THE KING *against* GEORGE FURSEY.

TRIAL OF GEORGE FURSEY BEFORE GASELEE, J., PARKE, J.,(a) Mr. RECORDER LAW, AND A COMMON JURY, IN THE OLD COURT AT THE SESSIONS HOUSE, OLD BAILEY, ON JULY 4, 1833, FOR FELONIOUSLY STABBING. (Reported in 6 C. & P. 81.)

A public meeting was advertised to be held to adopt preparatory measures for holding a National Convention as the only means of obtaining and securing the rights of the people. It was notified publicly by a Secretary of State that the meeting was dangerous to the public peace and illegal. The meeting was held, and, without the proclamation from the Riot Act being read, was forcibly dispersed by the police. Two of the police when taking a flag from one of the standard-bearers at the meeting were stabbed.

Ruled by the Court.

1. *Riot and Unlawful Assembly.*

A riotous or illegal meeting may be dispersed, by force if necessary, although the proclamation from the Riot Act has not been read.

A meeting "to adopt preparatory measures for holding a National Convention as the only means of obtaining and securing the rights of the people" is an illegal meeting.

2. *Effect of Proclaiming a Meeting.*

A notice issued by order of the Secretary of State, describing the purpose of an intended public meeting as "dangerous to the public peace and illegal" is no evidence of the purpose of such meeting, and does not make the meeting illegal.

Attending an illegal meeting knowing it to be so is an offence, although no proclamation declaring the meeting to be illegal has been issued by the Government.

3. *Murder.—Killing Person lawfully dispersing Illegal Meeting.*

Resistance to an attempt improperly to arrest must be proportioned to the attempt, and if a man for the purpose of such resistance should kill another with a deadly weapon which he prepared beforehand in order to resist at all hazards any attempt to arrest him, he would be guilty of murder.

(a) Afterwards Lord Wensleydale.

SESSIONS HOUSE, OLD BAILEY.

In the Old Court.

THURSDAY, July 4, 1833.

Before GASELEE, J., PARKE, J., Mr. Recorder *Law*, and a common jury.

First Middlesex jury(a):—

John McAll.
John Milne.
William Nash.
William Henry Partridge.
Thomas Peppercorn.
Thomas Howell.
Richard Sheldrake.
William Stydolph.
Cephas Slatterie.
Samuel Searl.
Richard Sturtivant.
George Travinard.

Counsel for the prosecution: *Solicitor General*,(a) *Adolphus*, *Wightman*,(b) and *R. Gurney*.(c)

Counsel for the Defendant: *Phillips*,(d) *Clarkson*.

Indictment on the stat. 9 *Geo.* 4. c. 31. s. 12.(e)

The first count charged that the prisoner did stab and wound *John Brooke*, with intent to disable him.

The second count charged the stabbing and wounding of *John Brooke* to be with intent to do him some grievous bodily harm.

(a) Old Bailey Sessions Papers, sixth session, 1833, p. 536.

(a) Sir John Campbell, afterwards Lord Chancellor.

(b) Afterwards a Justice of the Court of Queen's Bench.

(c) Afterwards Recorder of London.

(d) Afterwards one of Commissioners for the Relief of Insolvent Debtors.

(e) The prisoner was also arraigned on the charge of stabbing Henry Chance Redwood, and pleaded not guilty.

The third count charged that the prisoner did stab and wound *John Brooke*, he, the said *John Brooke*, being a constable duly appointed and sworn to act as a constable, under and by virtue of an Act of Parliament, passed in 10 *Geo.* 4. c. 44 (The Metropolitan Police Act), with intent to resist and prevent the lawful apprehension and detainer of him, the said *George Fursey*, for an offence for which he was liable to be apprehended and detained; that is to say, for that he, together with divers other persons, to wit, five hundred other persons, to the jurors unknown, were tumultuously assembled, making a great tumult, riot, and affray, in view of the said *John Brooke*.

The fourth count was similar to the third, except that it omitted to state that *John Brooke* was a constable, and that the riot, &c. was committed in his view.

The fifth count was the same as the fourth, except that it did not state the nature of the offence for which the prisoner was liable to be apprehended and detained.

CASE FOR THE PROSECUTION.

The *Solicitor General:* May it please your Lordships, gentlemen of the jury: I have the honour to attend you as counsel for the prosecution, and in that capacity, as the law now stands, I have a right to address you and to detail to you all the circumstances of the case as I propose and as I am instructed to give them in evidence. That privilege I waive. I will neither make statements nor comment. The prisoner's counsel has no right to address you, and in my judgment it is not equitable that there should be a power to address the jury on the part of the prosecution, and not on the part of the prisoner; and I will therefore content myself with only respectfully, but most earnestly imploring you to dismiss from your recollection all that you may have read or heard respecting this case, that the prisoner may have a fair and impartial trial; and whatever your verdict may be, I am convinced it will satisfy justice, and that it will be satisfactory to your country.

John Brooke.—Examined by the *Solicitor General.*

I was on the 13th of May a constable belonging to the C Division of the Metropolitan Police. On that day I proceeded to the Riding School in Gray's Inn Lane. We marched down Gray's Inn Lane, and then into Calthorpe Street. There were several hundred persons in the street. One brought a banner folded up in his left hand. The prisoner is the man who had the flag. I am certain of him. When he came opposite to where I was in the centre of the street, he raised his right hand and struck me on the sixth rib on the left side. I had been doing nothing before he struck me, only commanding the sub-division. I neither raised my staff nor touched any individual since I came into the street, nor saw anybody else attempt to do so. The blow was with the right hand. It was with an instrument something like a dagger, seven or eight inches long. The hilt of the dagger was brass. After I received the blow I retired back two or three paces, and after I had retired I looked particularly at the prisoner, and saw an instrument like a dagger in his right hand.(*a*)

Cross-examined by *Phillips.*

[My rib was not broken.]

You had the use of your sight?—Yes, till I was wounded, and then it was taken away.

I thought you said after you were wounded you looked particularly at the prisoner. How could that be if it was taken away? If what you have sworn be quite true, that after you were wounded your sight was taken away, how could you look particularly at the prisoner?—It was momentarily afterwards, but I had some distance to go before I got out of the street.

I thought you told me, or rather my learned friend, you turned round, and saw the prisoner with another policeman?—I did.

Your sight was not gone then?—I was not killed dead. If I had been killed——

Nobody is asking you about being killed dead, or you would not be here. Was your sight gone?—My sight was not gone, or I should not have seen the prisoner.

As you had the use of your sight, how many policemen did you see upon the ground?—I do not know. I saw my own division.

That will not do. How many did you see besides your Division?—I cannot say.

You can give some vague notion?—If I was to say there were three or four hundred I could not be certain.

Will you say there were not five?—I cannot say.

Will you swear there was not twelve hundred?—I cannot say. I did not see them.

Had they all truncheons?—All the men?

All that you knew of?—All that I knew of.

Did you see the hustings or railings where the chairman was?—I did not.

Not at all?—No.

