CASE OF THE SHERIFF OF MIDDLESEX.

PROCEEDINGS UPON A WRIT OF HABEAS CORPUS IN THE CASE OF THE SHERIFF OF MIDDLESEX, BEFORE LORD DENMAN, C.J., LITTLEDALE, WILLIAMS, AND COLERIDGE, J.J., IN THE COURT OF QUEEN'S BENCH AT WESTMINSTER, ON JANUARY 27, 1840. (Reported in 11 A. & E. 273, 3 P. & D. 349, 8 Dowl. P.C. 451, and 4 Jur. 70.)

To a writ of *habeas corpus ad subjiciendum*, &c. it was returned by the Serjeant-at-Arms of the House of Commons that he detained the prisoners on the following warrant, directed to him by the Speaker:—

"Martis 21° die Januarii, 1840.—Whereas the House of Commons have this day resolved that W. E. and J. W., sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this House, be committed to the custody of the Serjeant-at-Arms attending this House, these are therefore to require you to take into your custody the bodies of the said W. E. and J. W. and them safely to keep during the pleasure of this House, for which this shall be your sufficient warrant.

"Given under my hand, &c.

"CHARLES SHAW LEFEVRE, Speaker."

Commitment for Contempt by House of Commons—Jurisdiction of Court of Law.

Held by the Court, that—

1. A warrant of commitment by order of the House of Commons for contempt of the House need not specify the grounds of the order;
2. Whatever jurisdiction a court of law may have when the grounds are specified in the warrant, it has no jurisdiction to inquire into their existence or sufficiency when they are not specified, and in such case the return of the warrant is conclusive;
3. The Court will take judicial notice of the office of the Speaker of the House, and of his authority to give effect to its order;
4. The warrant was not vitiated by verbal defects.

January 23, 1840.—*R. V. Richards* moved for a writ of *habeas corpus* requiring Sir *William Gosset*, Knight, Serjeant-at-Arms of the House of Commons, or other person having the custody, &c., to bring before this Court the bodies of *William Evans*, Esq., and *John Wheelton*, Esq., with the day and cause of their being taken and detained, &c., to undergo, &c.

The motion was made on the affidavit of Messrs. *Evans* and *Wheelton*, sheriff of Middlesex, which set out the various proceedings in the cause of *Stockdale* v. *Hansard*, down to the return of the *venditioni exponas*.(a) It then stated that they had declined paying over to the plaintiff the money levied without an order of this Court, having been served by Messrs. *Hansard*, the defendants in the above-mentioned cause, with a notice informing the deponents of certain resolutions passed by the House of Commons on May 31st, 1837,(b) and August 1st, 1839,(b) and warn-

(a) December 19, 1839. See above, p. 947.

(a) See above, p. 737.

(b) These resolutions had reference to a report published by Messrs. Hansard under the orders of the House, respecting the islands of New Zealand and declared that "to bring or assist in bringing any action against them" (Messrs. Hansard) "for such publication would be a breach of the privilege of this House"; they also directed Messrs. Hansard not to defend an action with which they were threatened for publishing the report. See Com. Journ. 94, 502.

ing them that, if they proceeded in the levy, their conduct would be represented to the House, and they would become amenable to its authority, as expressed in the said resolutions. The affidavit then stated the service upon the deponents of the rule nisi granted by this Court on the first day of the present term, and the order of the Insolvent Debtors' Court(*a*); and that they were afterwards served with orders to attend the House of Commons, and bring with them all notices served upon them in respect of this cause, and all writs, rules of court, orders, or other authorities, &c., in obedience to which they had acted therein. That in obedience to such orders they attended the House and were examined at the bar touching the execution of the said writs, &c. That on January 21st the House resolved (as appears by the votes and proceedings) that the execution had been levied in contempt of the privileges of the House; and that the sheriff should be ordered to refund the amount,(*b*) and that *William Evans* and *John Wheelton*, Esqrs., sheriff of Middlesex, should be then called to the bar, and the resolutions communicated to them by the Speaker. That the deponents were then called to the bar, and the resolutions communicated to them by the Speaker, who acquainted them that, if they had anything to say to the House, the House was ready to hear it; whereupon the deponents withdrew. And it was further resolved (and appears by the votes and proceedings of the House) as follows:—

"That William Evans, Esquire, and John Wheelton, Esquire, sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this House, be committed to the custody of the Serjeant-at-Arms attending this House, and that Mr. Speaker do issue his warrant accordingly."(*c*)

The deponents then stated—

"that they were thereupon taken into custody of the Serjeant-at-Arms, Sir W. Gosset, Knight, for not paying over, as they believe, the said money in obedience to the said order; and they are informed, but of their own knowledge they do not know, that some warrant or other document has been made out by the Speaker of the said House of Commons, or some other person, under which the said Serjeant-at-Arms detains deponents in custody; but they further say that they have not, nor hath either of them, read the same or any copy thereof, or heard the same or any part read by any person whatsoever, but a paper purporting to be a warrant was shown to them these deponents. That they are not detained in the custody of the said Serjeant-at-Arms for or by reason of any cause other than for the matters aforesaid. That throughout the whole of the said proceedings in this cause, they have acted *bonâ fide* and to the best of their judgment as officers of this Court in the execution of the process of the Court. That they have been committed to the custody of the Serjeant-at-Arms of the said House by reason only, as they verily believe, of what they have so done in the discharge of their duty as officers of this Court, and in obedience to Her Majesty's writs, and to the rules and orders of the Court; and that they have been and are thus imprisoned and continued and kept in prison in order, amongst other things, that they may thereby be induced or compelled to pay back the said money to the said defendants in the said cause, instead of paying it over to the said plaintiff in the said cause, according to the writs, rules, and orders aforesaid. That they have throughout the whole of the said proceedings been earnestly desirous, and still are so, to do their duty in their said office faithfully to Her Majesty and to this Court, and that they are hindered and obstructed and put in peril and danger in so doing, in consequence of the said order to refund the said money to the said defendants, and by reason of their being imprisoned and detained as aforesaid. That they would not have been committed to custody at all if they had complied with the said order to refund the said amount to the said defendants."

