and he refers to 6 Hen. 8. cap. 16. But that proves no such thing. It prohibits the absence of any of the members without licence entered of record in the clerk's book; but that is merely a loose way of stating what stands to the House of Commons in place of a record. In the case of *Rex v. Creevey* it appeared that Mr. Creevey had published a correct account of a speech of his in the House of Commons for his constituents. An action was brought for a libel, and a verdict given against him. A motion was made for a new trial, on the ground that the House of Commons was a Court of Judicature, and that the publication of its proceedings was allowable, on the same principle as the publication of the proceedings of other courts of justice; and the case of *Curry v. Walter*, 1 B. P. 525. was cited. But a new trial was refused.

Rex v. Knollys. 12 How. St. Tr. 1195. 1 Ld. Raym. 10. Skin, 336. &c. &c.

Rex v. Creevey.

But, supposing the House of Commons to have this power, the Plaintiff's privilege of parliament ought to exempt him. I refer to the cases of *Walker v. Grosvenor* (Earl of), 7 T. R. 171. and that of

Vid. Wilkes's case. 2 Wils. 159.

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Catmur v. Knatchbull (Sir E.), 7 T. R. 448. The case of Brearton, 1 Hats. 131. is also in point; and one still more in point occurs in the same vol. After this it will be hard for the Commons to contend that their own members have not the privilege of exemption from commitment for contempt.

Excess.

Now I come to the question of excess. It is clearly laid down by Sir F. Pemberton in the proceedings relative to the case of *Jay v. Topham*, that the Court would inquire whether there was excess or impropriety in the execution of the order of the House. Two things are here complained of as excessive or improper in the manner of executing the order of the House:—1st, the breaking open the outer door; and, 2dly, the using a military force. As to the breaking open the outer door, the authority of Semayne's case falls from under their feet, though the Judges below relied on it. The reliance is on the words in the report in Cro. El.; "that *Williams* agreed with the opinion of *Yelver-* "*ton* and *Fenner in omnibus*, that the Sheriff might "not break any man's house to take execution, "unless in the Queen's case, *or for a contempt*." The House of Commons was well advised to resort to the report in Cro. El. for Coke says nothing about the contempt; and as to the opinion of Yelverton, he himself must have best known what he said, and hear what he says, "unless it be on a "*capias utlagatum*, which is the Queen's suit for "the contempt of the party, it is not lawful for "the Sheriff to enter the house unless it be open, "&c." This then is no authority for them. Then with respect to the employment of a military force,

Jay v. Topham, 12 How. St. Tr. 821.

Breaking open the door.

Semayne's or Seyman's case, 5 Rep. 91. Cro. El. 908. Moor, 668. Yelv. 28.

Military force.

that is open to us on the pleadings, and we say it was illegal. It has been said that the soldiers were bound to assist in executing the warrant as well as other citizens. But the record alleges that it was a military force of our Lord the King. And in Horne's case it was said by De Grey, Ch. J. "the "King's troops may, like other men, act as *indivi-* "*duals*, but they can be employed as *troops* by the "act of the government only," (Cowp. 682). That is the objection in my argument. The allegation is, that they were soldiers of our Lord the King, and therefore they were employed as the King's troops, and not as citizens in red coats. Now why do I contend that the warrant could not legally be executed by soldiers?—1st, the law does not recognize soldiers as such, and so it was argued in the defence of Lord Russel's innocency, by Sir R. Atkins, who says, "to seize and destroy the king's "guards. The guards! What guards? What or "whom does the law understand or allow to be the "King's guards for the preservation of his person? "Whom shall the Court that tried this noble Lord, "whom shall the Judges of the law that were then "present upon their oaths, whom shall they judge "or legally understand by these guards? They "never read of them in all their law books. There "is not any statute law that makes the least men- "tion of any guards. The law of England takes "no notice of any such guards, &c." King Henry VII. was the first who set up a band of gentlemen pensioners as a guard about his person; and the laws and constitution of these kingdoms, as Blackstone observes, know no such state as a perpetual

Horne's case, Cowp. 682.

