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Court of Common Pleas

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98 ER 489

COURT OF COMMON PLEAS

06 December 1763

B e f o r e :

Between:

John WILKES

v

Robert WOOD

At the Court of Common Pleas, at Westminster. Sittings after Michaelmas term, before Lord Chief Justice Pratt, John Wilkes, Esq; plaintiff; Robert Wood Esq; defendant.

In an action of trespass, for entering the plaintiff's house, breaking his locks, and seizing his papers, etc.

The plaintiff's counsel were

Serjeant Glyn, Mr Recorder Eyre, Mr. Stow, Mr. Wallace, Mr. Dunning, Mr. Gardiner.

The defendant's counsel were

Solicitor-General Norton, Serjeant Nares, Serjeant Davy, Serjeant Yeates.

Attorney for the plaintiff, Mr. Philips of Cecil-Street.

For the defendant

Philip Cartaret Webb, Esq; Solicitor to the Treasury, and Mr. Secondary Barnes.

The special jury

Plukenet Woodroffe, Esq; of Chiswick; William Baker, Esq; of Isleworth; William Clark, Esq; of Edmonton; James Gould, Esq; of Hatton-Garden; John Boldero, Esq; of Hatton-Garden; John Egerton, Esq; of St John's Street.

Mr Gardener opened the case, with several of the King's messengers, and a constable, entered Mr. Wilkes's house; that Mr. Wood was aiding and assisting to the messengers, and gave directions concerning breaking open Mr. Wilkes's locks, and seizing his papers, etc. for which Mr. Wilkes laid his damages at five thousand pounds.

Serjeant Glynn, then enlarged full, on the particular circumstances of the case, but remarked that the case extended far beyond Mr. Wilkes personally, that it touched the liberty of every subject of this country, and if found to be legal, would shake the most precious inheritance of Englishmen. In vain has our house been declared, by the law, our asylum and defence, if it is capable of being entered, upon any frivolous or no pretence at all, by a Secretary of State. Mr. Wilkes, unconvicted of any offence, has undergone the punishment. That of all offences that of a seizure of papers was the least capable of reparation; that, for other offences, an acknowledgement might make amends; but that for the promulgation of our most private concerns, affairs of the most secret personal nature, no reparation whatsoever could be made. That the law never admits of a general search-warrant. That in France, or Spain, even in the Inquisition itself, they never delegate an infinite power to search, and that no magistrate is capable of delegating any such power. That some papers quite innocent in themselves, might, by the slightest alteration, be converted to criminal action. Mr. Wilkes, as a member of Parliament, demanded the more caution to be used, with regard to the seizure of his papers, as it might have been naturally supposed, that one of the legislative body might have papers of a national concern, not proper to be exposed to every eye. When we consider the persons concerned in this affair, it ceases to be an outrage to Mr. Wilkes personally, it is an outrage to the constitution itself. That Mr. Wood had talked highly of the power of a Secretary of State; but he hoped by the verdict he would be brought to think more meanly of it. That if the warrants were once found to be legal, it would fling our liberties into a very unequal balance. That the constitution of our country had been so fatally wounded, that it called aloud for the redress of a jury of Englishmen. That their resentment against such proceedings was to be expressed by large and exemplary damages; that trifling damages would put no stop at all to such proceedings: which would plainly appear, when they would consider the persons concerned in the present prosecution, persons, who by their duty and office should have been the protectors of the constitution, instead of the violators of it.

Mr Eyre, the Recorder of London, then stood up: he apologized to the Bench for appearing in the present cause, considering the office he bore, but that he thought it was a cause which affected the liberty of every individual.

The Lord Chief Justice desired he would make no apology. He then observed, that the present cause chiefly turned upon the general question, whether a Secretary of State has a power to force persons houses, break open their locks, seize their papers, etc. upon a bare suspicion of a libel by a general warrant, without name of the person charged. A strange question, to be agitated in these days, when the constitution is so well fixed, when we have a prince upon the throne, whose virtues are so great and amiable, and whose regard for the subject is such, that he must frown at every incroachment upon their liberty. Nothing can be more unjust in itself, than that the proof of a man's guilt shall be extracted from his own bosom. No legal authority, in the present case, to justify the action. No precedents, no legal determinations, not an Act of Parliament itself, is sufficient to warrant any proceeding contrary to the spirit of the constitution.