(*a*) Old Bailey Sessions Papers, p. 543.

About how many persons might have been about the man you call the prisoner at the time this took place?—There were several policemen and several other inhabitants.

About how many persons do you suppose were about the prisoner?—I do not know. It is impossible to say.

Some hundreds? — Some hundreds might have been coming into the street.

Were there not some hundreds about the person you call the prisoner?—Yes, there were some hundreds, because they were coming into the street and going out.

Attend to the form in which I put the question. Were not the persons—the inhabitants as you call them, I mean to distinguish them from the police—were they not doing all they could to get out of the way of the police?—They were returning from the fields down the street.

Give me an answer. You would save us a great deal of time if you would answer the question?—I do answer it as far as I can.

No, you do not. The question I put to you is this, were they not apparently doing all they could to escape from the violence of the police? Yes or no?—I did not see any of the police driving the people.

Did not the people appear to you to be doing all they could to get out of the way of the police?—I did not see it.

Had you not a considerable view of the ground from the place where you were?—No.

To what extent?—I could see to the end of the street. It was the centre of the street, and we could see no further than the end of the street.

In that very street, Calthorpe Street, were there not numbers trying to get out of the way?—I did not see it.

Do you mean to state that it might have taken place, and you not see it?—I could not see what the people were doing. They were coming down upon the Division when we were marching into the street.

When was that?—About three o'clock.

What do you mean by coming down upon the Division?—I should suppose to drive them out of the street.

[I saw no one committing any act of violence until I was stabbed. There was no fighting until then.]

Who is prosecuting this case? My learned friend said he was counsel for the prosecutor?—I do not know.

You are not the prosecutor?—I am one of the witnesses.

Do you incur any expense in the prosecution?—Not to my knowledge.

You would know if you had given instructions to any solicitor, for instance, the Solicitor for the Treasury? Have you given any instructions to him to prepare briefs for counsel?—Not to my knowledge.

You cannot forget it?—

GASELEE, J.: You cannot doubt it is conducted by the Government.

Solicitor General: I appear for the Public Prosecutor.

Phillips: Here is a case conducted by my learned friend with all the array of Government against us.

Solicitor General: I hope that this will be conducted with every impartiality. It is conducted by the Public Prosecutor, and I appear here on the part of His Majesty, who represents the public. This prosecution is conducted by me, representing the *Attorney General*.

Phillips: I do not understand this. In every case of a criminal trial there is a Public Prosecutor, who is the King nominally. But my learned friend knows as well as I do, or much better, that the *Solicitor General* does not come in on behalf of the public in this case, but that he comes here specially to-day on behalf of the Government with the Solicitor of the Treasury. I say this on account of the phrase of my learned friend that he appears for the Public Prosecutor, and as we have had so slight an opening in this case——

GASELEE, J.: Nobody can entertain a moment's doubt about it.

Solicitor General: I am surprised that any interlocutory discussion of this kind should arise, and that my learned friend should complain of my slight opening. Can it be doubted that I appear here in my official capacity as His Majesty's *Solicitor General?* Is it to be supposed that I intend to disguise that fact?

GASELEE, J.: There cannot be the slightest doubt of it. It is clearly a Government prosecution.

Solicitor General: Yes, my Lord, avowedly.

GASELEE, J.: Nobody ever had the slightest doubt upon it. An application was made to the judges stating there was a public prosecution, and requesting them to take it at a particular time(*a*); and nothing the *Solicitor General* has said could leave anybody to suppose that it was not. But I am quite sure that, so far from any com-

(*a*) May 18, 1833.—On arraignment at the bar of the Old Bailey the prisoner pleaded not guilty, and applied to be allowed to traverse to the next sessions, on his own affidavit that he had not had time to prepare his defence, and that the public excitement was such as would imperil him on his trial unless he was not hurried in his defence and was legally defended. Adolphus, for the prosecution, opposed the application, citing *Bellingham's* case.—(Shorthand Report by Fraser, Lond. 1812). The Court (Littledale, J., and Bolland, B.) granted the application.—The *Times*, 21st May, 1833.

plaint being made of the slight opening, the prisoner cannot complain of it. I never heard a more fair statement in the world than this—alluding to a Bill in Parliament,(a) as to which the *Solicitor General*, the organ of the Government, has taken a particular part as to a prisoner having counsel—" although, as the law now stands, I am entitled to make that statement, I will not do it;" which, of course, has given the prisoner the benefit of the proposal, either that the prosecutor's counsel shall not open, or that the prisoner's counsel shall address the jury.

Solicitor General: Then I am reproached for my slight opening!

Phillips: I think my learned friend's not opening, getting up ostentatiously and saying he would not do so, has done the prisoner harm, and I repudiate the clemency. This is the first time I have ever stood in this Court when the public officer did not manfully get up and avow it was a Government prosecution.

Solicitor General: I protest, with the utmost sincerity, and upon my honour as a gentleman, I did not know that it could be doubted for a moment by any individual in the Court that this was a Government prosecution, and that I appeared in my official capacity.

Phillips: Then it is not a *public* prosecution.

Solicitor General: Yes, it is.

By a *Juryman:* I wish to know how long it was after you received the wound before you lost your sight?—It was a minute or two afterwards, not more; but directly I received the wound I lost——

How long did this obscuration of vision last?—After I had been wounded I went home, and went to the doctor's in the street to get my wound dressed. I was some considerable time in the shop, and after that I went to the stable yard, and sat myself down. I was upwards of two hours in the yard before I was put into a coach to be taken home.

GASELEE, J.: That is not an answer to the question. The question the jury ask you is this: you lost your sight almost immediately?—Yes.

It was two hours before you got to the stable?—Yes.

How soon did you recover your sight?—Some considerable time after.

How long before you got to the stable?—I sat down in the shop, and they gave me something to drink.

How soon did you recover your sight?—An hour perhaps.

Had you recovered your sight before you got to the stable yard?—I had.

A *Juryman:* How long was it from the time of his being struck till he got to the surgeon's?—It might have been a quarter of an hour after getting through the crowd.

Had your sight left you the whole of the time?—I was with a sergeant the whole of the time conducting me; I was not able to go by myself.

GASELEE, J.: How near was *Redwood* to you when you were struck?—He was just on my left hand, about a pace or two.

[He had said or done nothing, to my knowledge before I was struck. The instrument was in the prisoner's right hand. He was carrying it down by his side, hanging his arm down with it in his hand. I did not observe anything in his hand till he raised his arm against me. I did not observe anybody trying to take the flag before I was struck. I did not try myself, nor demand it.

Henry Chance Redwood.—Examined by *Wightman.*

I am a police constable belonging to the C Division, and on the 13th of May I was at the Riding School in Gray's Inn Lane with *Brooke.* When I got to Calthorpe Street I saw a mob of people coming from the fields.

