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REGINA v. HOWELL.

Campbell, A. G., *Balguy*, *Hill*, and *Waddington*, for the Crown.

Miller, for the prisoner Jones.

Daniel, for the prisoner Wilkes.

[Attornies—*Solicitors of the Treasury & Griffiths*, for the prosecution, and *Wright*, for the prisoners.]

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Every man has a right to give every public matter a candid, full, and free discussion; but although the people have a right to discuss any grievances they have to complain of, they must not do it in a way to excite tumult; and if a party publish a paper on any such matter, and it contain no more than a calm and quiet discussion, allowing something for a little feeling in men's minds, that will be no libel; but if the paper go beyo · · and be calculated to excite tumult, it is a libel.

A defendant was tried for publishing a letter, purporting to be the resolutions of a body of persons calling themselves the General Convention, and in one part of it stated that an outrage had been committed on the people of Birmingham by a force "acting under the authority of men, who, when out of office, sanctioned and took part in the meetings of the people." A witness for the Crown stated in his cross-examination, that he had formerly belonged to the Convention, but had since resigned, and had become a town councillor of Birmingham. It was proposed to ask him further in cross-examination, as to what he said at a meeting at which the Convention was agreed on, but which took place nearly a year before the publication of the alleged libel:—*Held*, that this could not be done.

LIBEL.—The indictment charged, that on the 4th day of July, 3 Vict., at the parish of Birmingham, in the county of Warwick, 10,000 persons unknown, with force and arms, unlawfully did assemble, armed with divers offensive weapons, to wit, sticks, clubs, and daggers, bearing banners and flags, and were then and there making a great noise and disturbance, to the great terror and alarm of the peaceable subjects of our Lady the Queen, and that George Martin and John Hugh Sweeting, together with certain other persons, forming and being part of the London metropolitan police force, having theretofore been sworn in and then being special constables of the Borough of Birmingham, in pursuance of the statute in such case made and provided, did, by the order and direction of William Scholefield, Esq., and John Kaye Booth, Esq., justices of our said Lady the Queen, assigned to keep the peace, disperse, separate, and remove, and and cause and procure to be dispersed, separated, and removed, the said unlawful assembly of persons, and that they the said G. M. and J. H. S., were, together with the said

other persons forming part of the metropolitan police force, then and there acting in the due execution of their duty as such special constables, in dispersing and causing to be dispersed the said unlawful assembly of persons; and that the defendant intending to excite divers liege subjects of the Queen to resist the laws and to resist the persons so being part of the metropolitan police force in the due execution of their duty, and to bring the said force into hatred and contempt, and to procure unlawful meetings, and to cause divers liege subjects of the Queen to believe that the laws of this kingdom were unduly administered, and intending to disturb the public peace, and to raise discontent in the minds of the subjects of the Queen, and raise and excite tumult and disobedience to the laws, did publish a certain false &c. libel, "of and concerning the said persons so being part of the London metropolitan police, and of and concerning the administration of law and justice within this realm, containing the false, malicious, scandalous, seditious, and libellous matter following, that is to say:—

"Resolutions unanimously agreed to by the General Convention.

"Resolved—1st, That this Convention is of opinion, that a wanton, flagrant, and unjust outrage has been made upon the people of Birmingham by a blood-thirsty and unconstitutional force from London, acting under the authority of men who, when out of office, sanctioned and took part in the meetings of the people, and now when they share in the public plunder seek to keep the people in social slavery and political degradation.

"2nd, That the people of Birmingham are the best judges of their own right to meet in the Bull-ring or elsewhere, have their own feelings to consult respecting the outrage given, and are the best judges of their own power and resources to obtain justice.

"3rd, That the summary and despotic arrest of Dr.

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Taylor, our respected colleague, affords another convincing proof of the absence of all justice in England, and clearly shews that there is no security for life, liberty, or property, till the people have some controul over the laws they are called upon to obey.

" By order, W. LOVETT, Sec.

" Friday, July 5, 1839."

There were other counts in the indictment, which were founded on different portions of the libel.

To prove the prefatory allegations, that there was an unlawful assembly in Birmingham on the 4th of July, 1839, that George Martin and John Hugh Sweeting, and others of the metropolitan police force, were sworn in as constables, and that they by the directions of the magistrates dispersed the mob, Dr. Booth, George Martin, and other witnesses, were called, and stated to the same effect as was proved with respect to those points in the case of *Regina* v. *Neale* (*a*); and it was also proved that by the direction of the defendant 500 copies of the paper set out in the indictment were printed, and 300 of them posted up in various parts of the town of Birmingham.