Secretary Williamson, in Charles the Second's time, for backing an illegal warrant, was sent to the Tower by the House of Commons. The jury, he observed, had no such power to commit; he knew it well; but, for his part, he wished they had, as he was persuaded they would exercise it, in the present case, as it ought to be.

On the famous certificate in Queen Elizabeth's name, how far a man might be detained by a warrant of a Privy Counsellor, the answer of the Judges, even in those days, confined it to high treason only, and the power to arrest to be derived from the personal command of the King, or a Privy Counsellor. He then congratulated the jury, that they had now in their power the present cause, which had been by so much art and chicanery so long postponed. Seventy years had now elapsed, since the Revolution, without any occasion to enquire into this power of the Secretary of State, and he made no doubt but the jury would effectually prevent the question from being ever revived again. He therefore recommends it to them to embrace this opportunity (least another should not offer, in haste) of instructing those great officers in their duty, and that they (the jury would now erect a great sea mark, by which our State pilots might avoid, for the future, those rocks upon which they now lay shipwrecked.

N.B. The Recorder shone extremely.

The first witness on the prosecution was Matthew Brown. Says that he is butler to Mr. Wilkes. That on the thirtieth of April last, about nine o'clock in the morning, Watson, Blackmore, Mony, and Man, King's messengers, and Chisholm, a constable, came to Mr. Wilkes's house. That Watson followed Mr. Wilkes into the house, and Mony came next; Blackmore and Man followed after. That this witness never heard them, or either of them, declare their business, or the purpose of their coming. That as soon as Mr. Wilkes was carried away, which was about noon, Mr Wood and Mr. Stanhope came: that Mr Wood asked Mr. Watson, "Have you locked up all the study." That Mr. Wood and Mr Stanhope then went into the parlour; the messengers continued waiting in the passage. That soon after Mr Webb knocked at the door; upon it's being opened this witness attempted to sop him, but he rushed in. That Mr. Wood staid that time about half an hour; that when he went away he gave orders to the messengers, that no one should come in or go out till he returned, but bade them lock up all the doors. That he came back again in about an hour. That in the mean time several of Mr. Wilkes's friends came, viz. Humphry Cotes, Gardiner, Philips, Hopkins, etc. and were denied admittance by the constable: that Watson, the messenger, upon being called upon by these gentlemen to produce his orders for refusing them admittance, said he had only a verbal order from Mr. Wood. That the messenger, however, did at at last permit the gentlemen to come in.

That soon after Lord Temple came; that in a short time after Mr. Wood returned, and appeared to be very angry that the gentlemen had been admitted, "Who let these men in?" That the messengers answered, "They would come in." Mr. Wood then asked, "Who would come in?" Mr. Gardiner answered, "Twas I, sir"

That soon after that Mr. Wilkes's friends went away; that Mr. Wood then called for a candle, which was brought him, and he and Mr Stanhope then went up stairs, with Mony and Blackmore, the messengers, who appeared to take their orders from Mr. Wood and Mr. Stanhope. That they rummaged all the papers together they could find, in and about the room; that they (the messengers) fetched a sack, and filled it with the papers. That Blackmore then went down stairs, and fetched a smith to open the locks. That Mann, a messenger, then came, and would whisper Mr Wood, who bade him speak out; he then said he brought orders from Lord Hallifax to seize all manuscripts. That the smith then came, and, by the direction of Blackmore, the messenger, opened four locks of the lower drawers of a bureau; that they took out all the papers in those drawers and a pocket-book of Mr. Wilkes's, and put them all into the sack together, and then sealed up the sack. That this witness was present during all this time; that the messengers were obedient, and paid an entire regard to the directions of Mr. Wood and Mr Stanhope. That when Mr. Wood went away it was near two o'clock in the afternoon; that Mr. Wood, upon the whole, might be near two hours and an half in Mr. Wilkes's house. That no kind of inventory was made of the papers which were put into the sack. That Mr. Stanhope appeared all along to be favourable, and frequently bade the messengers be cautious and careful.

Upon his being cross-examined, he said,

That Mr. Wilkes was carried away about noon.

That Mr. Wilkes went out in the morning about six, and returned home about nine o'clock.

That Mr. Hopkins had been there that morning before.

That Mr. Wood did absolutely and positively (this witness avers it) order, upon his going out, that all the doors should be locked up, particularly the street door: that Mr. Wood told the messengers they knew their orders, and bade them execute them. That he remembers Mr. Wood said so. That Chisholm, the constable, held the sack, whilst the messengers filled it with papers.

