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2. PRIDEAUX *versus* MORRIS. Trin. 2 Ann.

2 Salk. 502. Farresl. 13.

Action on the case for a false return of Parliament-men, against the sheriff; here the plaintiff declared, that whereas he was duly elected, the sheriff returned another to be so, who in fact was not duly elected. The question was, whether, this being a Parliamentary matter, might be determined here in this Court?

Holt C.J. The cause of the plaintiff's suit is a wrong done out of Parliament, and whatever falls under the regulation of law in such case, is subject to the law of the land; for laws are to be executed out of Parliament: but for the rules of the House of Commons, as to their sitting, &c. they are within the House, and the Judges cannot know them, there being no practice of them out of the Parliament; yet if a law should be made relating to them, or they should become necessary to be determined on account of some other matter cognizable by the Judges, we must take notice of and determine them. Though I think, for a false return the party can have no action, where there may be a determination in the House of Commons, because of the inconvenience of contrary resolutions; and so here, if one is voted elected, another person cannot bring an action and say, that he was duly elected and returned, because his name does not appear upon record: but where the right of election, either is determined, or cannot be determined in Parliament, as in case of a dissolution, &c. an action lies for the false return.

And he was of opinion, that for a double return, no action lay against the sheriff before the Statute 7 & 8 W. 3. Not only as it is the only method he hath to indemnify himself, but when the right comes to be determined in **[524]** Parliament, one indenture returned is taken off the file, and then there is no double return.

3. ASHBY *versus* WHITE & AL'. Mich. 2 Ann.

[See S. C. 2 Ld. Raym. 938 (with note).] (1703)

Mod. Cas. 45, 50, 53, 56. 1 Salk. 19, 20. 3 Salk. 17.

Case won

In action upon the case against the constables of Ailesbury, the plaintiff declared, that such a day the late King's writ issued and was delivered to the Sheriff of B. for election of members of Parliament in his county; whereupon the said sheriff made out his precept or warrant to the defendants, being constables of A. to chuse two burgesses for that borough, which precept was delivered to the said constables; and that, in pursuance thereof, the burgesses were duly assembled, &c. and the plaintiff, being then duly qualified to vote for the election of two burgesses, offered to give his voice for Sir. T. L. and S. M. Esq; to be burgesses of Parliament for the said borough; but the defendants knowing the premisses, with malice, &c. obstructed him from voting, and refused and would not receive his vote, nor allow it; and that two burgesses were chose, without allowing or receiving his voice: a verdict was found for the plaintiff; and upon motion in arrest of judgment, three Judges held, that this action would not lie, 'till the Parliament had decided, whether the plaintiff had a right to vote as an elector.

Appeal won

Holt C.J. The case is truly stated, and the only question is, whether or not, if a burgess of a borough, that has an undoubted right to give his vote for the chusing a burgess of Parliament for that borough, is refused giving his vote, has any remedy in the King's Courts for this wrong against the wrong-doer? All my brothers agree, that he has no remedy; but I differ from them, for I think the action well maintainable, that the plaintiff had a right to vote, and that in consequence thereof the law gives him a remedy, if he is obstructed; and this action is the proper remedy. By the common law of England, every commoner hath a right not be subjected to laws, made without their consent; and because it cannot be given by every individual man in person, by reason of number and confusion, therefore that power is lodged in their representatives, elected by them for that purpose, who are either knights, citizens or burgesses: and the grievance here is, that the party not being allowed his vote, is.

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not represented. The election of knights of shires is by **[525]** freeholders; and a freeholder has a right to vote by reason of his freehold, and it is a real right; and the value of his freehold was not material till the Statute of H. 7, which requires it should be 40s. a-year, for before that every freeholder, though of never so small a value, had a right to vote at these elections. In boroughs, some of which are by prescription, they have a right of voting ratione burgagii, and ratione tenuræ; and this like the case of a freeholder before mentioned is a real right, annexed to the tenure in burgage: and in cities and corporations, it is a personal inheritance, and vested in the whole corporation, but to be used and exercised by the particular members; and such a privilege cannot be granted but to a corporation. This is a noble franchise and right, which entitles the subject in a share of the Government and Legislature. And here the plaintiff having this right, it is apparent that the officer did exclude him from the enjoyment of it, wherein none will say he has done well, but wrong to the plaintiff; and it is not at all material whether the candidate, that he would have voted for, were chosen, or likely to be, for the plaintiff's right is the same, and being hindered of that, he has injury done him, for which he ought to have remedy. It is a vain thing to imagine, there should be right without a remedy; for want of right and want of remedy are convertibles: if a statute gives a right, the common law will give remedy to maintain it; and where-ever there is injury, it imports a damage: and there can be no petition in this case to the Parliament, nor can they judge of this injury, or give damages to the plaintiff. Although this matter relates to the Parliament, yet it is an injury precedaneous to the Parliament; and where Parliamentary matters come before us, as incident to a cause of action concerning the property of the subject, which we in duty must determine, though the incident matter be Parliamentary, we must not be deterred, but are bound by our oaths to determine it. The law consists not in particular instances, but in the reason that rules them; and if where a man is injured in one sort of right he has a good action, why shall he not have it in another? And though the House of Commons have right to decide elections, yet they cannot judge of the charter originally, but secondarily in the determination of the election; and therefore where an election does not come in debate, as it doth not in this case, they have nothing to do: and we are to exert and vindicate the **[526]** Queen's jurisdiction, and not to be frighted because it may come in question in Parliament; and I know nothing to hinder us from judging of matters depending on charter or prescription: he concluded for the plaintiff.

Appeal
Appeal won

Here judgment being given for the defendant, contrary to the opinion of the Chief Justice; on a writ of error afterwards brought in the House of Lords, the judgment was reversed by a great majority of the Lords, who concurred with Holt C.J.

Appeal
appeal
appeal lost

4. THE QUEEN *versus* PATY & AL'. Mich. 3 Ann.

2 Salk. 503, 504.

On a writ of habeas corpus, the defendants, who had been committed to Newgate by the House of Commons, were brought into Court; and the cause of their commitment was returned to be, for having commenced and prosecuted an action at law against the constables of Ailesbury, for refusing their votes in the election of members of Parliament, in contempt of the jurisdiction, and breach of the privileges of the House of Commons. The counsel for the defendants, prayed that they might be discharged for several reasons; and for that they had done no unlawful act, &c. But three of the Judges opposed it, and said, that the House of Commons were the proper Judges of their own privileges, &c.

Holt C.J. I am of opinion, that the prosecution of the suit is lawful, and no breach of the privilege of that House; nor can their judgment make it so, or conclude this Court from determining contrary; and when the House of Commons exceed their legal bounds and authority, their acts are wrongful, and cannot be justified more than the acts of private men: there is no question but their authority is from the law, and as it is circumscribed, so it may be exceeded. If we should say, they are Judges of their privilege and their own authority, and no body else, that would make their privileges as they would have them: in such case, if there be a wrongful imprisonment