The prisoner had the flag. He held the staff in his left hand. His right hand was down in this manner in the first instance when I went up to him (holding his arm down by his side). He came out into the middle of the street. I left my rank, and went out towards the prisoner to get the colour from him, and in so doing heard Sergeant *Brooke* say "Oh!" That was before I got up to the prisoner. *Brooke* was in front of me then. The prisoner had just passed him at the time. I saw them close together. He had passed him at the time *Brooke* said "Oh!" He had passed him. The prisoner was close by the side of him. I advanced up to the prisoner, and demanded the colour of him. He refused to give up the colour. I told him I should take it from him. I then seized the flag with both hands. The moment I seized the flag I saw him raise his right hand with a blade in it, terminating with a sharp point, about six or eight inches in length. I then struck him with my staff for safety. He raised his hand from his side, and I raised my truncheon and struck him. In defending the blow I put my arm out. He lifted up his arm in this manner. I put up my left hand to defend myself, and he struck me through my left arm. That was before I struck him with the

(a) The Prisoner's Counsel Bill, see Hansard, Parl. Deb. 3rd series, 16, 1199, and 18, 607, and 6 & 7 Will. 4. c. 114.

truncheon. I struck him on the head with my truncheon somewhere, but where I cannot say. After I had struck him I collared him with my right hand on his left-hand collar. I never lost sight of him from the time he struck me till the time I took him in custody.

What sort of wound was it?

Phillips: I object to that on the ground that it is made the subject of another indictment that is to affect the prisoner's life,(*a*) and for this simple reason that I do not see why that which may place his life in jeopardy on a subsequent indictment should be drawn into this case for the purpose of aggravating the offence that is alleged to have been committed. There is a case decided that appears to me to be on all fours with this.(*b*) A man was indicted for having two forged Bank of England notes in his possession, and these two notes were made the subject of separate indictments. On this first indictment it was attempted by the counsel for the prosecution to give in evidence the fact that the second note was forged in order to bring home the guilty knowledge of the first. It was objected to, and held to be a good objection, that the second note was made the subject of a second substantive indictment. As the prosecution had the option either to prefer two or more indictments, and as they selected to prefer two, they should not draw in aid of the first indictment that which might show substantive guilt on the part of the prisoner in the second indictment. I submit, therefore, to your Lordships it is not fair to the prisoner, nor legal, to draw into this indictment anything concerning the second offence upon which the moment this indictment is disposed of the prisoner may be put in jeopardy of his life. And, therefore, I submit to your Lordship whatever guilt, if guilt there is, may be supposed to attach to the prisoner in respect of this man's wound, it is not to be brought in aid of the offence with which he is now charged upon another indictment. That case was before Mr. Baron Vaughan, and recognised by him in a subsequent case at Stafford.

Clarkson: I submit to your Lordships that, inasmuch as this may operate upon the jury's mind as to the conduct of the prisoner upon that occasion—which conduct, as far as it respects this individual, is the subject of another inquiry—it ought not to be gone into.

Solicitor General: I agree.

GASELEE, J.: You offer it as evidence to identify the instrument.

Solicitor General: Merely so.

PARKE, J.: That he was in the possession of some instrument?

GASELEE, J.: Brother Parke and I agree that as far as it is necessary to identify the instrument, which is the only object you have in view, it is evidence. I think it was a very different case as to the note. It was not to prove the commission of another offence, but a circumstance to prove that he knew it was a forgery. It did not at all apply to the act.

Solicitor General: In a forgery it has been decided by the judges that you may show that the prisoner had in his possession other forged notes.(*a*)

PARKE, J.: It is solely to identify the instrument.

Clarkson: Your Lordship will take a note of our objection.

GASELEE, J.: I had taken a note of your objection and your argument.

Wightman: What sort of a wound was it?—A three-edged wound?

Cross-examined by *Clarkson.*

Fursey was waving the flag and heading the others; he had the flag in his hand. He passed *Brooke* first; he was nearest to *Brooke* when I rushed forward to seize him.

Must *Brooke* have seen him wave the flag?—I know nothing about that. He was waving the flag and urging the people to come on.

Did he not say, "Come on, my boys?"—I do not say that. I could hear him shouting something. I was examined before the coroner. I am positive I told the coroner that I heard *Brooke* cry out "Oh!" That was after I left the rank. I had not advanced above one step when I heard it. I did not receive any order to advance. I was in the front line.

When before the coroner did you tell him that *Fursey* raised his arm as if to strike, and then you hit him somewhere on the head with your staff?—No, I did not. I have told you so now. I did not strike him till he struck me with the dagger or instrument.

Why omit to state that before the coroner?—I cannot say anything about that. It has not come to my memory on a sudden. I was sworn to make the statement before the coroner, and I did so. I was sworn to tell him all I knew, and I

(*a*) See above, note on p. 544.

(*b*) *Rex* v. *Smith*, 2 C. & P. 633; but see Roscoe's Criminal Evidence, 11th edn., p. 85.

(*a*) Even though of a different description (*Reg.* v. *Harris*, 7 C. & P. 429; *Reg.* v. *Forster*, Pearce & D. 456), and though themselves the subjects of separate indictments, *Rex* v. *Hough*, Russ. & Ry. 122; *Reg.* v. *Weeks*, 8 Cox, 455; *Kirkwood's* case, 1 Lew. C.C. 103; *Martin's* case, *ibid.* 104; *Reg.* v. *Aston*, Russell on Crimes, 2, 407; *Reg.* v. *Russell*, *ibid.* (8th edn. by Prentice, Lond. 1877).

told all I knew before the coroner, except striking him. On my oath, I did not purposely conceal that from the coroner. If I intended to conceal it, I should conceal it now. I did not state it there, nor at Bow Street, because I thought there was sufficient evidence without that.

Then you did recollect it?—I knew of it, certainly. If I had not omitted it, I should have said it. I omitted it because I thought there was sufficient evidence without, as I said before.

If you thought there was sufficient evidence without when before the coroner, and at Bow Street, why did you not omit it to-day, if you thought there was sufficient evidence without?—Because I am bound to speak the whole of the statement, and that was not required of me there. It was not asked me. I was sworn, but I was not asked whether I struck him or not. I was sworn to speak the whole truth.

And is it not part of the truth that you struck the man?—After he stabbed me. I state it now because I am here to state the whole particulars. I have not stated the whole particulars before. I did not suppress it to prevent anyone from knowing that I had used violence. It was before I got to the man with the colour that *Brooke* cried "Oh!" and I was one step in advance of the rank when I heard it. I saw the flag, and my intent was to take the flag from the prisoner.(*a*)

James Compton.—Examined by *Gurney.*

I am a police constable belonging to the C Division.

[I did not see *Redwood* stabbed, but I heard him exclaim he was stabbed. He had hold of the prisoner at the bar. The prisoner was taken to the White Horse Livery Stables.

Cross-examined by *Phillips.*

There was scuffling at different parts of the street between the police and the people. Stones were thrown, I saw one man hit with a short stick loaded with lead. I did not search *Fursey* when brought to the stables.

Henry Holland, a policeman belonging to the C Division, described the scuffle between *Redwood* and the prisoner.