That Mr. Wood was not there when the locks were opened: he now says, that Mr. Wood had before declared that the locks must be opened.

That Mr Stanhope said, to be sure, the locks must be opened. That Mr. Wood, he now says, was at one time above an hour in Mr. Wilkes's study.

That Mr. Stanhope was there with Mr. Wood at the time the papers were carried away.

That Mr. Webb was gone away some time before.

Richard Schofield says, that he is a livery servant to Mr. Wilkes: that he let Mr. Wood in at the door on the 30th of April, about eleven o'clock in the morning, as he thinks, to the best of his remembrance; that Mr. Wood staid the first time about a quarter of an hour. He confirms in general the last witness.

That Wood went away, and returned in about an hour.

That the messenger, upon being asked by Mr. Gardiner for his orders, said he had only verbal ones, from Mr. Wood.

That he can give no account of what passed up stairs, as he remained all that time in the passage below.

He confirms the last witness on that circumstance of the messenger, Mann's, coming from Lord Hallifax, with fresh orders.

That a post-letter came, in the mean time, directed to Mr. Wilkes, which the messenger, Watson, received, and would not deliver till Mr. Wood returned, who immediately delivered it, unopened, into this witnesss's hands.

That Mr. Wood when he went away, ordered the doors to be kept fast locked, particularly the street door.

That Blackmore came down stairs, and asked this witness where Mr. Wilkes's smith lived, and he answered him he believed in Cheapside.

Upon his being cross-examined, he said,

That Mr. Wood came about a quarter of an hour after Mr. Wilkes was carried away to Lord Hallifax.

That Mr. Wood, Mr. Stanhope, the four messengers, with the constable, together with another gentleman, whom he did not know, were the persons who came into the house.

Humphry Cotes ways, that he was at Mr. Wilkes's the 30th of April last, in the morning, about eleven o'clock, being sent for by Mr. Wilkes.

That Mr. Wood came in between twelve and one: that he (this witness) had been down to the Court of Common Pleas, to apply for a habeas corpus, and, upon his return to Mr. Wilkes's house, was told that Mr. Wilkes was not at home, and that he, Cotes, must not come in; this was between twelve and one o'clock. He demanded the reason why he must not come in, and by whose authority the door was locked. The man at the door answered, by the Secretary of State's.

The Solicitor-General disputed this evidence, as Mr. Cotes did not declare the man's name.

But Cotes then said, that the door-keeper called Watson, the messenger, to him; but why said he had the secretary's verbal order only, but not a written one.

That this witness did then insist upon being admitted, and did accordingly enter the house.

That Mr. Wood presently after came in, and said, with anger, "What do these men do here?"

That this witness then said, "What business have you here, sir?" Mr. Wood answered, that he was the Secretary of State's secretary.

That this witness then said, he had nothing to do with the Secretary of State, nor his secretary neither; that his name was Humphry Cotes, and was to be spoke with at any time.

That he (this witness) staid at Mr. Wilkes's house till past two o'clock.

That he was desired by Mr. Wood to be present when Mr. Wilkes's papers were sealed up, which he refused to do.

The Solicitor-General did not cross-examine him.

Richard Hopkins, Esq; says, that he went to Mr Wilkes on the 30th of April last, at half an your past nine o'clock in the morning, and staid two hours; found then no kind of obstruction.

That Mr. Wood was not there at this time, as this witness verily believes; but that when he returned, Mr. Wood had been there.

Confirms the last witness's account, of the obstructions to his entering the house, at this his last coming. That he was desired to be present at the sealing up Mr. Wilkes's papers, which he declined doing.

Arthur Beardmore says, that he was in Westminster-Hall on the 30th of April last, and, hearing of Mr Wilkes's arrest, he went directly to his house, and, with some difficulty, gained admittance. That when he gained admittance, and came into the parlour, Mr. Wood was there, altercating with the last witness, Mr. Hopkins.

That Mr. Gardiner and Mr. Cotes were then there.

That Lord Temple was likewise there.

That he (this witness) observing much confusion, demanded of Mr. Wood to shew his authority, and that much wrangling then ensued. That Mr. Wood and Mr. Webb were both there at this time. That Mr. Wood intreated the company to believe, that the secretaries had acted entirely pursuant to the advice and direction of the Attorney and Solicitor Generals' to which this witness answered, that he very much doubted it.