9 How. St. Tr. 730—1

1 Blac. Com. 408.

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standing soldier, bred up to no other profession than that of war. It is well known that the army exists only by suffrance from year to year; and so jealous is the law of the interference of the military, that the troops are removed from assize towns when the Judges arrive there. And so it is when elections take place; so little does the House of Commons like soldiers, except on particular occasions. The King's troops, therefore, existing by suffrance only from year to year, cannot be proper instruments for executing the orders of the House of Commons. The command of the militia, as well as that of the regular army, is by law in the Crown; and how is the House of Commons to proceed when they employ soldiers? They cannot command the assistance of the troops by their own authority. They must apply to the Crown, and then what becomes of their privileges? They have only their mace and Serjeant at Arms. "They keep a kawk," (the Serjeant) as *Roger North* says in his *Examen*, "and must every day provide flesh for their hawk;" and he holds his place by patent from the Crown. When a body claiming a power has not means to exercise that power, it is a strong argument to show that it has not the power; as, if a court could not enforce a *venire*, it would be a strong argument to show that it could not try by jury. And so, here, as the House of Commons has not the means of enforcing the service of the King's troops by its own authority, it is a strong argument against their right to execute their orders by the assistance of soldiers. They claim their privileges as a protection against the crown, and yet they say they will enforce their

13 Car. 2 cap. 6.

North's Examen, 560.

orders by means of the King's troops. The execution of their orders by the aid of a military force is therefore inconsistent with their own argument, and this is one more of the difficulties in which the case has been involved.

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Mr. Courtnay. The points to be considered in this case, as it appears to me, are these:—1st, Whether the House of Commons has the power of committing for contempt, as a breach of privilege. 2dly, Whether the warrant is a good ground of commitment. 3dly, Whether it has been executed in a proper manner.

Whether the H. C. can commit for contempt as for a breach of privilege.

1st, Whether the House of Commons has the power of committing for contempt as a breach of privilege. It can only have it by immemorial usage, by statute, or statutary recognition, or from necessity, as being inherent in its existence. I am not driven to show that *parliament* had not that power from time immemorial.—It is enough for me to show that the House of Commons had it not. But the House of Commons had itself no existence till after the time of legal memory, till the reign of Hen. III. as was stated below. They attempted to meet this argument in this way: they said that the House of Commons, though it had no separate existence till after the time of legal memory, sat as a collective body with the King and Lords. But there is no evidence of that, so that this argument as to their having the power from time immemorial falls to the ground. And how do the facts agree with the assumption? They cannot go back further than the reign of Elizabeth as to the exercise of the power. If that were not a sufficient answer, it

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might be said that if they had the power when they sat with the Lords and King, it does not follow that they have it when separate. Each member may not have the powers which belonged to the whole body, and the House of Commons certainly has not a separate legislative power. 2dly, They have no such power by statute. They have indeed relied on two acts of parliament; but when these are examined, the argument founded upon them falls to the ground. The act, 4 Hen. 8. cap. 8. was passed upon the occasion of the imprisonment of Strode for something which he had done in parliament, and the extent of it is no more than to give personal immunity to the members for things done in discharge of their duty. The other act, 1 Jac. 1. cap. 13. which they say is a statutary recognition of this privilege, after enacting that, when a member of parliament, arrested in execution, should be set at liberty by privilege of parliament, the party might again take him in execution after the privilege of that session of parliament should have ceased, contains this proviso; "Provided always "that this act, or any thing therein contained, shall "not extend to the diminishing of any punishment, "to be hereafter, by censure in parliament, in-"flicted upon any person which shall hereafter "make, or procure to be made, any such arrest as "aforesaid." Now, giving this its most extended meaning, it only applies to punishment, to be inflicted for arresting members during the sitting of parliament; and the House of Commons must have that power to preserve its existence. The third ground is that of necessity, and that appears to me