The rule was granted and the writ issued in the usual form, returnable *immediatè*.(*a*)

(*a*) See above, *Stockdale* v. *Hansard*, p. 948.

(*b*) The printed votes and proceedings of January 21st 1840 contained the following resolutions of the House:—

"That it appears to this House that execution in the cause of *Stockdale* v. *Hansard* has been levied to the amount of 640*l.* by the sale of the property of Messrs. Hansard, in contempt of the privileges of this House, and that such money now remains in the hands of the sheriff of Middlesex.

"That the said sheriff be ordered to refund the said amount forthwith to Messrs. Hansard."—Com. Journ. 95, 16.

(*c*) Com. Journ. 95, 19.

(*a*) 3 P. & D. 350. The writ is set out at length in Com. Journ. 95, 25.

January 24, 1840.—The Serjeant-at-Arms informed the House that he had been served with the writ, and that he had not made any return, considering it his duty in the first place to receive the instructions of the House. Whereupon it was ordered "that the Serjeant-at-Arms attending this House be directed to make a return to the said writ, that he holds the bodies of the said William Evans, Esquire, and John Wheelton, Esquire, by virtue of a warrant under the hand of Mr. Speaker, by the authority of the House of Commons, for a contempt and a breach of the privileges of the House."—Com. Journ. 95, 25.

On the day following the service of the writ upon the Serjeant-at-Arms, R. V. Richards applied to the Court on behalf of the sheriff of Middlesex for an attachment against the Ser-

On Monday, January 27th, the Serjeant-at-Arms brought into Court Messrs. *Evans* and *Wheelton*, the sheriff, and made the following return (*a*):—

"I, the said Sir William Gosset, Knight, Serjeant-at-Arms of the House of Commons, in the writ hereunto annexed named, do hereby certify and return, in obedience to the said writ, that, before the coming of the said writ to me, to wit, on the 21st day of January, in the year of our Lord 1840, I did take into my custody, and have thenceforth always hitherto detained in my custody, and still do detain in my custody, the said William Evans, Esquire, and John Wheelton, Esquire, in the said writ named, under and by virtue of a certain warrant under the hand of the Right Honourable Charles Shaw Lefevre, Speaker of the said House of Commons, which said warrant is as follows:—

"Martis 21° die Januarii 1840.

"Whereas the House of Commons have this day resolved that William Evans, Esquire, and John Wheelton, Esquire, sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this House, be committed to the custody of the Serjeant at-Arms attending this House:

"These are therefore to require you to take into your custody the bodies of the said William Evans and John Wheelton, and them safely to keep during the pleasure of this House; for which this shall be your sufficient warrant.

"Given under my hand the 21st day of January 1840.

"(Signed) CHARLES SHAW LEFEVRE,
"Speaker.

"To the Serjeant at-Arms attending the House of Commons."

"And I do hereby further certify and return in obedience to the said writ, that the above is the cause of my taking and detaining in my custody as in the said writ mentioned, the said William Evans, Esquire, and John Wheelton, Esquire, the bodies of which said William Evans, Esquire, and John Wheelton, Esquire, I have here ready as in and by the said writ I am commanded.

"WILLIAM GOSSET."

R. V. Richards then moved that the return should be filed,(*b*) which being done, he moved that Messrs. *Evans* and *Wheelton* should be now discharged.

R. V. Richards, *W. H. Watson*, and *Kennedy*, in support of the motion: The present return is bad on three grounds. First, there is in fact no legal cause for the commitment. The Court may inquire into this, by stat. 56 *Geo.* 3. c. 100. Section 1, after a general recital that—

"the writ of *habeas corpus* hath been found by experience to be an expeditious and effectual method of restoring any person to his liberty, who hath been unjustly deprived thereof,"

and that—

"extending the remedy of such writ, and enforcing obedience thereunto, and preventing delays in the execution thereof, will be advantageous to the public,"

enacts—

"that where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit),"

a judge shall, on proper complaint, award a *habeas corpus*. Section 3 enacts that in all cases provided for by the Act, although the return to the *habeas corpus* be sufficient in law, it shall be lawful for the judge before whom it is returnable, to examine into the truth of the facts therein set forth, by affidavit or by affirmation, &c., and to do therein as to justice shall appertain, and if the truth of the facts returned appear to him doubtful on such examination, he may bail the party and transmit the writ, return, &c., to the court of which he is a judge, whereupon—

"it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit, &c., and to order and determine touching the discharging," &c.

Section 4 enacts—

"that the like proceeding may be had in the Court for controverting the truth of the return to any such writ of *habeas corpus*, awarded as aforesaid, although such writ shall be awarded by the said Court itself, or be returnable therein."

Now, an attachment for contempt is not a "criminal or supposed criminal matter" within the statute. The usual instances of contempt are nonpayment of money or disobedience of rules or subpœnas. In the present case it is clear that no criminal charge is in question. The words "criminal or supposed criminal matter" are adopted from the Habeas Corpus Act of 31 *Car.* 2. c. 2. sects. 1, 2. *Ex parte Beeching* (*a*) and *Hobhouse's* case(*b*) are among the cases which show how the words in that Act have been

jeant-at-Arms for not making a return to the writ. A rule was refused, Lord Denman, C.J., saying that there was "no sufficient ground at present for this application." 8 Dowl. P.C. 474.

(*a*) See the return set out in Com. Journ. 95, 30. See also Life of Lord Campbell, 2, 129 (ed. 1881, by the Hon. Mrs. Hardcastle).

(*b*) As to filing, see *Leonard Watson's* case, 9 A. & E. 731, 746, and above p. 976.

(*a*) 4 B. & C. 136; S.C. 6 D. & R. 209.