That this witness, coming into the parlour again through the passage, saw Mr. Webb standing at the foot of the stairs, with some keys in his hand, which this witness did

presume, and verily did believe, to be some of Mr. Wilkes's keys to his private escrutoires and drawers.

That Mr. Wood did desire him (this witness) to be present at the sealing up Mr. Wilkes's papers, which he utterly refused to do.

The council for the prosecution declined examining Mr. Gardiner and Mr. Philips, (who had both been present) on account of their being employed in the cause; and therefore rest there.

The Solicitor-General then stood up to make the defence which he divided into two parts; and first, he maintained the plea of not guilty; but if the jury should be of opinion that would not stand good, and that the evidence he should bring would not be capable of setting aside the evidence already produced in the Court on the other side; he then, secondly, relied on the special justification. He was at a loss, he said, to understand what Mr. Wilkes meant by bringing an action against Mr. Wood, as he was neither the issuer of the warrant, nor the executioner of it. If the constitution had been in such an egregious manner attacked, why not bring the Secretaries of State, themselves, into Court? Why should Mr. Wilkes commence separate actions against each person? Is Mr. Wilkes, at any event, entitled to tenfold damages? This was the first time he ever knew a private action represented at the cause of all the good people of England. If the constitution has, in any instance, been violated, the Crown must be the prosecutor, as it is in all criminal cases. The constitution does not consist in any one particular part of the law; the whole law is the constitution of the country, and a breach in one part of the law is as much a violation of the constitution as of another. Though so much has been said on the other side, with regard to the injury that might result from the promulgation of secrets, no proof had been brought of any thing being promulgated that was no proper to be so. The arguments which had been used against seizing of papers, to procure proof, were felo de se, unless the major was denied to include the minor. He then went upon the argument touching the warrant, and observed that these warrants had been issued as far back as the Courts of Justice could lead them. That the late Act of Parliament of George the Second for taking up vagrants was a general search-warrant, and he never knew it was ever esteemed an infringement of the constitution. That these warrants had existed before, at, and since the Revolution, and had till this case unimpeached; that if so contradictory to the constitution of this country, they could never have remained to this time.

He then made a general observation to the jury, that it was their duty to hear the cause coolly and dispassionately, without any bias to one side or the other. He then went on to make remarks on the evidence which had been given by the plaintiff; remarked that the question of liberty had nothing to do with the present cause, which only respected the seizure of papers. That the messengers went bunglingly about their business; Mr. Wood was only sent to see they did their duty.

He then went on to make remarks on *The North Briton*, No. 45. That it was a libel on the three branches of the legislative body, King, Lords, and Commons; that it was a libel of such a nature, that when it was before the two Houses of Parliament not one single person, in either House, ever uttered one single word in defence of it. That the whole of *The North Britons* were of such nature, that it astonished most considerate persons how they should have passed so long unnoticed; that it had attacked private persons, persons in public stations, with their names written at full length; which had already produced bloodshed, in an instance which the all well knew: and what farther fatal consequences might result from those publications, who would be answerable! If Mr. Wilkes should be proved to be the author of these papers, and of that libel of libels, No. 45, (an equal to which he defined this or any other age to produce) if he should be proved to be the author of that paper, which he was confident he should be able to prove, to the full satisfaction of the Court and jury; in that case, so far from thinking him worthy of exemplary damages, he was certain they would view him in his true and native colours, as a most vile and wicked incendiary, and a sower of dissention amongst His Majesty's subjects. He then observed, that the freedom of

this country consists, that there is no man so high, that he is out of the reach of law, nor any man so low, that he is beneath the protection of it.

That the warrant was legal in itself. That the authority of a Secretary of State was sufficiently established. That damages should always be reckoned according to the injury received. A jury that ever acted on any other principles certainly forswore themselves.

Lord Hallifax then came into Court, and being sworn, said, that he did receive information concerning No. 45.

That he did issue warrants in consequence of such information. That he did desire Mr. Weston, his secretary, to go to Mr. Wilkes's, and see that the messengers did their duty; that Mr. Weston declined it, beseeching his Lordship to excuse him, on account of his weak nerves, and ill state of health; that he then did desire Mr. Wood to go, who accordingly went. That he had reason to believe that Mr. Wilkes was the author of No. 45.

That he had information previous to the apprehending Mr. Wilkes, and his Lordship believes, to the best of his remembrance, it was on the very day the warrant was put in execution.