to be the formidable ground: for it is impossible to deny that a body, such as the House of Commons, must have immunities and privileges, and complete self-protection; which implies all the power that is necessary to make it effectual. But it has been justly and wittily said, that power is a sword, privilege a shield: and, as to the assumption of power, there is hardly any thing that may not be construed into a breach of privilege, or any power that may not on that ground be assumed. I refer to what Lord Clarendon says, "After the act for the continuance of the parliament, the House of Commons took much more upon them, in point of their privileges, than they had done, and more undervalued the concurrence of the Peers: though that act neither added any thing to, nor extended their jurisdiction, &c. &c. But now that they could not be dissolved without their own consent, &c. they called any power they pleased to assume to themselves a branch of their privileges, and any opposing or questioning that power a breach of their privileges, which all men were bound to defend by their late protestation, and they were the only proper judges of their own privileges. Hereupon, they called whom they pleased delinquents, received complaints of all kinds, and committed to prison whom they pleased, which had never been done or attempted before this parliament, except in some apparent breach, as the arresting a privileged person, or the like."

Hist. Rebel, vol. i. p. 212.

I would also admit the power of the House of Commons to commit for contempt, that is, for con-

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tempt properly so called, distinguishing the legal from the popular sense of the word. The legal meaning is an actual or constructive obstruction of process. In common language it means contumely. Where there is a legal contempt, or an actual or constructive obstruction to their proceedings, the House of Commons has the power, not vindictively to punish the offence *qua* offence, but to abate the nuisance. But there the power ends where the necessity ends. We do not contend that immunity ought to be given to libels, but that the House of Commons ought not to be judges in their own cause. The House of Commons has no criminal jurisdiction, or, if it has the power to punish an offence as such, it is an anomaly in the history of our courts that such a power should belong to a body which cannot apportion the punishment to the offence. Take the present offence for instance. A libel may be the most atrocious, or it may be the most trifling of personal affronts. And yet see the situation of the House of Commons; if the most attrocious libel against it should be published on the last day or the last hour of its sitting, it can imprison the libeller only for that day or hour. But there is no such anomaly if the power exists merely for the purpose of removing obstruction.

Whether the warrant is a good ground of commitment.

2dly, Whether the warrant is a good ground of commitment. Besides other objections, it does not pretend to commit for a contempt, but for a breach of privilege; and that was a libel, and a libel on a past proceeding of the House, as appears by the record, and could not therefore have been an obstruction of a present proceeding. The mere naked

fact here is the admission that a paper called a libel was printed by the Plaintiff's authority; and, I submit, the libel should have been set out on grounds of justice; for if it appears that it is no libel, you will not lend your judgment and authorities to the injustice. The House of Commons should, therefore, have shown the grounds of their proceeding. But the warrant does not even state that the Plaintiff is guilty; it only states that the Plaintiff, *having admitted* that the paper which the House of Commons resolved to be a libel was printed by his authority, was *thereby* guilty of a breach of privilege. How could the admission make him guilty of a breach of privilege? Then there is no allegation in the warrant of the publication of the libel; and the libel cannot therefore be a breach of privilege, for it might have been all along in his table drawer for any thing that appears on this warrant. It has been argued that no other court will relieve, because the Plaintiff was committed for a contempt. I have already said that it is not a commitment for contempt; but suppose it were, there are in Moore's Reports, 839. 840. a number of cases (Apsley's and others), which show that the rule contended for is laid down too broadly, and that other courts will sometimes interfere in such cases. Ch. J. Vaughan says, in Bushell's case, "that the cause "of the imprisonment ought, by the return (to a "*hab. corp.*) to appear as specifically and certainly "to the Judges of the return, as it appeared to the "Court, or person authorised to commit, else the "return is insufficient." But it could not so appear by a return founded on this warrant. It may be,

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Vau. Rep. 135. 6 How. St. Tr. 999.

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9 Com. Jour. 8 How. St. Tr. 223.

and has been argued, that your Lordships cannot take cognizance of the question, whether it is or is not libel, breach of privilege, or contempt, in the particular instance, that being settled by the resolution of the House of Commons. But in Fitzharris's case your Lordships refused to receive an impeachment against him. The House of Commons said this was illegal, and resolved that the proceeding in any inferior court would be a breach of privilege. But Fitzharris was tried by the Court of King's Bench, convicted, and executed. This shows that your Lordships may investigate whether there is a breach of privilege or not, notwithstanding their resolution.

Fitzherbert's case, D'Ewes Jour. 482.