(*b*) 3 B. & Ald. 420; S.C. 2 Chitt. Rep. 207. According to the reports in 3 P. & D. 352, and 8 Dowl. P.C. 454, Richards also cited *Hawley* v. *Luscombe*, 2 B. & P. 530; Wilmot, Notes of Opinions, 109.

construed. In the latter case this Court refused to enter into the merits of the commitment, but there statute 56 *Geo.* 3. c. 100. was not brought to their notice, and the case is the only one, since that statute, bearing on the present question. *Burdett* v. *Abbot*(*a*) was before the statute. Then, if the Court may inquire into the truth of the facts, it is shown here, on affidavit, that the sheriff is committed for having acted in the lawful execution of process, and that the proceeding of the House of Commons is in opposition to the judgment delivered in *Stockdale* v. *Hansard*,(*b*) which, until reversed on appeal, is the law of the land. It may be said that the statute allows only an examination into the truth of the matters set forth in the return, and that the facts here relied upon for the sheriff are not so set forth. But it is not denied that the cause of committal is the refusal to pay back the money levied, and, if a return is so framed as to involve a number of propositions in one general averment, the Court will not therefore refuse to inquire into the whole truth. Otherwise a return of this kind might be advised in bad times for the very purpose of excluding the jurisdiction of a court of law. The affidavit here is not offered for the purpose of traversing the return (which, according to *Leonard Watson's* case,(*c*) might perhaps not be allowable if this were considered as a criminal matter), but of explaining it, and of showing what the supposed contempt is, by matter consistent with the return. Five of the ten judges who, in 1758, delivered their opinions to the House of Lords on the proceedings upon *habeas corpus*, do not deny that such affidavits may be used.(*d*)

Secondly, this return is bad, because it does not state the facts on which the contempt arises. It is true that attachments for contempt issuing out of this Court are worded generally, but in those the process always contains a reference to the cause in which it is issued, and the proceeding is one which only calls upon the party to answer and purge his contempt; it is not final and for the purpose of punishment like this commitment, which affords no opportunity of purging the contempt. If commitments in the present form be held good, the most obvious deprivation of justice may take place without remedy. They may be supported by some precedents, but precedent has been adduced, in former times, for exertions of prerogative which have since been deemed clearly unjustifiable, as in Sir *Thomas Darnel's* case(*a*) and the case of *Shipmoney*.(*b*) But there are only three precedents of parliamentary commitments which have been supported where no grounds were set forth. The first is in *Streater's* case,(*c*) which, from the absurdity of the reasons by which the commitment was upheld, cannot be considered of any weight. The next occurs in the Earl of *Shaftesbury's* case,(*d*) which was decided in bad times, and is not a precedent by which any subsequent decision can be supported. The proceedings of the House of Lords against the Earl were, by the House itself, in 1680, declared unparliamentary, and ordered to be vacated in the journals, that they might never be drawn into a precedent.(*e*) Yet they were, at least, so far justifiable, that Lord *Shaftesbury* was a member of the House, and the alleged contempt was committed in one of their sittings. This last circumstance was noticed in *Regina* v. *Paty*(*f*) by *Holt*, C.J., who did not, like the other judges, yield to the authority of the Earl of *Shaftesbury's* case.(*d*) The third instance, and the only one since the Revolution, was in *Alexander Murray's* case.(*g*) There, indeed, two of the judges,(*h*) one of whom relied on the case of Lord *Shaftesbury*,(*d*) said that, even if the contempt had been specified, this Court could not judge of it; but the third, *Foster*, J., appears to have relied upon the circumstance of the contempt being committed "in the face of the House." And the particular point now in question does not seem to have been taken at the bar. In more modern cases the grounds from which the contempt was deduced have always been stated. It was so in *Brass Crosby's* case,(*i*) though *De Grey*, C.J., said there (as appears from *Wilson's* report (*j*) that a return stating the breach of privilege generally would be sufficient; but he seems to ground that opinion entirely on the Earl of *Shaftesbury's* case.(*d*) In *Rex* v.

(*a*) 14 East, 1.
(*b*) 9 A. & E. 1; S.C. 3 P. & D. 330; 4 Jur. 68, and above.
(*c*) 9 A. & E. 731, and above.
(*d*) 4 Bac. Abr. 140 (7th ed.), Habeas Corpus (B); 15 Parl. Hist. 903.

(*a*) 3 St. Tr. 1.
(*b*) 3 St. Tr. 825.
(*c*) 5 St. Tr. 365; S.C. Style, 415.
(*d*) 6 St. Tr. 1269; S.C. 1 Mod. 144; 1 Freem. 453; 3 Keb. 792.
(*e*) 6 St. Tr. 1310. See the observation of Lord Ellenborough in *Burdett* v. *Abbot*, 14 East, 124.
(*f*) 2 Ld. Raym. 1105, 1115; and see the judgment of Powell, J., p. 1110.
(*g*) 1 Wils. 299.
(*h*) Gould and Denison, JJ.
(*i*) 2 W.Bl. 754; S.C. 3 Wils. 188; 19 St. Tr. 1138.
(*j*) 3 Wils. 203.

Flower (*a*) the warrant was special; so were those in Sir *Francis Burdett's* case.(*b*) Lord *Ellenborough* there intimated that a commitment stated to be for a contempt of either House, generally, would be sufficient(*c*); but the opinion is thrown out *obiter*; and he seems to consider Lord *Shaftesbury's* case(*d*) an authority for such a form. In the case of *Burdett* v. *Abbot*,(*e*) in the House of Lords, Lord *Eldon*, C., put it to the judges—

"whether, if the Court of Common Pleas, having adjudged an act to be a contempt of Court, had committed for the contempt under a warrant, stating such adjudication generally, without the particular circumstances, and the matter were brought before the Court of King's Bench by return to a writ of *habeas corpus*, the return setting forth the warrant stating such adjudication of contempt generally; whether in that case the Court of King's Bench would discharge the prisoner, because the particular facts and circumstances out of which the contempt arose were not set forth in the warrant?"

