

Bolton Vs. Martin

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Decided On : 1788

Appeal No. : 1 U.S. 296

Appellant : Bolton

Respondent : Martin

Judgement :

BOLTON v. MARTIN - 1 U.S. 296 (1788)

U.S. Supreme Court BOLTON v. MARTIN, 1 U.S. 296 (1788)

1 U.S. 296 (Dall.)

Bolton

v.

Martin

Court of Common Pleas, Philadelphia County

June Term, 1788

The Defendant was one of the members from Bedford county, in the State convention, which assembled at Philadelphia, to take into consideration the adoption, or rejection, of the constitution proposed for the Government of the United States, by the Federal Convention on the 17th of September 1787. During

his attendance upon this duty, he was served with a Summons at the suit of the Plaintiff; and Sergeant obtained a rule to shew cause, why the Process should

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not be quashed upon a suggestion, that the Defendant; acting in this public capacity, was entitled to privilege? The case was elaborately argued by Levy for the Plaintiff; and Sergeant and Bradford for the Defendant. Levy represented the question to be, simply, whether a member of the State Convention was protected, during the sessions of that body, from being served with a Summons? He remarked, that there appeared to be a strong distinction between the privileges of a permanent Legislature, and those which might be claimed by a Convention called for a temporary purpose: but, waving any argument arising from that source, he contended that there was no similitude between the deliberative bodies of England and Pennsylvania; and that, consequently, the privilege of Parliament in that country, was not capable of a strict application in this. The English Constitution, consisting of three branches, was so constructed as to prevent the encroachments of one branch upon another, and privilege, as allowed in England, was the necessary result of that principle. The privilege of the House of Lords, might, perhaps, be founded on immemorial usage; but if the members of the House of Commons had not, likewise, been protected from arrests, it is easy to perceive, that their deliberations and decisions might, at any time, have been interrupted by the practices of the other branches of the government. But if we must still be referred to the privilege of Parliament, he insisted that the protection of a member of the House of Parliament, extended only to the case of arrests, or personal restraint, and not to the service of a Summons. *Atk. tracts* 41. 42. 43. *1 Mod.* 146. *S.C.* *Nay*, we find that anciently the Courts of Justice only took cognizance of the privilege of Parliament, to deliver the party out of custody, and not to abate the suit brought against him *1 Black. Com.* 166. *Dyer* 59.56. With respect to the nature of privilege, he argued, that, in modern times, it was become an odious and unpalatable doctrine; and that if it were *res nova*, a very doubtful question might be made, whether the advantage which the public derives from the protection of its servants against vexatious and malicious arrests, compensates for

the injury done by screening a man from the payment of his just debts. The policy of Queen Elizabeth's observation, that 'he was no fit subject to be employed in her service, that was subject to other men's actions, left she might be thought to delay justice,'* deserves to be well considered in a Republic; and it appears, indeed, to have operated considerably, even in that kingdom, from which all our precedents on the subject are derived. Statute after statute has been framed to narrow this infraction of the common law; and, by the influence of Lord Mansfield's eloquence, the statute of the 10 Geo.3.c.50. seems at length to have placed it upon a safe and reasonable foundation; for, a Peer of the most distinguished rank may, at this day, be served with a Summons, during the sitting of Parliament. 1 Black. Com. 166. But even when the pretensions of the Commons were exalted to their greatest height, it was always admitted that their privilege was given for the

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benefit of the people at large, and not for the benefit of the individual. Sir T. Raym. 142. How then can the interest of the people be affected by a process which imposes no restraint upon the person, and occasions no interruption of the public business? Nor was the privilege of the English Commons ever extended by analogy to other deliberative bodies. Till the statute of 8 H. 6. c. 1. was passed, in the year 1427, the members of the Convocation (which was then a deliberative Assembly whose decisions, in matters within their jurisdiction, were taken to be law) were liable to arrests; and to remove every doubt, whether this was merely a declaration of the ancient law, or an introduction of something new, 3 Black. Com. 289. says expressly, that the Privilege was given by that statute. If then we are to be governed by the privilege of the British Parliament in determining this question, are we to receive that privilege entire, in its duration commencing forty days before, and continuing forty days after, the Sessions; and in its object extending to the servant as well as to the master? Or, are we to receive it divested of its more odious trappings, and purified by the wholesome restrictions of modern statutes? If the latter proposition prevails, we have shewn that privilege cannot protect the Defendant from the service of a Summons; and, with respect to the former, though, it is true, we have adopted the municipal regulations of that nation for the