That this information tended to prove Mr. Wilkes the author of No. 45; but he cannot pretend to charge his memory with the entire contents of the information.

That orders were given by his lordship to the messengers, but he declares that he cannot, at this time, pretend to recollect either their names or their persons. That these orders were given by his lordship previous to the apprehension of Mr. Wilkes.

Upon the Lord Chief Justice expressing a desire to be informed by his lordship concerning the nature of the information said to be received at his office, and about which his lordship appeared rather shy, and cautious of entering upon, the Solicitor-General then produced an affidavit of Walter Balff, a printer in the Old Bailey, which was read, in order to prove Mr. Wilkes the author of No. 45.

Upon Lord Hallifax's being cross-examined, he said, that Mr. Weston is his own secretary, and that Mr. Wood was Lord Egremont's secretary.

His lordship was asked, whether he should think himself then authorized to command the secretary of Lord Egremont to do any thing. After some hesitation, his lordship answered, not without consulting Lord Egremont.

Said, that the offices are carried on in separate departments, but form only one complete secretary's office. He owns, however, that each secretary has the entire choosing and appointing his own officers.

That the warrant for the apprehension of Mr. Wilkes was issued (as he calls it, which, being explained, signifies made out) on the 26th of April last, and the information he now fixes to have been received on the 29th of April, and the arresting Wilkes's person the 30th day of April.

N.B. His lordship here fairly acknowledges that he issued the warrant three whole days before he received any information at all; and that during these three days the warrant lay dormant, whilst they were upon the hunt for intelligence.

The King's speech at the close of the last sessions of Parliament was then read.

The North Briton, No. 45, was afterwards read.

Some strictures of the Solicitor-General then ensued, upon the heinousness of the author's crime.

Thomas Caddell says, that he is apprentice to Andrew Millar, a bookseller in the Strand; that he is nearly out of his apprenticeship. That Mr. Wilkes called there in the summer of 1762, and left word with him, (this witness) that his master should advertise a new paper, shortly to come out, entitled *The North Briton*, and to be published by him (Millar). That his master did, in consequence, advertise it, and was paid by Mr. Wilkes the sum of one pound eight shillings, for advertisements.

That this master did afterwards, upon considering the affair, decline publishing *The North Briton*; saying he would publish no political matters.

Serjant Glynn then objected to their going into the evidence, to prove Mr. Wilkes the author of other papers, which had no respect to the paper in question; but

The Lord Chief Justice allowed it to be a good corroborating chain: but observed, if they failed in the last link, the whole would fall to the ground.

William Johnston says, that he is a bookseller in Ludgate-Street. That Mr. Wilkes applied to him to publish *The North Briton*, previous to it's appearing: that Mr. Wilkes did explain to him the general design; that he said he must have a publisher who would not stand in fear of the censures of justice.

That he never met Mr. Wilkes any where on this account; but that Mr. Wilkes always came to him.

That he, (this witness) upon consideration of this matter, declined publishing The North Briton.

That Mr. Wilkes then desired him to recommend a publisher: that he recommended Mr. Kearsly to him.

That he (this witness) had a correspondence with Mr. Wilkes, concerning The North Britons, and revision them for the press; but that, after three or four numbers of the paper were published, he (this witness) did, upon considering the affair decline that also.

Jonathan Scott says, that he knows Mr. Wilkes's hand-writing, and proves a number of letters shewn him to be Mr. Wilkes's hadn-writing, viz.

No.	1	dated	Wesminster,	26 July 1762
	2,		ditto,	29.
	3,		ditto,	8 August.
	4,		Aylesbury,	15.
	5,		ditto,	25.
	6,		Great George-Street	7 October
	7,		Winchester,	14.
	8,		ditto,	31.
	9,		Great Georte-Street	Friday morning.
	10,		ditto,	27 November
	11,		ditto,	12 December
	12,		ditto,	17.

All these were read; they are to Kearsly, and relate to *North Britons*, then sent to be published.

Walter Balff says, in the first place, that he is under a recognizance, and therefore prays he may be excused from answering any question which may tend to affect or injure himself.

A debate ensued for near an hour, whether he may or may not be allowed the privilege.

The Solicitor-General very strenuously asserts, that in the present case he may not be allowed it.

Serjeant Glynn, and the Recorder, reply to him.

The Lord Chief Justice gives it as his opinion, that the man is not bound to answer to any matter which may tend to accuse himself.[1]

Balff, then says, that he is a printer in the Old Bailey, and that he knows Mr. Wilkes.