and the judges answered in the negative. But, in the case supposed, the Common Pleas would be a court of record acting according to the known course of the common law; the House of Commons is not such a court or so acting; and the Common Pleas, in the case supposed, would be punishing for a contempt of court; the House of Commons here professes only to commit for a contempt of the privileges of that House, without showing what are the privileges which are supposed to have been infringed. If the House may declare its own privilege, as the common law courts declare that law, it should at least, when it punishes for a breach of privilege, point out the privilege, so that the law on that subject may be known in future. *Rex* v. *Hobhouse*(*f*) is another instance in which the warrant specified the contempt. In Moore, 839, several precedents are collected of returns to writs of *habeas corpus* stating the cause of commitment in general terms: but in every case the prisoner was bailed or discharged.(*g*) It was one of the articles of complaint laid before *Charles* 1, in the Petition of Right(*a*) that divers persons had—

"been imprisoned, without any cause showed; and when for their deliverance they were brought before your justices, by your Majesty's writs of *habeas corpus*, there to undergo and receive as the Court should order, and their keepers commanded to certify the causes of their detainer; no cause was certified, but that they were detained by your Majesty's special command, signified by the Lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law."

In the judgment of *Vaughan*, C.J., in *Bushell's* case(*b*) it is said that the writ of *habeas corpus*—

"commands the day, and the cause of the caption and detaining of the prisoner to be certified upon the retorn; which if not done, the Court cannot possibly judge whether the cause of the commitment and detainer be according to law, or against it. Therefore the cause of

(*a*) 8 T.R. 314; 27 St. Tr. 985.
(*b*) *Burdett* v. *Abbot*, 14 East, 1.
(*c*) See pp. 147–150.
(*d*) 6 St. Tr. 1269; S.C. 1 Mod. 144; 1 Freem. 458; 3 Keb. 792.
(*e*) 5 Dow, 165, 199.
(*f*) 3 B. & Ald. 420; S.C. 2 Chitt. Rep. 207.
(*g*) "Collection of precedents of prisoners delivered by *habeas corpus* on the return; annexed to *Glanvile's* case, Moore, 838. In some of these instances no cause whatever is stated."—Note by reporters, 11 A. & E. 283. "Delivery of prisoners brought up by *habeas corpus* on trial appears to have been the course pursued by the Court when an illegal commitment was made by the King's Privy Council, or one of the superior Courts. Thus in the free conference between the Houses of Parliament in 1628 touching the liberty of the subject (Lords' Journ. 3, 722), Selden and Coke cited twelve cases, including two of those mentioned in Moore, 839, to show that commitments by the Crown or Privy Council without cause expressed were void, and that the Court on the returns to the *habeas corpus* had delivered the prisoners on bail. It was objected by the counsel for the Crown that this practice implied that the imprisonment had been legal, 'for bailing doth signify a kind of imprisonment still;' but it was answered that 'it hath ever been the discretion of the judges to give such respect to a commitment by command of the King or Privy Council, which are ever supposed to be done in just and weighty cases, that they will not suddenly set them free, but bail them to answer what shall be objected against them on the King's behalf; but if any other inferior officer do commit a man without showing cause they do instantly deliver him.'—2 Parl. Hist. 264. See also the same point in the argument of Littleton, afterwards Lord Keeper, in the second conference between the Lords and the Commons on the liberty of the subject, 2 Parl. Hist. 321. So also commitments for contempt by judges of the superior courts appeared to have been made from the earliest times without cause expressed. See Staundf. Pl. Cor. fol. 75*b*. 'Le prisoner nest bailable, si le justice commanda un a prison sans monstrer cause pur que il issint commanda, ou pur misdemeanor fait devant luy.' Staundford lays this down as the construction of Stat. Westm. 1st, c. 15. It was conceded by Selden and Coke that if the warrants of the King or Privy Council expressed the cause generally, as treason, suspicion of felony, or contempt, it was sufficient."—Note by reporters, 3 P. & D. 354.
(*a*) See 3 St. Tr. 223.
(*b*) Vaugh. 135, 137; S.C. 6 St. Tr. 999, 1002.

the imprisonment ought, by the return to appear as specifically and certainly to the judges of the return, as it did appear to the Court or person authorised to commit; else the return is insufficient."

The House of Commons, then, like other jurisdictions which exercise the power of committing, may be required, on *habeas corpus*, to show the particular grounds.(*a*) And, were this otherwise, the Houses of Parliament might at any time punish offences against the property or servants of individual members, under the name of contempts, as was done formerly,(*b*) that the Court now would not suffer this practice to pass unquestioned, though the contempt might be alleged generally on return to a *habeas corpus*, appears from several passages in the judgment of Lord *Denman*, C.J., in *Stockdale* v. *Hansard*.(*c*) The decision of the three judges who differed from *Holt*, C.J., in *Regina* v. *Paty*(*d*) cannot be considered as having settled the law; this opinion was strongly intimated by Lord *Denman*, C.J., in *Stockdale* v. *Hansard*.(*e*)

Thirdly, in point of form the warrant does not show a sufficient jurisdiction in those issuing it. It does not recite any direct adjudication that the sheriff has been guilty of a contempt, but only a resolution that the sheriff, "having been guilty of a contempt," &c., "be committed." It does not state that the House authorise or direct the Speaker to issue his warrant. To pass the resolution is not to order the committal. And, lastly, the mandatory part of the warrant requires the Serjeant-at-Arms to keep the sheriff during the pleasure of "this House," not showing in terms or by sufficient reference, what House is meant. In *Brass Crosby's* case,(*f*) *Burdett* v. *Abbot*,(*g*) and *Hobhouse's* case,(*h*) the words used were "during the pleasure of the said House." No language is used here to show that the person styling himself "Speaker" is acting in that capacity, or in the course of proceedings in the House of Commons.

