

LAW INTELLIGENCE.

COURT OF KING'S BENCH, LONDON, FEBRUARY 7. THE KING, vs. FINNERTY.

The Attorney General moved for the judgment of the Court against P. Finnerty. Mr. Finnerty presented his amended affidavit, stating that there was any thing still objectionable in it, that it had only proceeded from his want of ability to ascertain the will of the Court.

The affidavit was read to a certain length; but on its proceeding to state that the defendant should be able to offer a justification of the whole libel, and to point out objectionable features in the government of Lord Callaghan in Ireland.

Lord Ellenborough observed that these were things on which the Court had formerly commented with disapprobation. He expected the defendant would have been prepared to come up to-day, in the spirit of mitigating his offence, not of justifying it.

Mr. Finnerty said, he was ready, if he had been allowed, to prove the truth of every part of the libel. If he was refused that, he must deem, not only to be a libeller, but what his mind was worse, a liar.

Lord Ellenborough said, if the affidavit went to justification, it must be laid aside. The Court was not to be misled. After advising the defendant what was best for him to do, they would not have improper affidavits thrust upon them.

Mr. Finnerty shewed the Court he had been deceived. He had withdrawn two-thirds of his former affidavit, and had retained that part which had formerly been allowed to be read, only such part as seemed to have passed without objection on the part of the Court.

Lord Ellenborough said, the defendant had already had an opportunity of filing a proper affidavit, and he had pertinaciously fortified it. The Court could not indulge him from time to time, till it suited his will to come in a proper mind to act as became a person in his situation.

Mr. Finnerty contended, that he had shamed his conduct entirely by the case of Col. Draper. There were statements in the affidavit he now tendered which would affront the Court, if they would hear them. But, if he was not to be suffered to state them, he must submit.

He then gave in the affidavit of David Power, who accompanied the expedition to Walcheren, in which Mr. Power represented the prejudice raised against the defendant, in consequence of the order given to him, which had been issued, to be such that he should not have concerned it safe for the defendant to show himself to the British Lines, and in consequence of which he dissuaded the defendant from going into public company.

Mr. Finnerty then offered the affidavit of a Dr. O'Connor, relative to a Mr. Chinnery. On being asked to what the affidavit referred, he stated it referred to a fact of a person's having been banished to Botany Bay on the warrant of Lord Callaghan alone, without trial.

Mr. Finnerty contended that he was not stating any thing to extenuate his own offence. Now what would extenuate his offence as against the public and against the law of the land, most of course aggravate the offence as against Lord Callaghan. He wished to treat the law of the land with all respect, but by no means to make any amendment to what he had said against Lord Callaghan.

Lord Ellenborough observed, that he had been simple enough to believe that the Defendant meant to profit by the recommendation of the Court, but he found he had been deceived. Was there any thing more the defendant would wish to offer which he would venture to say should be received?

Mr. Finnerty understood he was at liberty to offer any thing to extenuation of his own offence. Now what would extenuate his offence as against the public and against the law of the land, most of course aggravate the offence as against Lord Callaghan.

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He then offered in evidence two other affidavits, which, he said, would fill the minds of the Court with horror at the bare recital. Lord Ellenborough asked, were they to be trying persons who were not before them? This was an enormity not to be tolerated.

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Mr. Finnerty said, he had told the Court they would wait till to-morrow he would send model his affidavits. Lord Ellenborough observed, that he had been simple enough to believe that the Defendant meant to profit by the recommendation of the Court.

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TO BE SET DIRECTLY. FOR A SHORT TERM OF YEARS. THE HOUSE OFFICES, GARDEN, AND LANDS OFFICE, situated in FARRERSHOWN, in the County of Waterford, containing a Piece of Ground situate by Samuel Street, in Grantham Gate, of Dublin, and a PLOT OF GROUND, about 54 Feet in Front, and about 122 Feet in Depth, adjoining a Piece of Ground belonging to Bryan Hackett, of Dublin.

BANKRUPT'S SALE. THE ASSIGNEE OF JAMES ACLETT, will sell by Auction, on Thursday, the 15th Instant, at 12 o'Clock, at his Dwelling House and Store, at Cappoquin, the Bankrupt's HOUSEHOLD FURNITURE; also, two NEW COATS and SAILS, COAL, &c. &c. also, the Bankrupt's INTEREST in his DWELLING HOUSE and STORES, which are well situated for the Corn Trade, held for a long Term, and on which a Sum of £900 has lately been expended, in valuable Improvements.

ELECTION. TO THE GENTLEMEN, CLERGY, AND FREEHOLDERS, OF THE COUNTY OF WATERFORD. A Freeholder, Representative for our County is expected shortly to take place, allow me to offer myself to your Consideration as a Candidate for that high Office.

TO BE LET. FROM THE TWENTY-FIFTH MARCH NEXT. THE HOUSE, OFFICES, AND DEMESNE, OF BALLYANCHOR, containing about 120 Acres, English Statute Measure—Proposals in Writing, (if by Letter, Post Paid), will be received by Captain Prouse, Bandon, or Wm. Prouse, Lisamore.