In Fitzherbert's case, 35 Eliz. there being then a doubt how a member, who had been arrested, should be relieved, Coke, who was then Speaker, said, "First, this writ of privilege must go from "the body of this House made by me, and I to "send it into the Chancery, and the Lord Keeper to "direct it. Now before we make such a writ, let "us know whether by law we may make it, or "whether it will be good for the cause or no. For "my own part, my hand shall not sign it, unless "my heart assent to it. And though we make such "a writ, if it be not warrantable by law, and the "proceeding of this House, the Lord Keeper will "and must refuse it." This was an acknowledgment that the Lord Keeper had authority to inquire into the matter, whether a breach of privilege or not.

R. Coke's case, 1584.

And so it appears also from the case of Richard Coke, 1 Hats. 96. upon whom a subpœna out of Chancery had been served; and the Commons

being of opinion that their privileges were concerned, sent a deputation of some of their members to the Lord Chancellor, who answered, "that "he thought the House had no such privilege "against subpœnas as they contended for, and that "he would not allow any precedent in the House of "Commons to that effect, unless they could show "that they had been allowed and ratified by the "precedents in Chancery." Another authority is that of Lord Holt in the case of *Rex et Reg. v. Knollys*, who said that their resolution would not make that a breach of privilege which was not so before. Your Lordships ought, therefore, to be put in a situation to consider whether this is a breach of privilege. Then there are these critical objections to the warrant:—1. That it does not allege that the libel was printed by the authority of the Plaintiff, but only that he, having *admitted* the fact, was *thereby* guilty of a breach of privilege. How the admission can be tortured into a breach of privilege I cannot understand:—2. That it does not allege that the libel was *published* by the Plaintiff:—3. That the word "*reflecting*, on the just rights," &c. was equivocal, for he might have reflected upon them favourably. In an indictment for obtaining money on false pretences, if it is alleged that the Defendant unlawfully, knowingly, and designedly, *pretended* so and so, by means of which pretences he obtained the money; what doubt could there be that this was a charge that the pretences were false; yet they say that it is not sufficient, but you must proceed to negative the pretences to be true. I might ask whether, if this nicety is required in

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Rex v. Airey. 2 E. R. 30.

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Whether the warrant was properly executed.

indictments, it ought not *a fortiori* to be required in such a penal execution as this.

3dly. Whether the warrant was properly executed. And, first, with respect to the breaking open the outer door, Semayne's case, for the reasons already stated, is no authority whatever for it. It is only where the King has an interest that the outer door can be lawfully broken open; and Treby, Ch. J. in a note to Dyer, says, "By the common law no "house may be broke open by the officer of the "King, at the suit of a common person, otherwise "at the suit of the King. But now by 21 Jac. 1. "cap. 19. §. 8. concerning bankrupts, the com- "missioners may break open the house of another "for the debt of the debtor: and if bankrupts con- "vey their goods to their neighbour's house, the "commissioners cannot, but the Sheriff may, break "open the *house*, because he is the sworn officer of "the King. The commissioners may break open the "*booth* or *shop* of another to get at the bankrupt's "goods." The act gives the commissioners power to break open, not only shops and warehouses, but also houses and chambers; and yet, though the power is so distinctly given, the house can be broken open only by the King's officer. The only ground on which this is justified, is, that the public is a party, and that it is for the benefit of the commonwealth; but these words, in order to have such an effect, must be held to imply something beyond an ordinary expediency—something of a moral necessity. But as long as the Plaintiff confined himself to his house, he could not obstruct the proceedings of the House of Commons: if he came out, the

warrant might be executed; so that there was no necessity in this instance for breaking open the door. Secondly, with respect to the employing a military force, I need not add any thing to what has been said already. The jealousy of the constitution is very strong as to the interference of soldiers in the execution of process, and pervades the whole frame of our municipal law. The Sheriff, or the officers of the Houses of Lords or Commons, have a right to the services of individuals, whatever be the colour of their coats. That is clear. But the House of Commons has no power to call on soldiers as a body under their officers, and acting as the servants of the Crown.