No one appeared in support of the return.(*a*)

Lord DENMAN, C.J.: I think it necessary to declare that the judgment delivered by this Court last Trinity Term in the case of *Stockdale* v. *Hansard*(*b*) appears to me in all respects correct. The Court decided there that there was no power in this country above being questioned by law. The House of Commons there attempted to place its privilege on the footing of an unquestionable and unlimited power. It was argued against that claim that the dicta of learned judges by which it was supported had in many cases been hastily thrown out, and were encountered by others of a contrary tendency from judges not less eminent, and by precedents. I endeavoured to establish that the claim advanced in that case tended to a despotic power which could not be recognised or exist in this country, and that the privilege of publication as there asserted had no legal foundation. To all these positions I, on further consideration, adhere; all of them I believe in my conscience to be true. And if this were not so, it is strange that the case should not have been brought before the other ten judges by writ of error. The House could have suffered no loss of dignity by submitting to them the question which it had already laid before us. In the last resort a further appeal might have been made to the House of Lords. The efficacy of such an appeal is not to be disputed merely because persons may choose to cast reflections on that body in which by law the ultimate decision is vested. That House, too, had an interest (if such motives were supposed to prevail) in upholding a privilege which was claimed for them as well as for the House of Commons. Besides, if our judgment and that of the Exchequer Chamber had been adverse to the plaintiff, it is probable that he would not have acquiesced, and then resort must have been had to the jurisdiction of the House of Lords. In deciding the former case we looked to the law as our only safe guide, discarding all considerations of supposed expediency, and under the same guidance we examine the question now before us.

The only question upon the present return is whether the commitment is sustained by a legal warrant. Three objec-

(*a*) Richards here cited *Glanvile's* case, Moore, 838; *Rex* v. *Dugger*, 5 B. & Ald. 791; S.C. 1 D. & R. 460; *Cropper* v. *Horton*, 8 D. & R. 166.

(*b*) See *Stockdale* v. *Hansard*, 9 A. & E. 12, note (*b*); 106, note (*a*), and above, pp. 746, 747*nn*.

(*c*) 9 A. & E. 1, pp. 116, 124, 147, were particularly referred to. See above, pp. 856, 862, 878.

(*d*) 2 Ld. Raym. 1105.

(*e*) 9 A. & E. 137, 138, and above, pp. 871, 872. See also the judgment of Coleridge, J., 9 A. & E. 230, and above, p. 936, and see also 14 East, 92, note (*b*) to *Burdett* v. *Abbot*.

(*f*) 3 Wils. 188; S.C. 2 W. Bl. 754; 19 St. Tr. 1138.

(*g*) 14 East, 1.

(*h*) 2 Chitt. Rep. 207; S.C. 3 B. & Ald. 420.

(*a*) "In *Reg.* v. *Paty*, 2 Ld. Raym. 1105, and in *Brass Crosby's* case, 2 W.Bl. 754, it is stated that no counsel appeared to support the commitment."—Note by reporters in 11 A. & E. 285.

(*b*) 9 A. & E. 1, and above, p. 849.

tions have been taken to the warrant in point of form merely. First, that the words "having been guilty" are no direct adjudication that a contempt has been committed. But in a late case,(a) where the participle was used in this manner we considered it as a direct allegation; and it would be childish to suppose that in a document expressed as this is the grammatical form objected to could alter the effect. Secondly, it is said that the warrant states only a resolution of the House that a contempt has been committed, but no order given by them to the Speaker. This appears to me unnecessary. We must notice that the Speaker is the officer of the House, and must take it that when they adjudged a contempt to have been committed he had full authority from that moment. Thirdly, it is objected that the words "this House" in the latter part of the warrant are not connected by any reference with the House of Commons before mentioned. But no other House is mentioned in the warrant, and the Serjeant-at-Arms certifies in his return that the warrant is under the hand of the Speaker. I cannot for a moment so trifle with a clear and intelligible document as to say that the House of Commons is not meant. It was also observed that the warrant does not allege a contempt of this House, but "a contempt and breach of the privileges of this House." But the same form was used in the cases of Sir *Francis Burdett*(b) and Mr. *Hobhouse*.(c)

The verbal criticisms, therefore, fall to the ground. The great objection remains behind, that the facts which constitute the alleged contempt are not shown by the warrant. It may be admitted that words containing this kind of statement have appeared in most of the former cases; indeed there are few in which they have not. In the proceedings upon the case of *Jay* and *Topham*,(d) where Sir *Francis Pemberton* and Sir *Thomas Jones* were committed by the House of Commons for a judgment as just and reasonable as any ever pronounced, the resolution as to each was, that he—

"giving judgment to overrule the plea to the jurisdiction of the Court of King's Bench, in the case between *Jay* and *Topham*, has broken the privileges of this House."

I mention this case chiefly for the purpose of correcting a mistake of no small importance. It has been supposed that the resolution to which I have referred was passed by the Convention Parliament, and had the sanction of Sir *J. Holt*, as one of the members; but the resolution was passed in July 1689(a) and in April of that year *Holt* was made Chief Justice of the King's Bench. In *Brass Crosby's*,(b) Sir *F. Burdett's*,(c) and Mr. *Hobhouse's*(d) cases, words were used showing the nature of the contempt. In the Earl of *Shaftesbury's* case(e) the form was general; and it was held unnecessary to set out the facts on which the contempt arose. That case is open to observation on other grounds; but I think it has not been questioned on this. In *Regina* v. *Paty*(f) three of the judges adopted the doctrine of that case to the extent of holding that the Court could not inquire into the ground of commitment, even when expressed in the warrant. *Holt*, C.J., differed from them on that point; but he did not question that where the warrant omitted to state facts the cause could not be inquired into.(g) In *Murray's* case,(h) which has often been referred to, and recognised as an authority, the warrant was in a general form. There is, perhaps, no case in the books entitled to so great weight as *Burdett* v. *Abbot* (i) from the learning of the counsel who argued and the judges who decided it, the frequent discussions which the subject underwent, and the diligent endeavours made to obtain the fullest information upon it. The judgment of Lord *Ellenborough* there, as it bears on the point now before us, is remarkable. He says(j):—

"If a commitment appeared to be for a contempt of the House of Commons generally, I

(a) "See *Reg.* v. *Lewis*, 8 A. & E. 881; S.C. 1 P. & D. 112. Also *Rex* v. *The Justices of Cambridgeshire*, 4 A. & E. 111; *Rex* v. *Milverton*, 5 A. & E. 841."—Note by reporters, 11 A. & E. 289.