security of property, and the punishment of crimes; yet, does it follow that we are to be encumbered with the various extravagancies of their political system, exhibiting to the world the absurd portrait of a Republic, with the heterogeneous features of a Monarchy? In this country an universal equality is established; no jealous, and rival, powers, warp the legislature; the distinctions of rank and degree are unknown, except, indeed, in the honorable pre-eminence which the voice of the people periodically bestows on the most worthy; and surely the privileges of the Sophi of Persia, or the Musti of Constantinople, are as fit to be engrated on a constitution of this description, as the Privilege of the British Peerage, or their House of Commons. But, after all, if the essential difference in the principles of Government, should not be sufficient to exclude the privilege contended for, the 5 Sect. of the Art. of Confed. which has been incorporated into the new Federal System, is tantamount to a solemn declaration, that no such privilege exists: for, there, Congress in defining the privilege of its members, secures them from arrest and imprisonment, but not from the process of a Summons. Will it, therefore, be asserted that the Defendant, in the present case, is entitled to greater privileges, than he would have enjoyed as a member of that honorable body? The idea is contrary to reason and propriety; and if we must argue from anaology, there can be no doubt that we ought rather to apply to Congress for the precedent, than to the Parliament of Great Britain. Sergeant for the Defendant. The exemption from arrest in the case of members of Parliament, is totally unconnected with the political

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system of King, Lords, and Commons. It is a privilege granted for this end that the administration of the government may not be interrupted, or damaged, by the embarrasments arising from the private affairs of those who are called into the public service; and, as a necessary consequence of this principle, it belongs to every national body, constitutionally assembled for legislative purposes. The members of the House of Commons in England would therefore have been entitled to it, even if no King, or House of Lords, had been known to their constitution; the Congress of the United States must have enjoyed it, though the

Articles of Confederation had been silent upon the subject; and the sovereigns of a free People, convened in a single House, are surely not less entitled to that distinction, than if they had only formed a third branch of the government. That the privilege is applicable to the Legislature of Pennsylvania, must then be acknowledged, though it certainly is not conferred by any positive law: Nor can it be denied to a Convention acting under the immediate sanction and authority of the people, upon a question of the highest importance to the general interests of the community. Their power, though directed to a particular object, was derived from the same source, which supplies the permanent Legislature of the State; and their business equally required a protection from vexations, interruptions, and intrusions. In short, there is a sanctity in the character of the Representatives of an independent people, which is the true foundation of privilege; and it is recognized, not only for municipal purposes, but, by the law of nations, for the protection of Monarchs, their Ambassadors, and other public Ministers; in which respect no positive statute will be found to mention it, till the reign of Queen Anne.* With respect to the distinction that is attempted, that the privilege is only from arrests, and not from being impleaded, it can neither be supported by law, nor the reason of the case. The service of a Bill of Middlesex, which is no restraint upon the Person, was held to be a breach of privilege, under circumstance infinitely less important, than an attendance upon the State Convention, 2 Stra. 1094. In the case of Col. Pitt, the whole proceedings, upon mature consideration, were done away; 2 Stra. 990. and 2 Ld. Raym, 1113. shews, that, though an original might be sued out, and continued down, in order to avoid the statute of limitations, yet the sanctity of the person could not in the smallest degree, be violated. Even the case which has been relied on from Atk. Tracts, declares that he shall neither be arrested, nor impleaded. It would, indeed, be nugatory, if an exemption from the trouble of entering special bail, was all the advantage privilege conferred; as the public service would still be left exposed to the interruptions of an anxious attendance upon a litigious suit, and all its concomitant circumstances, of instructing lawyers and collecting witnesses. Bradford, on the same side, arranged his argument under two propositions; 1st, that such a thing as privilege existed in Pennsylvania;

and 2nd, that it extended to the case of a Summons, as well as a Capias. 1. He said, that where there was the same reason, there ought to be the same law; and if the purpose of privilege was to prevent a man's being drawn aside from his public duty, or embarrassed with private cares, during his attendance upon it, that fundamental principle operated, at least, with as much force in Pennsylvania as in England; and in the case of the State Convention (whose business was of the most critical nature) perhaps, more than in the case of any permanent deliberative Assembly. But, he asked, what writer has ever treated privilege as the result of a form of Government, composed of three branches? Experience contradicts the assertion. Even in England, a member of Parliament cannot plead his privilege against a debt due to the Crown, so superior is prerogative; the privilege which the law of nations confers upon Ambassadors, is not the result of any particular form of Government: nor does the privilege recognized in Courts of Justice, rest upon so equivocal a bases. Is a suitor here protected from arrests upon any political consideration? Or, can it be said that a witness at this bar, owes his security to the texture of the constitution? No: These are the effects of an universal principle, which equally applies in all Countries, and under every modification of Government; for, when the business of the State requires the attendance of an individual at a particular place, it would be unreasonable and unjust to expose him to an inconveniency, which he would not have suffered, but for that attendance; it would be impolitic, likewise; for few men would be willing, on such terms, to engage in the public service. 2. The preceding argument must serve, likewise, to shew, that the privilege extends to the case of a Summons, as well as a Capias. For, though the Defendant avoids the trouble of entering special bail; yet the former process, as well as the latter, will oblige him to attend the Court from which it issues, however remote it may be from his fixed place of residence. But, in the present case, the Defendant is not solicitous to be discharged from the suit, for he will engage to appear gratis in the proper county. The difficulty, in fact, arises from the nature and extent of the jurisdictions of our Courts. In England the jurisdiction of the King's Bench and Common Pleas, being co-extensive with the kingdom, those Courts can direct the venue to be laid in the County where the cause of