Question: Did you receive this letter? One being shewn to him. Answer: Yes.

A letter of the 22d of April was then read of Mr. Wilkes to Walter Balff, which, from the purport of it, has a strong tendency to prove Wilkes the author of No. 45.

This letter of Wilkes refers to an inclosed paper (which paper does not appear) which he directs Balff to bring in, in the form of a letter, betwixt the conclusion of the next *North Briton*, and his proposals.

This letter likewise directs Balff to print *The North Briton* spoken of, in the compass of two sheets.

Charles Shaw says, that he is an apprentice to Walter Balff the last witness. That *The North Briton*, No. 45, was printed at his master's house. That he knows Mr. Wilkes, and has seen him often at his master's house, but that he does not know the business upon which he came there.

George Kearsley sworn, but not suffered to be examined, being under a prosecution at this time.

Michael Curry says, that he is a journeyman printer, that he was employed by Mr. Wilkes to work at the press in Great George-Street; that Mr. Wilkes gave them the whole set of *The North Britons* to be printed, and called them at that time his *North Britons.*

The counsel for the prosecution objected to this last being a proper evidence at all to the questions; and Mr. Wilkes or any other person's republishing a work, against which there was no judicial determination, could never affect them, as the original author and publisher of it.

Then they went into the legality of the warrant, and many precedents of the same kinds of warrants were produced in Court, to prove such warrants the constant uninterrupted course of the secretaries office from the Revolution.

The warrants from Lord Hallifax, for apprehending the authors, printers and publishers of *The North Briton* No. 45, were likewise read.

Loveill Stanhope, Esq; says that he came to Mr. Wilkes's house immediately after he was carried away to Lord Hallifax's; that he went with Mr. Wood, and stayed there half an hour; that he was there but once, and stayed till the papers were seald up; that he never went out of the study; that Mr. Wood was in the study but part of the time, and did nothing at all but observe what past; that he (Mr. Wood,) gave no orders to break locks by any kind

of means, nor gave the messengers any orders or directions at all, but only bade them to do their duty, and use civility!

That Mr. Wood was not in the room when the smith was sent for, nor gave any orders for that purpose, as Mr. Stanhope observed; that Mr. Wood was not present when the locks were opened.

But that it was Mr. Blackmore, the messenger, who broke open the locks, (in this circumstance Mr. Stanhope exactly confirms Matthew Brown's evidence).

That Mr. Wood went to Mr. Wilkes, merely at the instance of Lord Hallifax, in order to inforce a due and proper obedience to, and execution of, the warrant, and to prevent the messengers from committing any blunders.

That a debate arising, whether a table with a locked drawer should be removed entire or be opened, Mr. Mann was sent to Lord Hallifax for direction, and brought word that the drawers must be opened.

Upon this being cross examined, said that the messengers were to take manuscript papers only, and not meddle with improper matters, such as printed books, papers, etc. That he did think it incumbent upon him (this witness) to see that all the proper papers should be removed.

Robert Chisholm says that he was the constable called upon to attend the messengers to Mr. Wilkes; that it was on the 30th of April last, at six o'clock in the morning, that he was called upon; that Mr. Wood came immediately after Mr. Wilkes was carried away; that he (this witness) heard Mr. Wood came immediately after Mr. Wilkes was carried away; that he (this witness) heard Mr. Wood give no kind of orders at all; in short, that his opinion is, Mr. Wood only came to take care that the messengers did nothing that was wrong or improper.

Mr. Dunning asked this witness, whether he then imagined, that Mr. Wood appeared there merely on behalf of Mr. Wilkes, as his friend –he answered not so neither.

This witness shuffled and prevaricated very much, and contradicted his own evidence more than once.

Philip Carteret Webb, Esq; says that Mr. Wood was sent by the secretaries, merely to see that the messengers executed their warrants in due form and order; that he (this witness) was only once at Mr. Wilkes's, and then not more than half and hour; that he went because the Secretary of State was uneasy, and anxious to know what was doing at Mr. Wilkes's; that he (this witness) was never up stairs at Mr. Wilkes's; that he had a conversation with Lord Temple in the parlour. That he denies he had ever any keys of Mr. Wilkes in his hands; that he verily believes he had no keys at all in his hands; but that if he had any, they were his own and not Mr. Wilkes's.