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Lord Eldon (C.) The Counsel for the Plaintiff having been now heard, I propose to your Lordships that the Counsel for the Defendants should not be heard, until we shall have received the advice of the Judges on the following question, viz. "Whether, "if the Court of Common Pleas, having adjudged "an act to be a contempt of Court, had committed "for the contempt under a warrant, stating such "adjudication generally without the particular cir- "cumstances, and the matter were brought before "the Court of King's Bench, by return to a writ "of *habeas corpus*, the return setting forth the "warrant, stating such adjudication of contempt "generally; whether in that case the Court of "King's Bench would discharge the prisoner, be- "cause the particular facts and circumstances, out "of which the contempt arose, were not set forth "in the warrant."

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Answer.

The question being handed to the Judges, and they having consulted among themselves for a few minutes, Lord Ch. Baron Richards delivered their unanimous opinion that in such a case the Court of King's Bench would not liberate.

Judgment.

Lord Eldon (C.) That this is a case of very great importance none will dispute: but at the same time I do not think it a case of difficulty. If I did, I should be anxious to hear the counsel for the Defendants before proceeding to judgment. But in my view of the case, considering it as clear in law that the House of Commons have the power of committing for contempt; that this was a commitment for contempt; that the general nature of the contempt, if that was necessary, was sufficiently set forth in the warrant; and being of opinion that the objections in point of form have not been sustained, unless any other Noble Lord should express a wish to hear the Counsel for the Defendants, I shall now move that the judgment of the Court below be affirmed.

Lord Erskine. When this matter was first agitated, I understood that the House of Commons intended to pursue a very different course. I was therefore alarmed. I expressed myself, because I felt, with warmth. I have changed none of the opinions which I then entertained; I then said that the House of Commons ought to be jealous of such privileges as were necessary for its protection. My opinion is that these privileges are part of the law of the land, and upon this record there is nothing

more than the ordinary proceeding; the Speaker of the House of Commons, like any other subject, putting himself on the country as to the fact, and pleading a justification in law; for this was not a plea to the jurisdiction, but a plea in bar. This course of proceeding gave me the most heart-felt satisfaction; for if the judgment had been adverse to the Defendants, the House would no doubt have submitted. It would be a libel on the House of Commons to suppose that it would not. Therefore, by this judgment, it appears that it is the law which protects the just privileges of the House of Commons, as well as the rights of the subject.

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The case has been argued with great propriety; but it was contended that it was not alleged in the warrant that the libel was *published* by the Plaintiff. But it is alleged that the paper was printed by his authority. And if I send a manuscript to the printer of a periodical publication, and do not restrain the printing and publishing of it, and he does print and publish it in that publication, then I am the publisher. The word *reflecting*, standing separately, would not be sufficiently distinct. But the warrant recites that the letter had been adjudged to be a libellous and scandalous paper, reflecting on the just rights and privileges of the House of Commons; and the meaning there must be, arraigning the just rights and privileges of the House.

I myself, while I presided in the Court of Chancery, committed for contempt, in a case in which a pamphlet was sent to me, the object of which was, by partial representation, and by flattering the

Vid. ex parte Jones. 13 Ves. 237.

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Judge, to procure a different species of judgment from that which would be administered in the ordinary course of justice. I might be wrong, but I do not think I was. The House of Commons, whether a Court or not, must, like every other tribunal, have the power to protect itself from obstruction and insult, and to maintain its dignity and character. If the dignity of the law is not sustained, its sun is set, never to be lighted up again. So much I thought it necessary to say, feeling strongly for the dignity of the law; and, have only to add, that I fully concur in the opinion delivered by the judges.

The Counsel were called in, and informed that the House did not think it necessary to hear Counsel for the Defendants. And then, without further proceeding, the judgments of the Court below were AFFIRMED.

ENGLAND.

IN ERROR FROM KING'S BENCH.

RANDOLL and others—*Plaintiffs in error.*

DOE, on the several demises, and on the joint demise, of Roake and others..... } *Defendant in error.*

May 2, 7, 16, 1817. Devise of freehold estates to J. R. nephew and heir at law of testatrix for life; and on his decease "*to and amongst* "*his children lawfully begotten, equally at the age of*