action originated. But here, our County Courts are in their nature circumscribed; and it has lately been determined in the Supreme Court, on a motion by Mr. Sergeant to change the venue from Bucks to Philadelphia, that even there, this relief could not be obtained; for the act of 1766,* expressly declares, that the venue shall be laid in the county where the action is instituted. The Defendant's claim, therefore, is rather the privilege of being sued in a particular Court, than an exemption either from arrest, or being impleaded; and we say that he ought not to be sued in this

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Court, because it was the public, and not his private, business, that brought him within its jurisdiction. By an act passed in the year 1684, (though since repealed) a summons might have been served in any county, at any time, with an exception, allowing, in the case of a member of Assembly, a protection for the space of 14 days after the sessions. Shall it then be said that any individual might compel a Judge of the Supreme Court to attend a private suit upon the Ohio, by serving him with a summons, while he is discharging his official duties on the Western circuit? We contend that the interest of the Commonwealth requires that persons employed in such services, should not be incommoded; there is no necessity, therefore, to derive the privilege by the analogy of other cases; it arises from the nature of the thing; and many authorities shew, that the rule is as forcible to prevent their being impleaded, as to prevent their being arrested. 2 Stra. 1094. Vin. tit. Priv. 519. A man, by the law of Pennsylvania, may be his own council; if he exercises this right, is he not as much drawn from the public service by a Summons as by a Capias? In Matlack's case, the Court would not issue a Subpoena to two members of the Assembly (Delaney and Hill) who were witnesses in the cause; but a letter was written to the Speaker, stating the necessity of their attendance, and a vote of the House was taken to allow it. In Col. Pitt's case, he was entirely discharged from a Capias, without common bail being ordered; from which it may be fairly inferred, that he ought not to have been sued at all; as the effect of common bail, and a Summons are, in that respect, the same. The case cited from Pryn in Atk. Tr. is not in the Year Books, and it could not have

been within the knowledge of the writer, as it is said to have happened in the reign of Edw. 3. For this reason it bears a doubtful complexion; nor, do we know that the decision was on the case before the Court; and, at all events, there is an essential difference in privilege, when it is extended to the servants (who have no public cares to claim their attention) and when it relates to the master. Levy, in reply. He said, that he had not asserted that a member, either of the Assembly, or Convention, was liable to arrest during the sitting of those bodies; but that he had expressly narrowed the question to this point, whether he might be served with a Summons. Nor had he insisted on the idea, that the Convention was not entitled to the same privileges, which a permanent Legislature might claim; but merely suggested a distinction for the consideration of the Court. He contended, however, that a member of the British House of Lords, since the 10 Geo. 3. c. 50. was not entitled to the privilege claimed by the Defendant; and, he asked, whether such privileges ought to be introduced and established in Pennsylvania, as only existed in the dark ages of the English government, and which the reason and justice of more enlightened generations had happily corrected? Finding, indeed, that they had failed in point of fact, with respect to the existence of such a Parliamentary privilege as

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they claim, he said, the adverse council had entered elaborately into arguments ab inconvenienti. But in doing this, no answer had been given to the reason for passing the 8 H. 6. c. 1. by which statute, the members of the Convocation, were first exempted from personal arrest.

Where, however, is the great inconveniency of a suit, if it is not founded in malice, or instituted in a subordinate and incompetent jurisdiction? neither of which can be pretended upon this occasion. Is there any thing more required, in its first stages, than to direct an Attorney to enter an appearance? When, indeed, the cause is ready for trial, at the distance of, perhaps, many months, and long after the business of a deliberative Assembly, constituted for similar purposes as our State Convention, must be closed, it will be necessary to prepare for a defence, if there is any in the cause; but is this so severe a hardship as to distract a member of the

Assembly, or Convention, in the prosecution of his duty, and to disqualify him for the public service in which he is employed?

Nothing appears to shew that any other county, is a more proper county than this; so that the offer to appear gratis might have been spared; as well as the argument respecting the venue, which is an inconveniency that extends to all cases; is equally felt by every citizen; and, proving too much, it must be taken to prove nothing.