Upon being cross-examined by Mr. Dunning, Philip Carteret Webb then said, that upon recollection he was absolutely certain, that he had no keys at that time in his hands.

That Mr. Weston was desired by Lord Hallifax to go, but that he excused himself on account of his weak nerves, and ill state of health, and that upon his (Mr. Weston) declining it Mr. Wood was desired by my lord to go, which he accordingly did.

Richard Watson says he is a Kin's messenger, that he was at Mr. Wilkes's on the 30th of April last, that Mr. Wood was there and did nothing at all as this witness observed, but only gave them directions how to act.

The Solicitor-General observed, when Balff and Kearsely's evidence were set aside, that he placed little dependence on their evidence, as to the proof of Mr. Wilkes being the

author of No. 45, and indeed he said it was not very material, for that the letter from Mr. Wilkes to Balff the printer which had been read, see page 26, and which he then held in his hand, was conclusive evidence against him. Norton expatiated long upon the circumstance of this letter: he observed that it was a lucky circumstance for them that No. 45 was the only number of *The North Briton* which was printed on two sheets of paper, that it was the only number that had a letter at the end of it, with the proposals following. He enlarged very full on all these corresponding circumstances.

Lord Chief Justice Pratt asked for the letter which was enclosed, that he might compare it with the letter at the end of *The North Briton*, No. 45.

But the Solicitor-General answered, he had it not.

Serjeant Glynn in his reply observed, that the manner of defence that had been set up would necessarily make his reply longer than it otherwise would have been. What he had to remark he should divide under two heads, 1st, as to the defence which had been set up of not guilty; and 2dly, make observations on the special justification that had been pleaded.

The evidence proved, uncontroverted, that Mr. Wood was the prime actor in the whole affair. He then observed that the three witnesses on the side of the defendant gave different evidences of the business Mr. Wood came about: Mr. Philip Carteret Webb's account was quite inconsistent: was it possible to suppose that a man of Mr. Wood's character and known abilities should be sent only with a message that any menial servant could have delivered as well; and that he should have nothing else to do with the affair. He then observed that all the witnesses called to oppose the evidence of their side were all parties, and against whom prosecutions of a like nature were at present depending. He then went upon the point of justification, and observed, that as to Mr. Wilkes being the author of No. 45, they had totally failed in any kind of proof whatsoever; or if they had produced the appearance of a proof, it was quite aside to the present question, and to which he should not at any event have made any reply, as there was at present depending a prosecution, as to that particular point, in his defence of which he made no doubt he should be able fully to prove that Mr. Wilkes was not the author. That Mr. Wilkes could not be supposed or even suspected of any design against the present establishment; that he was educated in and had always adopted Whig principles; that he was known to be attached to and to have the highest opinion of the present prince on the throne, which he had often and upon many occasions declared; and his conduct had always been answerable to these declarations. When crimes have been exaggerated, and so much declamation made use of as there has been on the present occasion, one would naturally have expected that some proof would have followed; but that in reality could never have been the case, as the sole design was to blacken Mr. Wilkes's character, without any foundation in fact. He then observed that various hands were commonly employed in most periodical works; that Mr. Wilkes was not denied to be the author of some of The North Britons; but that it was not likely he was the author of No. 45, and that indeed the republication of the work in volumes, in which was No. 45, so far from being a presumption against him, certainly affords the strongest reason to think he was not the author; for if he had been so, it is not likely he would have been concerned in a publication, whilst a criminal process was depending. He then observed as to the warrant, that it was destitute of those things necessary to make it legal: that a previous information was always necessary. That the defendants had nothing to entitle them to a verdict; that the evidence they had set up was perfectly declamatory and unfair: possibly Mr. Solicitor-General's office, might demand from him what he had said; but that he was well satisfied, from that gentleman's known good character and great abilities, that he would have refused to plead in a cause of a similar nature, which he was not forced to do ex officio. He was satisfied the jury would not view Mr. Wilkes as not entitled to a verdict, because loaded with calumny: that the case was a wound given to the constitution, and demanded damages accordingly: that Mr. Wilkes's papers had undergone the inspection of very improper persons to examine his private concerns, and called for an increase of damages on that score. The evidence brought of precedents of these kind of

warrants only shew how easy things may creep into our constitution, subversive of its very foundation. He then closed with telling the jury he made no doubt, but they would find a verdict for the plaintiff, with large and exemplary damages.