William Hales, a police constable.—Examined by the *Solicitor General.*

I was in the White Horse Livery Stables on the 13th of May when *Fursey* and the two *Tillett*s (*b*) were brought. They were taken to the further stable, to which I had taken a truss of straw on which I had been sitting, and they sat themselves down on the litter and leaned back against the truss of straw. They were then taken out and put into the coach-house.]

Did you observe anything in the stable?—I did.

When was it?—It was near as I can say of the time about ten minutes after the prisoners were taken away. I saw part of a book that appeared to me part of a penny publication.

Where was it?—It was lying on the litter.

Did you go into the stable?—I did.

What did you then do?—I turned the heap of straw over, and there I found a dagger and a pistol and a powder flask.

Had the dagger, pistol, and powder flask been there when you placed the truss of straw?—I did not see them.

Was it light enough for you to have seen them there if they had been there?—Yes.

Do you think it possible that they could have been there without your observing them?—I do not think it possible.

Had there been any person in the stable from the time you put down the truss of straw until you discovered the powder flask, pistol, and dagger?—No.

Have you got the dagger?—Yes.

Produce it. [The witness produced a dagger.]

Cross-examined by *Phillips.*

Just hold it up. Would it not be difficult for a man to secrete that after he had been stabbing another, he being caught in the act? Does it not occur to you that it would be rather difficult for a man caught in the act of stabbing to conceal it in his pocket in a moment? Do you think he could do it easily?—No.

Why did you not search the prisoner when he was brought in?—I had nothing to do with him.

Was there anything to prevent the two constables searching him?—No, not that I know of. I was not upon their duty. I do not know what their duty was.

Was there any person in before the prisoner was brought in?—Yes, I think there was. My firm belief is there was one sitting on a chair.

Were you not to keep the door?—No. There was a police constable there besides me, in uniform.

Were you in uniform?—No, I was not.

What were you doing there?—I had been sent there.

Is the police constable here that was to keep the door?—I do not know that he is.

(*a*) Old Bailey Sessions Papers, pp. 543, 545, 547, 548.

(*b*) Two prisoners brought in with Fursey.

Had you seen him at the door?—I saw him at the door of the stables.

You knew who he was? Tell us his name?—I do not know that I can. He was there so short a time.

What was his number and letter?—I cannot say.

Were you inside the stable when the prisoner was brought in?—Just inside the door.

As you have said, it was so light you could tell whether the dagger and pistol and powder flask were there before. Could you not see whether there was a human being there?—To the best of my belief there was one sitting in a chair.

You were in the stable?—I was at the door after the prisoners were begun to be brought in.

Was it light within the stable?—Certainly.

PARKE, J.: Where was the chair?—Under the window.

Phillips: Then it was in a light situation? Was there a person under it?—I think there was.

Do you know whether there was or was not?—I think there was.

Do you know whether there was or was not?—To the best of my belief there was.

Have you any doubt there was not one?—No.

Did you not see a person sitting in the chair?—I was not aware he was the prisoner.

Who is using the word "prisoner" to you? Did you see a person sitting in the chair?—To the best of my belief there was.

You have sworn this instant there was. Was there or was there not?—I cannot say positively, to the best of my belief there was.

Did you not swear this instant that there was; which do you mean to abide by? Did you not swear there was positively? Did you see the chair?—I did.

Was there a person seated on it?—I saw the chair.

Was there a person seated on it? Can you tell me whether it was empty or a human being was sitting on it?—We were in such a bustle that it is impossible to say. I do not know whether it was the prisoner or not.

That did not prevent you seeing the chair?—No.

Was there a person in it?—Not when I noticed it the first time.

Did you look at it two or three times?—Yes.

Was there anyone on it the first time you saw it?—No.

Was there anyone the second time?—Yes, police constables were sitting in it afterwards.

How came you to use the words, you did not know it was the prisoner sitting in it, if it was a police constable?—It was before the row or the riot began.

Did they go out afterwards?—Yes.

After that was there anybody in it?—I cannot say.

[Two prisoners were brought in at the same time as *Fursey*.]

Was the dagger in the sheath?—Yes, just as it is now.

He must have sheathed it and concealed it in his pocket?—He must either have sheathed it before he got into the stable or afterwards.

Did you at last take it into your heads to search the young man?—I believe he was. I had nothing to do with it.

Were you present?—No, I was not present.

Show me the dagger. Was it upon the litter you placed the straw?—Yes.

Litter for horses?—Yes.

Horse straw?—Yes, for a horse to lie on.

Is the dagger the same as you got it?—Except a mark on the handle.

As bright as it is now?—Yes.

John Brooke recalled.—Examined by the *Solicitor General.*

You say that you observed in the hand of *Fursey* a dagger with a brass handle?—I did.

Just look at that (handing him the dagger produced)?—It was a dagger like this. I cannot swear to this being the one. It was a dagger similar to this.

Cross-examined by *Phillips.*

Phillips: What kind of coat had *Fursey* on, the same as now?—Not the same colour.

Was it the same kind of coat except the colour?—Yes.

The same shape?—Yes.

It was of that sort?—It was a ragged sort of coat he had.

Was it a coat of that make?—To the best of my belief it was.

A large great coat with large pockets?—I saw none.

Is the person here that searched *Fursey?*—I do not know.

Re-examined by the *Solicitor General.*

Solicitor General: Do you know of his having been searched?—No, I do not.

Look at *Fursey?*—That is not the dress he wore.

Phillips: I object to the question, because my learned friend has already got—I do not think it fair on the part of the Crown to pursue this course—my

learned friend has got this man, *valeat quantum*, as far as he could to identify the prisoner. The only question I asked as to his coat was not to dispute his identity, but to ascertain whether he had a coat of a description to conceal an instrument of this sort. The answer of the witness is that it was the sort of coat he has on, but that the colour was different. My reason for asking was, not doubting the identity, but as to the power of concealing such a weapon. I submit my learned friend has no right to question the man, and say, have you any doubt that is the man, as a sort of finish to the case.

Solicitor General: My learned friend has asked him whether the coat was of the make of the one he has got on, and if it was with a view to question the identity of the prisoner, I submit to the Court I have have a right to re-examine upon it, the tendency of such a question certainly was to doubt the identity of the prisoner, and, being so, I have a right to re-examine the prisoner.

Phillips: I have merely to say that my learned friend would be right in the abstract principle if he had coupled it with any facts for it, but I asked had he such a coat with long pockets as to conceal the weapon?

GASELEE, J.: What is the object of it but to raise a doubt of the identity?

Phillips: No, my Lord; I would not be foolish enough to question the identity of a man taken upon the spot, but the question was whether they were not mistaken in supposing he had the dagger.

PARKE, J.: The question now going to be asked is upon that.

GASELEE, J.: The question is fairly put, whether having had on another coat he is the same person. I do not think a person has a right to put the question after all that this witness has said in a case of this sort. Have you any doubt?

PARKE, J.: Particularly when a doubt is raised as to his being the man that had the dagger.