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SOCIAL CLUB. THE ROOMS will be open as usual, at the COMMERCIAL BUILDINGS, on Tuesday, the 19th Instant, Waterford, Feb. 12, 1811.

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COURT OF KING'S BENCH, LONDON—FEB. 8. SIR FRANCIS BURDETT vs. THE RIGHT HON. CHARLES ARBUTT, SPEAKER OF THE HOUSE OF COMMONS.

Mr. Holroyd first stated the special case, setting forth the facts relating to the conveyance of Sir F. Burdett. The Defendant, put in several pleas; first, That he is not guilty; 2d, that Parliament was holden at Westminster at the time of the trespass in question; that the defendant was a Member of the House of Commons, as well as the plaintiff; that a certain publication signed by Sir F. Burdett and the argument were libels, and that Sir F. Burdett was guilty of a breach of privilege; it was ordered that he be committed to the tower; that the defendant, the Speaker, issued his warrant for such purpose—it was required that the Sergeant at Arms take him into custody to convey him thither; that the defendant, in pursuance of the Resolution, directed a similar warrant to the Lieutenant of the Tower; that the Sergeant at Arms went to the house of the plaintiff, and on the door being that, he required to be admitted; but being refused, he broke in, arrested the Plaintiff and conveyed him to the Tower.

Mr. Holroyd then enumerated a great multitude of cases, for the purpose of laying down the law on the question at issue. He then drew the following conclusions. 1. That in all matters relating to the privileges of Parliament, recourse was had to the law. 2. That the privilege was claimed by the whole Parliament, and not as the privilege of any one House.

3. That on any question arising regarding privilege, the usage has been for one House to lay the matter before the other. 4. That the Judges have the right to determine all questions of privilege, excepting in Parliament.

Mr. Holroyd argued, that Courts of Law, had this power to such an extent as to comprehend this case on the authority of Nevill and Strout, Bernard and Soame, &c. &c. He entered at length into those judgments which related to arrests and remedies by Habeas Corpus.—He contended that lengthly would be wholly without remedy if Habeas Corpus were not granted by the Court even on commitments by Parliament. He drew a distinction between the House of Lords and Commons, the one not being, and the other being a Court of Record.

The Learned Counsel, after citing many authorities to the wording of the Speaker's warrant, maintained, that if it appeared in the face of the warrant that there was no good cause of commitment, the warrant for false imprisonment brought by Sir F. Burdett, would lie. In the plea of the Defendant there was nothing to show that there was any just cause of commitment, so that the action was maintainable. Admitting the right of the House to commit, still if the warrant for that commitment was not in a proper and legal form an action was maintainable against the Speaker—a mere libel was libel was unquestionably no breach of privilege if it were not published; but the plaintiff, according to the wording of the warrant, had only admitted that it was printed by his desire—not published. The terms were not to be taken beyond their proper sense. The warrant stated, that it was "a libellous and scandalous publication, reflecting on the proceedings of the House of Commons;" it might allege that the House meant nothing injurious taken in its proper sense &c. &c.

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Lord Ellenborough.—Although it must be admitted that it might have been much better expressed, yet do we not understand what it means? Mr. Holroyd replied, that in such a case nothing was to be attended to by the Court but what the words actually imported. The Learned advocate concluded a speech of more than four hours, by impelling upon the Court the misery that would arise, if the plaintiff had no redress, whereas if the action were allowed and it terminated in favour of the plaintiff, still the defendant would have his remedy by appeal to the Lords.

After a very high compliment from the Chief Justice, Mr. Holroyd sat down, but rose again to add a few words, relating to the trespass in breaking and entering plaintiff's house. By law no man's outer door could be forced unless it was in a criminal proceeding, as appeared by 13, Edw. 4. Lord Coke, in his 4th book, had held, that even in cases of felony a man's castle cannot be forced on bare suspicion of crime, but it was necessary to have the King's Writ, and that not until a Bill had been found by the Grand Jury. He forcibly urged therefore that the House of Commons could not break into any man's house for a crime that concerned a particular body, and which did not affect the whole kingdom, by being against the public weal.

The Attorney General began to reply, but he was stopped by the Court, who informed him that sufficient time did not remain to proceed further this day. The Attorney General expressed his anxiety to be heard but was not permitted. As this day was the last for arguments during the present term, the subject will stand over until the next, when the argument will be renewed.

We may add that the meaning of their Lordships' minds was evidently against the side that Mr. Holroyd supported.

LONDON GAZETTE. ADMIRALTY-OFFICE, FEB. 9. Copy of a letter from Captain Rogers of his Majesty's ship, the Kent, addressed to Admiral Sir Charles Cotton, Bart. Commander in Chief of his Majesty's ships and vessels in the Mediterranean, and transmitted by the Admiral to John Wilson Croker, Esq.

Sir—Just as I had closed my letter to you of the 13th instant, the Cambrian bore in sight, which immediately determined me to attempt the destruction of the convoy at Palamos. I had great reliance in Captain Fane's knowledge of the place, and as the reinforcements the French had received in Catalonia, gave me no hope of assistance from General Donnell, who had full occupation for his troops, I felt that I should be deficient in duty if I did not employ the means in my power with energy, to effect the important service of depriving Barcelona and the French army of the supplies which this convoy would convey to them; I gave it, Sir, every consideration with the anxiety natural to responsibility, and the more I reflected, the more my mind was fortified with hope of success.