The Lord Chief Justice then summoned up the evidence of the whole, and observed it was an action of trespass, to which the defendant had pleaded first not guilty, and then a special justification. He then went through the particulars relating to the justification, the King's speech, the libel No. 45.

Information given, that such a libel was published,

Lord Hallifax granting a warrant; messengers entering Mr. Wilkes's house; Mr. Wood directed to go thither only with a message, and remaining altogether inactive in the affair.

If the jury should be of opinion, that every step was properly taken as represented in the justification, and should esteem it fully proved, they must find a verdict for the defendant. But if on the other hand they should view Mr. Wood as a party in the affair, they must find a verdict for the plaintiff, with damages. This was a general direction his Lordship gave the jury, and he then went into the particulars of the evidence. The chief part of the justification, he observed, consisted in proving Mr. Wilkes the author, and the evidence given, together with the letters to Kearsley plainly swew, that Mr. Wilkes was generally so. Then as to No. 45, the evidence was of two sorts, first a letter to fix It upon him, and the other general: as to the proof of the republication of The North Britons given by Currie, supposing it of itself sufficient, of which there was doubt, it did not extend to the present case, to justify a warrant issued several weeks previous to that period. As to the letter, the gentlemen must take that out with them, together with The North Briton, No. 45, and allow all the weight to the circumstance they think it will admit of.

If upon the whole they should esteem Mr. Wilkes to be the author and publisher, the justification would be fully proved. But that, to do this, it was essentially necessary to have the enclosed paper in the letter to Balff, as, without that, all the rest was but inference, and not the proof positive which the law required. As to Mr. Wood, he was described on one side as very active in the affair, and on the other side as quite inoffensive. Aiders and abetters are always esteemed parties: but if a person present remains only a spectator, he cannot be affected. The evidence on the one side had been positive, and on the other side only negative. Mr. Wood might have said and done as represented on the one side, when the evidences on the other side were not present: if upon the whole they should be of opinion, that Mr. Wood was active in the affair, they must find a verdict for the plaintiff with damages. His Lordship then went upon the warrant, which he declared was a point of the greatest consequence he had ever met with in his whole practice. The defendants claimed a right, under precedents, to force persons houses, break open escrutores, seize their papers, etc. upon a general warrant, where no inventory is made of the things thus taken away, and where no offenders names are specified in the warrant, and therefore a discretionary power given to the messengers to search wherever their suspicions may chance to fall. If such a power is truly invested in a Secretary of State, and he can delegate this power, it certainly may affect the person and property of every man in this kingdom, and is totally subversive of the liberty of the subject.

And as for the precedents, will that be esteemed law in a Secretary of State which is not law in any other magistrate of this kingdom? If they should be found to be legal, they are certainly of the most dangerous consequences; if not legal, must aggravate damages. Notwithstanding what Mr. Solicitor-General has said, I have formerly delivered it as my opinion on another occasion, and I still continue of the same mind, that a jury have it in their power to give damages for more than the injury received. Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself.

As to the proof of what papers were taken away, the plaintiff could have no account of them; and those who were able to have given an account (which might have been an extenuation of their guilt) have produced none. It lays upon the jury to allow what weight they think proper to that part of the evidence. It is my opinion the office precedents, which had been produced since the Revolution, are no justification of a practice in itself illegal, and contrary to the fundamental principles of the constitution; though its having been the constant practice of the office, might fairly be pleaded in mitigation of damages.[2]

He then told the jury they had a very material affair to determine upon, and recommended it to them to be particularly cautious in bringing in their verdict. Observed, that if the jury found Mr. Wilkes the author or publisher of No.45, it will be filed, and stand upon record in the Court of Common Pleas, and of course be produced as proof, upon the criminal cause depending, in barr of any future more ample discussion of that matter on both sides; that on the other side they should be equally careful to do justice, according to the evidence; he therefore left it to their consideration.

The jury, after withdrawing for near half hour, returned, and found a general verdict upon both issues for the plaintiff, with a thousand pounds damages.

After the verdict was recorded, the Solicitor-General offered to prefer a bill of exceptions, which the Lord Chief Justice refused to accept, saying it was out of time.

The Court sat at nine o'clock in the morning, and the verdict was brought in at twenty minutes past eleven o'clock at night.

Note 1 Nemo tenetur seipsum accusare. [Back]

Note 2 Ut poena ad paucos, metus ad omnes pertingat, Judicandum est legibus non exemplis. [Back]

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