Solicitor General: Can you state who the person was that you saw holding that dagger?

Phillips: I object to that question. The witness has never ventured to swear he saw him hold that dagger.

Solicitor General: I mean the dagger he has been speaking of. Can you state who the person was that you saw holding the dagger that struck you?—The prisoner at the bar struck me with a dagger similar to that lying on the table.

PARKE, J.: Did you observe at the time the prisoner's head or face to see whether there was any mark of blood upon it?—I never saw any blood of any description upon any man.

Did you take notice whether the prisoner's face was bloody at any time?—It was not bloody at that time.

Henry Chance Redwood recalled.—Examined by the *Solicitor General*.

You say you observed in *Fursey's* hand a dagger with a brass handle, just look at that (handing a dagger to the witness)?—This is about the length of the blade, but I cannot say whether it is the instrument or not. It was a blade similar to this in length.

Clarkson: I submit to your Lordships that upon many of the counts of this indictment there is no evidence whatever.

PARKE, J.: There is no proof of any act committed by him, or any attempt to apprehend him in consequence.

Solicitor General: No, my Lord.

PARKE, J.: The third, fourth, and fifth(*a*) counts are out of the question.

Solicitor General: Yes, my Lord, entirely. It rests upon the first and second.

Phillips: Then if these counts are out of the question, perhaps it is premature to raise any objection. Your Lordships will say whether it is premature at present, but the abandonment of those counts considerably varies the case.

GASELEE, J.: This case not having been opened has thrown a difficulty upon the Court—without presuming to say it ought not to have been the course, considering the state of the matter; I am thinking of the inconvenient situation in which the Court is placed. Parties, I think, should act upon the law as it stands. The usual course is for the counsel for the prosecution to state the facts without reasoning upon them, and such facts as may lead one's attention to that which may be the real question of law in the case. But if a contrary course is to be adopted, and an opening is to be done without, we shall be in great difficulty at the end of the cause.

Solicitor General: If I felt myself at liberty to address the jury I should have pointed out the first and second counts.

PARKE, J.: That is the great difficulty in not having an opening speech. If there is a speech without any observations, I think it beneficial.

Phillips: Yes, my Lord, and your Lordships have now also an additional reason why I expressed my surprise at it.

Solicitor General: The case for the prosecution is concluded.

GASELEE, J.: Prisoner, you have heard the witnesses examined on the part of the prosecution. As the law now stands, your

(*a*) See above, p. 545.

counsel are not permitted to address the jury upon the facts of your case. Whether the law will ever permit it, it is not for us to say. There was no statement made by the prosecutor. Therefore, you so far stand upon equal terms. Your counsel can examine any witnesses they please, or you may read, or have read, any observations you wish to make upon the facts of this case, or make any observations you please.

STATEMENT BY THE PRISONER.

The prisoner delivered in the following paper, which was read:—

My Lords and gentlemen: I am so overpowered by my situation and the fatigue I have undergone, being in ill-health, that I feel incapable of making such a defence in the way of address to you as my case would admit of, therefore I prefer submitting to your better judgment from the mouths of my witnesses a full statement of my case, from which I have no doubt you will see just reason to conclude that the aggressors throughout were the police constables, whose conduct from beginning to end I am sure will turn out to have been wanton, brutal, and savage; and but for their misconduct no riot or disturbance whatever would have taken place. My life is in your hands, gentlemen, I am sure you will do justice between me and my prosecutors.(*a*)

EVIDENCE FOR THE DEFENCE.

Nathaniel Stallwood.—Examined by *Phillips.*

I am a gentleman living on my own fortune, and residing at No. 13, Calthorpe Street. My house commands a view of the field upon which the meeting was to be held, Calthorpe Street, the "Union" public-house, and all the avenues leading to it. On the 13th of May, about half-past two o'clock, I was on the balcony of my house. Until the appearance of the police there had been no disturbances. The first division of the police came from Gray's Inn Road, and halted immediately in front of my house. I observed a body of police come out of the "White Horse" livery stables and go into Gough Street. They halted at the corner of Collingridge Buildings. I heard orders given to draw their staves. They were about 700 or 800. An order was then given to the Gough Street body to charge. Both bodies charged, making for the chairman, and knocking down indiscriminately everyone whom they met. Up to that time no order had been given to disperse, and the Riot Act had not been read or proclamation made. No disturbance or breach of the peace had up to that time taken place. I was so indignant that I addressed the C Division and begged them that as the Riot Act had not been read nor a proclamation calling on the people to disperse made, to take the people into custody, if they were doing wrong, and not to knock them down. I thought they were rather intoxicated.

Cross-examined by the *Solicitor General.*

I was formerly a justice of the peace for Middlesex. I held the office for three or four months. I was superseded on the representation of the select vestry of the parish of St. Pancras. I was once tried for riot and assault and acquitted. I was also tried for an assault and fined 10*l.*(*a*)

Did you know there was to be a meeting on the Calthorpe Estate the 13th of May?—No, not until my groom informed me on the Sunday previous there was a proclamation on the prison walls, and then I went and read it.

On what day of the week was the 13th?—On a Monday.

Did not the proclamation caution the people from coming to that meeting?—I considered it not a proclamation, because it was not signed.

Because it was not signed, did you consider it was to be disregarded?—I did.

Did it not caution persons coming to the meeting on the following day?—It cautioned persons from holding any illegal meeting.

Did it not state that the object was to adopt preparatory measures for holding a National Convention as the only means of obtaining and securing the rights of the people?—It did.

Did it not state that a public meeting for such a purpose would be dangerous to the public peace, and be illegal?—I think it very probable it did.

Did it not so state it, according to the best of your recollection?—Yes; it is there to be read.

Phillips: If my learned friends are not ashamed of the document, let them put it in.

Solicitor General: Did it not warn all classes of His Majesty's subjects?

Phillips: We must take a short step here. This is the third objection I have been obliged to make. My learned friend has got the document here, and is examining from it. Whether he is ashamed to read

(*a*) Old Bailey Sessions Papers, 1833, p. 553.

(*a*) See the *Times*, 20th May 1833.

it, I do not know. It is now in evidence before your Lordships that what the gentleman read was in print. I submit that the document must be produced before anything is said of its contents.

Solicitor General: I humbly apprehend that we are not bound to bring the walls of Cold Bath Fields Prison here, and that that which was posted up there may be given in evidence as verbal testimony, and that I have a right to cross-examine him as to what he read, just as I might ask him the inscription upon any flag.

GASELEE, J.: I think it was so held at Lancaster in Mr. *Hunt's* case. They were allowed to give evidence of the oath taken.(*a*)

Phillips: Certainly; there could have been no objection to that. The best evidence here would have been what appeared on the walls. But this must have originated somewhere. I do not know whether the parties who have the original think it prudent or discreet to withhold it. But if this came from the Government—and this is a Government prosecution—it must have come from the prosecutors. I am astounded almost to find this course resorted to on the part of the Government, when there is no person around the Court that does not see the document lying before them.