(b) 14 East, 1.

(c) 2 Chitt. Rep. 207; S.C. 3 B. & Ald. 420.

(d) 12 St. Tr. 821, 834; Com. Journ. 10, 227.

(a) July 19th. The Convention Parliament was dissolved February 6, 1689–90. 5 Parl. Hist. 539. Ralph's History of England, 2, 186. Sir John Holt's patent as Lord Chief Justice of the Court of King's Bench is dated April 17, 1689. Fourth Report ofthe Deputy Keeper of the Public Records, Appendix II., 184.

(b) 2 W. Bl. 754; S.C. 3 Wils. 188; 19 St. Tr. 1138.

(c) 14 East, 1.

(d) 2 Chitt. Rep. 207; S.C. 3 B. & Ald. 420.

(e) 6 St. Tr. 1269; S.C. 1 Mod. 144; 1 Freem. 453; 3 Keb. 792.

(f) 2 Ld. Raym. 1105.

(g) "He said the cause of the prisoners' commitment being expressed in the warrant excluded any intendment that they might be committed for any other cause than that expressed in the warrant, 2 Ld. Raym. 1115."—Note by reporters, 11 A. & E. 289.

(h) 1 Wils. 299.

(i) 14 East, 1.

(j) Page 150. See p. 148: "Upon this case I would observe," *et seq.* See 2 Hawk. P.C.

would neither in the case of that Court, or of any other of the superior courts, inquire further; but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law or natural justice, I say, that in the case of such a commitment (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur), we must look at it and act upon it as justice may require from whatever court it may profess to have proceeded."

Bayley, J., as well as Lord *Ellenborough*, appears in that case to have been of opinion that, if particular facts are stated in the warrant, and do not bear out the commitment, the Court should act upon the principle recognised by *Holt*, C.J., in *Regina* v. *Paty*(*a*); but that, if the warrant merely states a contempt in general terms, the Court is bound by it. That rule was adopted by this Court in *Rex* v. *Hobhouse*(*b*); and in the late case of *Stockdale* v. *Hansard*(*c*) there was not one of us who did not express himself conformably to it. In the passages which have been cited from my own judgment in that case, as showing that if a person were committed for a contempt in trespassing upon a member's property, this Court would notice the ground of committal, I always supposed that the insufficient ground should appear by the warrant. The Earl of *Shaftesbury's* case(*d*) has been dwelt upon in the argument as governing the decisions of the Courts on all subsequent occasions, but I think not correctly. There is something in the nature of the Houses themselves which carries with it the authority that has been claimed; though, in discussing such question, the last important decision is always referred to. Instances have been pointed out in which the Crown has exerted its prerogative in a manner now considered illegal, and the Courts have acquiesced: but the cases are not analogous. The Crown has no rights which it can exercise otherwise than by process of law and through amenable officers, but representative bodies must necessarily vindicate their authority by means of their own, and those means lie in the process of committal for contempt. This applies not to the Houses of Parliament only, but, as was observed in *Burdett* v. *Abbot*(*a*) to the courts of justice, which, as well as the Houses, must be liable to continual obstruction and insult if they were not entrusted with such powers. It is unnecessary to discuss the question whether each House of Parliament be or be not a court; it is clear that they cannot exercise their proper functions without the power of protecting themselves against interference.(*b*) The test of the authority of the House of Commons in this respect, submitted by Lord *Eldon* to the judges in *Burdett* v. *Abbot*,(*c*) was whether, if the Court of Common Pleas had adjudged an act to be a contempt of court, and committed for it, stating the adjudication generally, the Court of King's Bench on a *habeas corpus* setting forth the warrant, would discharge the prisoner because the facts and circumstances of the contempt were not stated. A negative answer being given, Lord *Eldon*, with the concurrence of Lord *Erskine* (who had before been adverse to the exercise of jurisdiction), and without a dissentient voice from the House, affirmed the judgment below. And we must presume that what any court, much more what either House of Parliament, acting on great legal authority, takes upon it to pronounce a contempt is so.(*d*)

It was urged that, this not being a criminal matter, the Court was bound by stat. 56 *Geo.* 3. c. 100. s. 3. to inquire into the case on affidavit, but I think the provision cited is not applicable. On the motion for a *habeas corpus*, there must be an affidavit from the party applying,(*e*) but the return, if it discloses a sufficient answer, puts an end to the case, and I think the production of a good warrant is a sufficient answer. Seeing that, we cannot go into the question of contempt on affidavit, nor discuss the motives which may be alleged. Indeed (as the courts have said in some of the cases) it would be unseemly to suspect that a body, acting under such sanctions as a House of Parliament would in making its warrant suppress facts which, if discussed, might entitle the person committed to his liberty. If they ever did so act I am persuaded that on further consideration they would repudiate such a course of proceeding. What injustice might not have been committed by the ordinary courts in past times if such a course had been recognised,

c. 15, s. 73 (vol. 3, p. 219, 7th ed.), which is to nearly the same effect as the passage cited in the text.—Note by reporters, 11 A. & E. 298.

(*a*) 2 Ld. Raym. 1105.

(*b*) 2 Chitt. Rep. 207; S.C. 3 B. & Ald. 420.

(*c*) 9 A. & E. 1, and above, p. 736.

(*d*) 5 St. Tr. 1269; S.C. 1 Mod. 144; 1 Freem. 453; 3 Keb. 792.

(*a*) 14 East, 138.