The libel was read, and at the desire of *Gou burn*, Serjt., for the defendant, Mr. Salt (whose name was on the back of the indictment) was called: he stated that he was a town councillor of Birmingham, and that he had been one of the Convention, but had resigned, and that he was present at a meeting at Holloway-head on the 6th of August, 1838, which was a meeting to agree on the Convention, and that Mr. Alderman Muntz and Mr. Attwood (the member of Parliament) were present, and that a large body of persons were assembled.

Goulburn, Serjt., proposed to ask the witness as to what he said at that meeting.

(*a*) Ante, p. 431.

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Campbell, A. G., for the Crown.—I submit that what the witness then said is not admissible in evidence in the present case. How can language used by Mr. Salt on the 6th of August, 1838, be in the slightest degree relevant to the publication of this libel in Birmingham on the 5th of July, 1839?

Goulburn, Serjt.—The libel arises out of it. It says—"acting under the authority of men who, when out of office, sanctioned and took part in the meetings of the people." I do not put it that it is evidence, because it proves the truth of the placard; but the question for the jury being, whether this is a seditious libel, it is important for the jury to know what has preceded it.

Campbell, A. G.—This is an indictment for libel, which contains introductory averments, which I have called witnesses to prove, and any evidence to contradict those introductory averments is clearly admissible. The evidence proposed to be given does not go to disprove any part of the introductory averments, but merely goes to shew that at some prior time A. B., J. S., or X. Y., have used inflammatory language which was not prosecuted.

LITTLEDALE, J.—The only way in which this could be receivable in evidence is, that the defendant has mentioned in a part of the alleged libel that these men acted on the authority of "persons who, when out of office, sanctioned and took part in the meetings of the people;" and, in order to shew that sanction, Mr. Serjt. *Goulburn* asks Mr. Salt whether he did not say certain things. Now, if the evidence were admissible on that ground, it would be only as proving the truth of the statements of the libel. I therefore think that I ought not to receive the evidence.

The evidence was rejected.

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Goulburn, Serjt., addressed the jury for the defendant, and argued that this publication was not a libel, induced as it was by the conduct of the police; and that the terms of it were not so violent as those that had been made use of by persons who had afterwards filled high situations in this country.

LITTLEDALE, J. (in summing up).—You will first have to consider whether the statement at the commencement of the indictment, that there was an unlawful assembly which was dispersed by the police, be true or not, and if it be true, you will then have to consider whether this publication was or was not a calm and temperate discussion of the events which had occurred; for if the object of it were merely to shew that the conduct of the police was improper, that would not be illegal, because every man has a right to give every public matter a candid, full, and free discussion. If the language of this paper was intended to find great fault with the police force, even that might not go beyond the bounds of fair discussion; and you have to say, looking at the whole of this paper, whether or not it does so. With respect to the first resolution, if it contains no more than a calm and quiet discussion, allowing something for a little feeling in men's minds, (for you cannot suppose that persons in an excited state will discuss subjects in as calm a manner as if they were discussing matters on which they felt no interest), that would be no libel; but you will consider whether the kind of terms made use of in this paper have not exceeded the reasonable bounds of comment on the conduct of the London police. With respect to the second resolution, it is no sedition to say, that the people of Birmingham had a right to meet in the Bull-ring, or anywhere else; but you are to consider, whether the words, that they "are the best judges of their own power and resources to obtain justice," meant the regular mode of proceeding, by presenting petitions to the

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Crown, or either house of Parliament, or by publishing a declaration of grievances; or whether they meant that the people should make use of physical force as their own resource to obtain justice, and meant to excite the people to take the power into their own hands, and meant to excite them to tumult and disorder. The third resolution refers to the arrest of Dr. Taylor; and if the arrest of Dr. Taylor was considered to be illegal, the defendant had a right to discuss it in a calm, quiet, and temperate manner; and if Dr. Taylor had been arrested in a manner wholly illegal and improper, we may allow for some warmth of expression. I have already said that the people have a right to discuss any grievances that they have to complain of, but they must not do it in a way to excite tumult. It is imputed that the defendant published this paper with that intent, and if he did so it is in my opinion a seditious libel. It seems that on former occasions a great deal of strong discussion has taken place; but if that be so, it is no justification of the defendant that other libels have been published that have not been prosecuted.

Verdict—Guilty.

Campbell, A. G., *Balguy*, and *Waddington*, for the Crown.

Goulburn, Serjt, for the defendant.

[Attornies—*Solicitors of the Treasury & Griffiths*, for the prosecution; and *Wright*, for the defendant]