GASELEE, J.: That is not the document posted on the walls.

Solicitor General: The only question is this——

GASELEE, J. (reading the decision in *Hunt's* case upon the admissibility of parol evidence): "An indictment against A. B. and others of a meeting, parol evidence of inscriptions may be received without producing them."

Phillips: Because there are no copies of them.

Solicitor General: This has been affixed to the wall.

PARKE, J.: The usual mode is by producing a copy, and asking whether it is correct.

Solicitor General: If my learned friend wishes the document to be put in, I have no objection to it.

PARKE, J.: I will not say it is not admissible, because the thing is affixed to the wall.

(The placard was handed to the witness.)

Solicitor General: Is that a copy of what you saw on the wall?—It is.

Read it, if you please.

[It was to the following effect:—

"Whereas printed papers have been posted up and distributed in various parts of the metropolis, advertising that a public meeting will be held in Coldbath Fields on Monday next, May 13th, to adopt preparatory measures for holding a National Convention as the only means of obtaining and securing the rights of the people; and whereas a public meeting holden for such a purpose is dangerous to the public peace and illegal, all classes of His Majesty's subjects are hereby warned not to attend any such meeting nor to take any part in the proceedings thereof.

"And notice is hereby given that the civil authorities have strict orders to maintain and secure the public peace, and to apprehend any persons offending herein, that they may be dealt with according to law.

"By order of the Secretary of State."]

There was a copy of this stuck up against the walls of Cold Bath Fields Prison?—And is there now.

And was there the 13th of May?—Yes.

You thought this not being signed was to be disregarded?—Yes.

That is your opinion?—Yes, as it does not specify what Secretary of State.

And perhaps you thought there would be nothing illegal in such a meeting?

Phillips: What signifies what Mr. *Stallwood* thought?

Solicitor General: I may ask this to try the credit of the witness.

PARKE, J.: Certainly.

GASELEE, J.: He has said it was to be disregarded.

Solicitor General: Did you consider a meeting to consult upon preparatory measures for holding a National Convention as the only means of obtaining and securing the rights of the people would be an illegal meeting?—I never considered the question at all, because there was a meeting held by Mr. *O'Connell* with ten times the number, and the peace was not broken.(*a*)

Was that a meeting to adopt preparatory measures for holding a National Convention?—I do not know what its object was.

[Witness saw a flag with a death's head and cross bones. He saw the American flag unfurled. *Mee* was declared chairman.]

Did he (*Mee*) say anything about the taking care of his wife and children?—Mr. *Mee* addressed the meeting, desiring them to be peaceful and quiet, for it was of essential importance to their cause that it should be conducted with peace and quietness.

I asked you whether he said anything about his wife and children?—I am coming to that—and that he was very much obliged to the Whig Government for advertising their meeting, for it gave

(*a*) 1 St. Tr. N.S. 492.

(*a*) In December 1830, in Dublin; see Ann. Reg. 1831, 304.

them an importance they did not possess. He then halted, and he was desired by the people to go on. He appealed to the people to know if they were prepared to sacrifice one tenth of all their earnings to support his wife and family.

[It was proved by other witnesses that some of the police constables behaved with great violence, though none of them spoke to any violence used by the prosecutor or *Redwood*; and it was stated by one of the witnesses for the defence, Mr. *Courtney*, on his cross-examination, that he saw a death's head and cross bones on one of the flags and the inscription "Liberty or Death." and it was also proved on the cross-examination of another of the witnesses for the defence, Mr. *Carpenter*, editor of the *True Sun*, that he knew of the intended meeting before he went to the ground, as he had seen it stated to be the intention of the meeting to establish a National Convention; that he had seen it stated in various publications, advertisements, and bills; and he further stated that it was notorious.(*a*)]

Solicitor General: I beg your Lordship's permission to call back *Redwood*.

Phillips: This witness has been in Court during the entire time of the examination of the prisoner's witnesses.

Solicitor General: It is quite new to me that there should be any objection. I am surprised at the objection taken.

Phillips: As to your surprise it signifies nothing. Beyond all question the usual custom is not to examine those who have been in Court when there has been an order that they should be sent out, and my learned friend was aware of that, for the first question he put to Mr. *Stallwood* was, Have you been in Court? My learned friend proposes to call a witness to contradict ours—one who has been in Court during the entire time of the examination. It is true he has been so, and we made no objection; but my learned friend should have told us in common fairness he intended to call him again. He could not perhaps anticipate what the witness has stated; but when he found that the witness was stating facts he intended to call *Redwood* to contradict, he ought to have called our attention to it. *Redwood* stays in Court, and knows what he has to contradict. See the situations in which our witness stands! We have called our witness to contradict what that witness swore, and I say let not this *Redwood* who has heard every word come up to contradict our witness.

PARKE, J.: It is competent to call a witness to contradict anything incidentally arising. Yours was to prove a fact.

GASELEE, J.: Are you about to call *Redwood* to reswear what he has already sworn, or to contradict something that this man has said?

Solicitor General: To contradict what he has said.

PARKE, J.: It can only be for that.

GASELEE, J.: It is the rule of law with respect to people who are in Court, unless the judges make some order to the contrary, there is no legal objection to their evidence—if it is by accident without any design. That has been done upon this occasion which has been done upon others. The witness has been allowed to stay in Court. Therefore the Court will, unless it sees there is any improper course taken, admit his evidence.

[*Redwood* was re-called to prove that he was sober, and that he never raised his truncheon until he was stabbed.]

At five minutes to eleven o'clock Mr. Justice *Gaselee* commenced his summing up to the jury.(*a*)

SUMMING UP.

GASELEE, J.: The question for you to consider will be, whether there was sufficient provocation to reduce the offence of the prisoner below the crime of murder, if death had ensued; and although it is not mentioned in the indictment, you are at liberty to inquire whether the meeting was an illegal meeting or not; for if it was, the police would be justified in taking away the flag; but if the meeting was not an illegal one, then they would have no right to take the flag away from the prisoner. Taking it that the meeting was a legal one this question will arise, whether the taking away of the flag was a sufficient provocation to justify the prisoner in striking with such a deadly weapon; and it makes a great difference whether a man under provocation takes up a deadly weapon on the sudden, or whether he goes out with the weapon in-

(*a*) "For several days past large placards have been distributed throughout the metropolis, by order of the Committee of the National Union of the Working Classes, and signed by *John Russell*, the secretary, intimating that a public meeting would be held on the Calthorpe Estate, Coldbath Fields, on Monday next (this day), to adopt preparatory measures for holding a National Convention as the only means of obtaining and securing the rights of the people."—The *Times*, 13th May 1833.