(*b*) Cited by Williams, J., in *Howard* v. *Gosset*, 10 Q.B. 395.

(*c*) 5 Dow, 199.

(*d*) See *Bradlaugh* v. *Erskine*, 47 L.T. 618.

(*e*) See the *Canadian Prisoners'* case, 5 M. & W. 32, and above, p. 1031.

as, for instance, if the Recorder of London in *Bushell's* case,(*a*) had in the warrant of commitment suppressed the fact that the jurymen were imprisoned for returning a verdict of acquittal. I am certain that such will never become the practice of any body of men amenable to public opinion.

In the present case, I am obliged to say that I find no authority under which we are entitled to discharge these gentlemen from their imprisonment.

LITTLEDALE, J.: I am of the same opinion. I agree with my Lord Chief Justice that the judgment in *Stockdale* v. *Hansard* (*b*) is a binding authority. The defendants might have brought that case before a court of error, but have not done so.(*c*) I still concur entirely in the opinions there delivered. The question before us arises on the return to a writ of *habeas corpus*. If the warrant returned be good on the face of it, we can inquire no further. The principal objection is that it does not sufficiently express the cause of commitment, and instances have been cited in which the nature of the contempt was specified. But the doctrine laid down in *Burdett* v. *Abbot*,(*d*) in this Court and before the House of Lords, sufficiently authorises the present form. If the warrant declares the grounds of adjudication, this Court, in many cases will examine into their validity, but if it does not we cannot go into such an inquiry. Here we must suppose that the House adjudicated with sufficient reason and they were proper judges. As to the verbal objections, I think that "having been guilty of a contempt" is a sufficient averment that the parties were guilty, and although there is no express statement of an authority to the Speaker to sign the warrant, we must all take notice that there is such a person, and that by the practice of the House, he is the person to execute a resolution of this kind. Who is to commit the parties in such a case? The House must do it through the proper officer, and we must take notice that the Speaker is that officer. The expression "this House" might have been ambiguous if any other "House" had been spoken of in the warrant, but no other is mentioned.

WILLIAMS, J.: Any observation on this case from me might have been spared, but for the extent to which the discussion before us has gone, and the circumstances in which the respectable gentlemen making this application are placed. It was a startling admission in the argument which has been addressed to us, that, for the last century and a half, there have been precedents in favour of this commitment. Recognised precedents have the force of decisions, by which courts and judges individually must hold themselves bound. I do not think this Court can suffer any loss of authority by so acting in the present case; but, whatever may be the consequence we must overlook it when there is an ascertained rule of law before us. If the return in a case like this showed a frivolous cause of commitment, as for wearing a particular dress, I should agree in the opinion expressed by Lord *Ellenborough* in *Burdett* v. *Abbot*,(*a*) where he distinguishes between a commitment stating a contempt generally, and one appearing by the return to be made on grounds palpably unjust and absurd. The power of committing generally for breach of privilege may be admitted; although, where the privilege is incidentally brought forward, and especially if the House of Commons by plea bring it before us, we cannot avoid judging of it. Then the only point in this case is whether there be on the warrant an adjudication, in form, of commitment for contempt, which the Court, according to precedent, is bound to recognise. The verbal criticisms I scarcely need notice. The expression "this House" is certain enough, no other having been mentioned; and the authority of the Speaker appears sufficiently from the resolution set forth. It did not appear more fully in *Crosby's* case,(*b*) *Burdett* v. *Abbot*(*c*) or *Rex* v. *Hobhouse*.(*d*) The only real question is, whether we can interfere, because the ground of commitment is not particularly stated. On this point it is sufficient to cite the judgment of *De Grey*, C.J.. in *Brass Crosby's* case,(*b*) which is referred to with approbation by Lord *Ellenborough* in *Burdett* v. *Abbot*.(*e*)

"When the House of Commons adjudge anything to be a contempt, or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is execution, and no court can discharge or bail a person that is in execution by the judgment of any other court."(*f*)

De Grey, C.J., adds(*g*) that the privilege being in that case brought in question directly, and not incidentally, the Court

(*a*) Vaugh. 135; S.C. 1 Freem. 1; T. Jones, 13; 6 St. Tr. 999.
(*b*) 9 A. & E. 1, and above, p. 736.
(*c*) See report of Select Committee, Com. Journ. 94, 847.
(*d*) 14 East, 1; 5 Dow, 165.

(*a*) 14 East, 1, 150.
(*b*) 3 Wils. 188; S.C. 2 W. Bl. 754; 19 St. Tr. 1138.
(*c*) 14 East, 1.
(*d*) 2 Chitt. Rep. 207; S.C. 3 B. & Ald. 420.
(*e*) 14 East, 1, 148.
(*f*) 3 Wils. 199.
(*g*) 3 Wils. 202.

cannot interfere. Whether or not in the present instance it was right to visit any person with the anger or justice of the House of Commons is a question with which we have no concern. On grounds of law, the only grounds we have a right to proceed upon, we cannot order these gentlemen to be discharged.

COLERIDGE, J.: I come to my present conclusion with great regret when I consider the circumstances, but with confidence in its justice. As to the former case of *Stockdale* v. *Hansard*,(*a*) so far as regards the general positions there laid down, I most entirely agree in them, and remain of the same opinion as when it was decided. I formed that opinion with great pains and labour, and a candid attention to the arguments. The part I took in the decision was comparatively small; but the judgment of the Court appears to me perfectly sound: and it would have been better for those dissatisfied with it to apply to a court of error than content themselves with railing against it in terms which neither do themselves credit nor invalidate the decision. The material questions here are, whether the return is bad for not disclosing the particular grounds of the commitment: and whether it is open to an answer by affidavit; or, if it be so, whether there is any case made by the affidavits. Now, first, it is too late to contend that the generality of statement in the warrant is any solid objection. It appears by precedents that the House of Commons have been long in the habit of shaping their warrants in that manner.(*b*) Their right to adjudicate in this general form in cases of contempt is not founded on privilege, but rests upon the same grounds on which this Court or the Court of Common Pleas might commit for a contempt without stating a cause in the commitment. Lord *Eldon* puts the case in this manner in *Burdett* v. *Abbot*.(*c*) When a court of competent authority has committed the commitment is an adjudication, and the grounds of it need not be stated.