I therefore formed my plan, and Capt. Fane did me the favour to volunteer the command of 350 seamen, 250 marines, and two field pieces selected from the ships under my orders, and well appointed for this desirable service. The enemy's vessels lay in the Mole, and consisted of a very fine new National Ketch, mounting fourteen guns with fifty men, two Xebecs of three guns each, and thirty men, and there were eight merchant vessels under their convoy, all laden with provisions for Barcelona; they were protected by two twenty four pounders, one in a battery which stood high over the Mole, and the other with a 13-inch mortar in a battery on a very commanding height; there were also, from the information I received, about 250 falders in the town.

From light winds it was near one o'clock in the afternoon of the 8th, before the ships could get safe enough into the bay to put the men on shore, and they were soon after landed on the beach, in the finest order, under cover of the Sparrowhawk and Minstrel Boats, without harm, the enemy having posted themselves in the town, supposing we should be injudicious enough to go into the Mole without disclosing them; soon after our men moved forward to take the town and batteries in the rear; the enemy withdrew to a windmill on a hill, where they remained almost quiet spectators of our people taking possession of the batteries and the vessels in the Mole; the mortar was spiked, and cannon thrown down the heights into the sea; the magazine blow up; the whole of the vessels burnt and totally destroyed, save two which were brought out; in short, the object had succeeded to admiration, and at this time, with the loss of no more than four or five men from an occasional skirmishing; but I am sorry to relate, that in withdrawing our boat from a hill which we occupied to keep the enemy in check until the batteries and vessels were destroyed, I fear that our people retired with some disorder, which encouraged the enemy, who had received a reinforcement from St. Felice, to advance upon them, and by some unhappy facility, instead of directing their retreat to the beach where the Cambrian, Sparrowhawk, and Minstrel lay to cover their embarkation, the brave, but thoughtless and unfortunate men came through the town down to the Mole; the enemy immediately occupied the walls and houses, from which they kept up a severe fire upon the boats crowded with men, and dally fired upon and killed several who had been left on the Mole, and were endeavouring to swim to the boats.

Nothing could exceed the good conduct of Capt. Pringle, of the Sparrowhawk, Capt. Campbell of the Minstrel, and Lieutenant Conolly, first of the Cambrian, (who commanded that ship in the absence of Captain Fane) both in the landing and withdrawing the men, and the officers in the launches with cannonades, and the two mortar boats of the Cambrian; indeed the officers and men of all the boats distinguished themselves beyond all praise in going to the Mole to bring off the men who had been left behind. In performing this arduous service they suffered much, but I had the satisfaction to perceive the fire of their cannonades and mortars upon the enemy was very destructive.

I feel a delicacy in noticing the exertions and gallantry of an individual where most appear to have an equal claim, but it is due to Mr. George Godfrey, my first Lieutenant, whose exertions, both on shore and in the boats bringing off the men, were conspicuous.

Unfortunately Captain Fane, as I am informed, was at the Mole giving directions to destroy the vessels, when our men were withdrawn from the post on the hill; he remained there with firmness to the last, and among the missing, but I have received a satisfactory account that he is well.

I feel, Sir, with unfeigned grief, that our loss has been heavy, as you will see by the enclosed return; but had it not been for the indifferency of the people straggling from their post and coming into the town, contrary to my caution, the enemy would not have dared to approach them, and the loss would have been very inconsiderable, compared with the importance of the service performed. The French had entered Catalonia with an army of ten thousand men with little means of subsistence, and as I was ordered to this coast for the express purpose of depriving the enemy of their expected supplies, I considered that some energy and enterprise was necessary to accomplish it; the force I employed was fully adequate to this service, and I considered the execution of it to an officer of reputation, I therefore cannot reproach myself, as my conduct would have been censured if I had not undertaken it, although I must ever deeply regret the severe loss.

I have the honour to be, &c. THOMAS ROGERS. Abstract of the returns of officers, seamen and marines, belonging to his Majesty's Ships Kent, Ajax, Cambrian, Sparrowhawk, and Minstrel, killed, wounded, and missing, in destroying the enemy's convoy at Palamos, 18th Dec. 1810. Kent—3 seamen, 7 marines, killed; 7 officers, 12 seamen, 19 marines, wounded; 1 officer, 11 seamen, 22 marines, missing; 1 seaman deserted. Ajax—11 seamen, 4 marines, killed; 3 officers, 12 seamen, 6 marines, wounded; 19 seamen, 18 marines, missing. Cambrian—2 officers, 3 seamen, 1 marine, killed; 3 officers, 19 seamen, 7 marines, wounded; 1 officer, 11 seamen, 4 marines, missing. Sparrowhawk—1 seaman, killed; 1 officer, 2 seamen, wounded. Minstrel—1 seaman, killed; 1 officer, 4 seamen, wounded. Total—33 killed, 69 wounded, 80 missing, 1 deserted.