(*a*) Annual Register, 1833 (Law Cases), p. 327. His Lordship during his summing up was twice informed by the majority of the jurors that they had no wish to trouble his Lordship; but on each occasion one juror expressed his wish that his Lordship should proceed.—The *Times*, 5th July 1833.

tending to use it to prevent the taking away of the flag. It will be for you to say whether the conduct of the prisoner showed that malignity of purpose which would, if death had ensued, have constituted the crime of murder. If you are of opinion that he took this deadly weapon with an intention to resist, under all circumstances, the taking away of the flag, I feel justified in telling you, and I believe that my learned brother will agree with me, that, if death had ensued, the crime of the prisoner would not have been less than the crime of murder; however, you ought also to consider whether there was sufficient provocation before the blow was given to reduce the offence, had death ensued, to the crime of manslaughter. A great deal has been said of the impropriety of sending out policemen in plain clothes.(*a*) I own that it does not strike me that there is any impropriety in it; for those who have to prevent disturbances, would not do their duty if they did not take every means of discovering the persons who were concerned in them. For, although it would be improper, as suggested on the part of the prisoner, if persons were sent out to lead others into the commission of offences; yet when the object is to prevent the commission of crime, parties would not do their duty if they did not take every means of finding out the parties concerned by sending those in among them who might be able to make the discovery.

On the part of the prisoner a great deal of evidence has been given to show that the conduct of the policemen was very violent and very outrageous. You will have therefore to consider whether their conduct was a sufficient provocation to the prisoner to resist as he did, or whether, from the fact of his having taken the weapon out with him, there was that malignity of purpose which would have made the offence of the prisoner amount to murder, if death had ensued.

It appears from the evidence of Mr. *Stallwood* that the proclamation contained in the Riot Act was not read. Now, a riot is not the less a riot nor an illegal meeting the less an illegal meeting because the proclamation of the Riot Act has not been read, the effect of that proclamation being to make the parties guilty of a capital offence if they do not disperse within an hour; but, if that proclamation be not read, the common law offence remains, and it is a misdemeanor(*b*); and all magistrates, constables, and even private individuals, are justified in dispersing the offenders; and if they cannot otherwise succeed in doing so, they may use force. I do not lay down this as the law for the first time; the law has been so laid down by the judges on the special commissions.(*a*) There has also been given in evidence a proclamation issued by order of one of the Secretaries of State; and in that proclamation it is stated that printed papers have been posted up, advertising that a public meeting would be held to adopt preparatory measures for holding a National Convention. Now, that proclamation is not evidence that the meeting was to be held for the purposes there mentioned. It is, in effect, only a notice given by the Secretary of State, and is evidence in this case in no other way; but, if placards convening the meeting were posted up, stating that the meeting was for those purposes, then it is an illegal meeting. If it was intended by force to make any alterations in the laws of the country, that would be a much more serious offence, as it would be high treason. The proclamation states it to be an illegal meeting, and commands all constables and others to disperse it. If such a notice be given, and a party chooses to treat it as of no effect, he does it at his own risk.(*b*)

Clarkson, for the prisoner: The Solicitor General did not offer any evidence to show that this proclamation was issued by the Secretary of State.

Gaselee, J.: That is true; but, without any proclamation at all, if a meeting is illegal, a party who attends it knowing it to be so is guilty of an offence. There may be a difficulty in saying in what way this meeting was illegal, but it was either illegal as a misdemeanor or a higher offence; and, whichever it was, it justifies the dispersion of the meeting. One of the witnesses has stated that the purpose of the meeting was to adopt preparatory measures for holding a National Convention, and that that was generally known. If you think that the meeting was held for the purpose of adopting preparatory measures for the holding of a National Convention, then the police had a right to interfere, and arrest the parties. The first question will be, whether the prisoner was the person who gave the wound to the prosecutor *Brooke*? And the question

(*a*) The suggestion was that police spies in plain clothes fomented the disturbance.

(*b*) See Appendix C.

(*a*) The special commissions issued in 1832 for the trial of the Bristol and Nottingham rioters. See above, p. 1.

(*b*) "If after such a notice as that parties choose to treat it as deserving of no regard, but actually do attend a meeting of this description, they must take the consequences and be liable to the punishment to be inflicted upon parties so conducting themselves."—Shorthand Notes.

will then be, whether there was such provocation as would have reduced the offence to the crime of manslaughter if death had ensued? If you are of opinion that the prisoner, having taken the flag in his hand, had prepared the weapon with a view of protecting it under all circumstances, then I own it appears to me that there are not those circumstances which will reduce the crime, so as that, if this person *Brooke* had died, it would not have amounted to murder. If you think that the prisoner, previous to his going out, prepared a deadly weapon to resist any attempt to defeat the object of the meeting, or to prevent himself from being deprived of the flag which he carried, I am bound to tell you that I think the offence has been proved.

A *Juryman:* Before we retire will your Lordship let me ask a question? The only evidence as to the character of the meeting is that to which you have referred given by Mr. *William Carpenter*. His evidence goes to show that it was notorious that a meeting was to be held, but not for that purpose; and there is no evidence put in, I believe, in any form, not even a copy of the advertisements or placards which the getters-up of this meeting had issued, so that we cannot gather it from the meeting itself, Mr. *Carpenter's* evidence only referring to that. Are we to consider it an illegal meeting as a matter of course, because it is so pronounced in the proclamation by the Secretary of State?

PARKE, J.: Certainly not.

GASELEE, J.: No, I have stated that Mr. *Carpenter* says what was the object of the meeting.

PARKE, J.: He does not state the proclamation but the placards. The placards have not been put in.

Another *Juryman:* Then the legality of the meeting we are not to decide upon?

GASELEE, J.: If the meeting was legal, then the arrest was improper. Then the question is whether the resistance to the arrest was proportioned to the attempt made to arrest. It is not because a man attempts to arrest you wrongfully that you are to kill him with an instrument prepared for the purpose of supporting you in what you are about to do. The question would be, whether that instrument was prepared to resist any attempt to oppose them at all hazards, or whether it was under those circumstances which, according to your honest opinion, would justify you in saying he did not do it with that intent. If he did, in point of law I have told you the consequences. You will consider your verdict. If there is any information I can give you I shall be happy to do it. They have not given in the placards, but one of the witnesses has said what the object of the meeting was.

His Lordship concluded at twenty minutes after one o'clock, when the jury retired to consider of their verdict.

At twenty minutes past two the jury returned into court, and the foreman, addressing the judges, said, "My Lords, we have, as your Lordships are aware, given not only long, but close and anxious attention to this case, and have, since we retired, considered with all the care which it was possible to bring to bear upon it, the evidence on both sides, and we cannot on such evidence conscientiously pronounce any other verdict than Not guilty."(*a*)

Verdict, not guilty.

(Attornies: *Maule & B.*, and *Harmer & Co.*)

MATERIALS MADE USE OF.—The report is partly taken from 6 Carrington and Payne's Nisi Prius Reports, p. 81. The shorthand notes in the possession of the Solicitor of the Treasury, the evidence in the Old Bailey Sessions Papers, and the report in the *Times* of 5th July 1833 have also been made use of.