Secondly, it is a mistake (though I need not dwell upon the point) to treat this as a *habeas corpus* under statute 56 *Geo.* 3. c. 100. That Act was passed to remedy a defect in the common law. I think that the *habeas corpus* here is at common law, but it is unnecessary to consider that question. It is contended that affidavits may be received to explain the facts returned. But the return states simply an adjudication of contempt. There is nothing in the affidavits referred to which controverts the fact of such an adjudication; and, if the House had jurisdiction to make it, we can no more inquire by affidavit whether they came to a right conclusion in doing so than we could in the case of a like adjudication by the Court of Common Pleas. These gentlemen must therefore be remanded.

Prisoners remanded.(*a*)

(*a*) 9 A. & E. 1, and above, p. 736.

(*b*) See Second Report of the Select Committee in *Howard* v. *Gosset*: Appendix, Nos. 4 and 5; and *Gosset* v. *Howard*, 10 Q.B. 459.

(*c*) 5 Dow, 165, 199.

(*a*) On the same day that the prisoners were remanded the Serjeant-at-Arms communicated the fact to the House.—Com. Journ. 95, 30.

February 3, 1840.—Motion by Mr. Darby that William Evans, Esq., and John Wheelton, Esq., Sheriff of Middlesex, be discharged from the custody of the Serjeant-at-Arms attending this House. Debate adjourned.—Com. Journ. 95, 56; Hansard, Parl. Deb. (3rd series), 51, 1109.

February 4, 1840.—Lord Brougham presented a petition from the Sheriff of Middlesex to the House of Lords, "throwing themselves upon the just and merciful protection of the highest court of judicature of this realm of England," and praying their Lordships to afford them such assistance and relief as to the House should seem meet.—Lords' Journ. 72, 84; Hansard, Parl. Deb. (3rd series), 51, 1160.

February 10, 1840.—The adjourned debate in the Commons upon the motion for the discharge of the sheriff out of custody was resumed, and the motion negatived.—Com. Journ. 95, 70; Hansard, Parl. Deb. (3rd series), 52, 7.

February 11, 1840.—Sir E. Knatchbull informed the House that Mr. Sheriff Wheelton was extremely ill, and that his life might be in danger if he were continued longer in confinement; whereupon, after examining the sheriff's medical attendant, the House ordered that, it having been stated by Dr. Broackes, medical attendant on John Wheelton, Esq., that in his judgment Mr. Wheelton's life would be endangered by further confinement, Mr. Sheriff Wheelton be forthwith discharged out of the custody of the Serjeant-at-Arms attending this House; and that Mr. Speaker do issue his warrant accordingly.—Com. Journ. 95, 74; Hansard, Parl. Deb. (3rd series), 52, 155. He was discharged accordingly without payment of fees.

February 13, 1840.—The Corporation of the city of London presented a petition for the release of the sheriff, in order to assist in presenting an address of congratulation to Her Majesty upon her marriage.—Com. Journ. 95, 82; see Ann. Reg. 1840, Chronicle, p. 28.

February 14, 1840.—Mr. Alderman Thompson moved for the discharge of Mr. Sheriff Evans out of the custody of the Serjeant-at-Arms, but the motion was negatived, and so also was a motion by Sir Edward Sugden (afterwards Lord St. Leonards) that the resolution ordering the sheriff to refund the money levied in execution should be rescinded.—Com. Journ.

MATERIALS MADE USE OF.—The foregoing report is from 11 A. & E. 273. The other reports mentioned above have also been consulted.

95, 89; Hansard, Parl. Deb. (3rd series), 52, 301, 308.

February 26, 1840.—A motion by Sir M. Wood that Mr. Sheriff Evans be allowed to wait on Her Majesty to receive her commands with respect to the presentation of an address from the Corporation of London was superseded by the orders of the day.—Com. Journ. 95, 116; Hansard, Parl. Deb. (3rd series), 52, 646.

March 3, 1840.—The House was informed by Lord Viscount Mahon that in the opinion of the medical attendant of Mr. Sheriff Evans Mr. Sheriff Evans was materially suffering from his confinement, and that his life would be endangered by further confinement. The medical attendant (Mr. Freeman) was examined in relation thereto.—Com. Journ. 95, 137; Hansard, Parl. Deb. (3rd series), 52, 850.

March 4, 1840.—The House, being further informed by Lord Mahon that Mr. Sheriff Evans had been examined by another medical man (Dr. Chambers) who was in attendance, called in Dr. Chambers, and he was examined in relation thereto. A motion that Mr. Sheriff Evans be forthwith discharged was negatived.—Com. Journ. 95, 143; Hansard, Parl. Deb. (3rd series), 52, 878.

March 7, 1840.—On the motion of Sir James Graham it was ordered by the House that on consideration of the evidence of Mr. Freeman and Dr. Chambers, given at the bar of this House, with respect to the state of the health of Mr. Sheriff Evans, who is now in custody, he be discharged for the present out of the custody of the Serjeant-at-Arms attending this House; and that he be directed to attend at the bar of this House on Monday, the 6th day of April next.—Com. Journ. 95, 154; Hansard, Parl. Deb. (3rd series), 52, 1028.

April 3, 1840.—The order for the attendance of Mr. Sheriff Evans was discharged, and it was ordered that he should attend on May 6.—Com. Journ. 95, 253.

April 14, 1840.—Royal assent to 3 & 4 Vict. c. 9.

April 15, 1840.—On the motion of Sir Robert Harry Inglis the order for the further attendance of Mr. Sheriff Evans was read and discharged.—Com. Journ. 95, 291; Hansard Parl. Deb. (3rd series), 53, 1126.