(*a*) Annual Register, 1833 (Law Cases), p. 327. "The announcement was received with a general burst of applause, which it was impossible to stem within the walls of the court, and without, the applause, even at this late hour, was, to say the least of it, deafening."—The *Times*, 5th July 1833, and Place MSS. 27, 797, f. 214.

DICAS *against* LORD BROUGHAM.

ACTION OF TRESPASS BY JOHN DICAS AGAINST LORD BROUGHAM, L.C., BEFORE LORD LYNDHURST, C.B., AND A SPECIAL JURY, DECEMBER 3, 1833, IN THE COURT OF EXCHEQUER AT WESTMINSTER. (Reported in 6 C. & P. 249; 1 M. & Rob. 309.)

The Lord Chancellor sitting in bankruptcy committed Dicas to prison for contempt of an order in bankruptcy. Dicas brought an action against the Lord Chancellor for the imprisonment. The only plea was the general issue. It was argued at the trial that the order of commitment was erroneously made.

Ruled by Lord Lyndhurst, C.B.

1. *Jurisdiction to commit for Contempt in Bankruptcy.*

The Lord Chancellor, sitting in bankruptcy under 6 *Geo.* 4. c. 16., could, by virtue of his authority as Lord Chancellor, commit for contempt.

2. *Trespass—Judicial Act.*

No action lies against the Lord Chancellor for an order (even though erroneous) made in the exercise of his judicial authority in a matter within his jurisdiction.

3. *Pleading—General Issue.*

The general issue sufficed inasmuch as no action could lie.

Westminster, December 3, 1833.

Before Lord LYNDHURST, C.B., and a Special Jury.

[*Gunning* opened the pleadings(*a*):—

Middlesex, to wit.—Be it remembered that on Thursday, the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and thirty-three, John Dicas, gentleman, the plaintiff in this suit, one of the attornies of this Court, complained of the Right Honourable Henry, Baron Brougham and Vaux (the defendant in this suit), who had been summoned to answer the said John Dicas of a plea of trespass, for that the said Baron, on the nineteenth day of April, one thousand eight hundred and thirty-one, with force and arms made an assault on the plaintiff, to wit, in the county of Middlesex, and then and there ill-

(*a*) Plea Roll, 4 Will. 4, Michaelmas Term.

treated and imprisoned the plaintiff, and detained him in prison there without reasonable and probable cause, for sixteen days next following, contrary to law, and against the will of the plaintiff, whereby the plaintiff was not only prevented from attending to and transacting his necessary affairs and business as an attorney and solicitor during all that time, but necessarily expended seventy-two pounds in obtaining his release from such imprisonment, and was greatly injured in his profession, underwent great anxiety of mind, and was reduced with his family to great distress, poverty, and ruin, to wit, in the county aforesaid. And for that the said Baron on the said nineteenth day of April, and on divers other days between that day and the commencement of this suit, with force and arms again ill-treated and imprisoned the plaintiff, to wit, in the county aforesaid, and other wrongs to the plaintiff then and there did, against the peace of our Lord the King, to the plaintiff's damage of ten thousand pounds, and therefore he brings his suit, &c. *Plea*—And the said defendant by Joseph Blower his attorney comes and defends the force and injury when, &c., and says that he is not guilty of the supposed trespasses above laid to his charge in manner and form as the said plaintiff hath above thereof complained against him, and of this he, the said defendant, puts himself upon the country, &c. *Replication*—And the said plaintiff doth the like.

The case was opened by *Platt*,(*a*) for the plaintiff, that a commission of bankrupt had been sued out against a person named *Nokes*, and that the plaintiff was solicitor to that commission; and that on the 12th of February 1831 the Vice-Chancellor (*b*) made an order directing the plaintiff to pay to *George Butler* and *Joseph Proctor* (the assignees) a sum of 56*l.* 13*s.* 11*d.*, and to deliver up books and papers. However, without any demand of either the money or books having been made on this order, the plaintiff was arrested under a warrant issued by the defendant as Lord Chancellor. At the time of this arrest the plaintiff was attending the argument of a motion for a new trial in the Court of Common Pleas in a case in which he was the attorney. This arrest took place on the 19th of April 1831, the warrant bearing date the 12th of March preceding. Immediately after this arrest the plaintiff was, at his own desire, taken before the defendant, who discharged him, and directed him to attend the Court of Chancery.(*c*) The plaintiff attended the Court of Chancery during nearly the whole of Easter Term, and, within a few days of the end of it, the Lord Chancellor having conferred with the Lord Chief Justices of the Courts of King's Bench and Common Pleas,(*a*) discharged the warrant for the committal of the plaintiff. By this the warrant was discharged, but not the order for committal on which the warrant was founded; and, on the last day of term, Sir *William Horne*(*b*) applied to the Lord Chancellor to discharge the order. This application was granted, with costs, which costs were to be deducted from the sum of 56*l.* 13*s.* 11*d.* The plaintiff supposed that this meant his entire costs, but the officers of the Court thought not; and, on the matter being again mentioned by Sir *William Horne*, the Lord Chancellor said that he intended it to include the entire costs, but after conferring with one of his officers he said he would consider of it; but since that his Lordship had never given any judgment. It was mentioned to the Lord Chancellor by Sir *William Horne* that the opposite party would go on, but his Lordship said that the proceedings would be stayed. However, notwithstanding this, the plaintiff wrote to Mr. *Vizard*, his Lordship's secretary of bankrupts, who informed the plaintiff that there was no stay of proceedings; and the plaintiff was again taken into custody on another warrant of the Lord Chancellor on the 22nd of September, under which he was imprisoned in the Fleet Prison till the 22nd of December.(*c*)

Having stated these facts, *Platt*, for the plaintiff, submitted that the Lord Chancellor had no authority to issue these warrants. By the 6 *Geo.* 4. c. 16, all former Bankrupt Acts were repealed, and by that statute no such authority is given.

(*a*) Afterwards a Baron of the Exchequer.

(*b*) Sir Lancelot Shadwell.

(*c*) "After the hearing was over Mr. Serjeant Bompas being informed of the plaintiff's situation, went with him and the tipstaff to the Lord Chancellor's Court, but his Lordship was up. They then went to the Vice-Chancellor, but his Honour refused to interfere with the Lord Chancellor's order, although he intimated an opinion that the arrest was illegal. Upon this they went to the House of Lords, where the defendant directed the plaintiff to be discharged upon an undertaking that he should appear the next day in the Court of Chancery."—The *Times*, Dec. 4, 1833.

(*a*) Lord Denman, Chief Justice of the Court of King's Bench, and Sir Nicholas Conyngham Tindal, Chief Justice of the Court of Common Pleas.

(*b*) Afterwards Attorney General and subsequently a Master in Chancery.

(*c*) "On the 10th August 1831 the plaintiff wrote to Mr. Vizard, the defendant's secretary, on the subject, and received an answer that there was no order of the Lord Chancellor for staying proceedings. Upon that very day the plaintiff was taken from his family by another warrant of the defendant and immured in a prison, where he remained three months."—*Times*, Dec. 4, 1833.