The act of 1684, has been long repealed; and the distinction attempted between a Capias and Summons does not apply; for every writ irregularly issued must be set aside; and, therefore, if a man is illegally arrested, common bail ought not to be ordered. [302-Continued.]

With respect to the instance of an application to the Speaker of the Assembly, requesting the attendance of two members, that was in the case of witnesses; and as the Court, after issuing a Subpeona, must have compelled obedience to it by attachment, a very serious question, between the legislative and judicial authority, was prudently avoided by the step then taken.

If the privilege in England is not the result of their form of government, why does it exist forty days before, and forty days after, the sessions, in the case of the members for Middlesex and London, who certainly do not require so long a protection eundo et redeundo. But the whole argument ought to be determined by an analogous consideration of the 5 Sect. of the Art. of Confed.

On the 6th of September, the President delivered the opinion of the Court.

Shippen, President.

The question in this case is, whether a member of Convention, residing in a distant county, could legally, and consistently with the privileges of such a deliberative Assembly, be arrested, or served with a Summons, or other process, out of this Court, issued to compel his appearance to a civil action, while he remained in the city of Philadelphia, attending the duties of that office?

The members of Convention, elected by the people, and assembled for a great national purpose, ought to be considered in reason, and from the nature, as well as dignity, of their office, as invested with the same or equal immunities with the members of General Assembly, met in their ordinary legislative capacity: And in this light I shall consider them. The Assembly of Pennsylvania, being the legislative branch of our Government, its members are legally and inherently possessed of all such privileges, as are necessary to enable them, with freedom and safety, to execute the great trust reposed in them by the body of the people who elected them. As this is a parliamentary trust, we must necessarily consider the Law of Parliament in that country from whence we have drawn our other laws. That part of the law of Parliament, which respects the privileges of its members, was principally established to protect them from being molested by their fellow subjects, or oppressed by the power of the Crown, and to prevent their being diverted from the public business. The parliament, in general, is the sole and exclusive judge and expositor of its own privileges: but, in certain cases, it will happen, that they come necessarily and incidentally before the Courts of law, and then they must likewise judge upon them. The origin of these privileges is said by Selden to be as ancient as Edward the Consellor. For a long time, however, after the conquest, we find very little, either in the books of Law, or History, upon this subject. If there were then any regular Parliaments, their members held their privileges by a very precarious tenure. There appears, indeed, in the reigns of Henry the 4th and Henry the 6th to have been some provisions made by acts of Parliament, to protect the member from illegal and violent attacks upon their persons. In the reign of Edward the 4th, there has been a case cited to shew, that the Judges determined that a menial servant of a member of Parliament, though privileged from actual arrest, might yet be impleaded. Although it were fairly to be inferred from the case, that the privilege of the servant was equal to the privilege of the member himself, yet a case determined at so early a period, when the rights and privileges of Parliament were so little ascertained and defined, cannot have the same weight as more modern authorities. Upon an attentive perusal of the statute of 12 & 13. Will. 3. c. 3. I think, no other authority will be wanting to shew

what the law was upon this subject, before the passing of that act. From the whole frame of that statute, it appears clearly to be the sense of the Legislature, that, before that time, members of Parliament were privileged from arrests, and from being served with any process out of the Courts of law, not only during the sitting of Parliament, but during the recess within the time of privilege; which was a reasonable time eundo & redeundo. The design of this act was not to meddle with the privileges which the members enjoyed during the sitting of Parliament (those seem to have been held sacred) but it enacts, that after the dissolution, or prorogation, of Parliament, or

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after adjournment of both Houses for above the space of fourteen days. any person might commence and prosecute any action against a member of Parliament, provided the person of the member be not arrested during the time of privilege. The manner of bringing the action against a member of the House of Commons is directed to be by Summons and distress infinite, to compel a common appearance: But even this was not to be done till after the dissolution, prorogation, or adjournment. The act further directs, that where any plaintiff shall by reason of privilege of Parliament be stayed from prosecuting any suit commenced such plaintiff shall not be barred by the statute of limitations, or nonsuited, dismissed, or his suit discontinued for want of prosecution, but shall, upon the rising of Parliament, be at liberty to proceed. So that before the rising of Parliament, and during the actual sitting of it, it appears, not only that, generally, a suit could not be commenced, but, if it had been commenced before, it could not be prosecuted during that time. One exception, as to commencing the action appears to have been made by the Judges, agreeably to the spirit and apparent intention of the act; which is, that in order to prevent a member of Parliament from taking advantage of the statute of limitations by reason of his privilege, an original might be filed against him; but that original must lie dormant during the sitting of Parliament; no process could issue upon it to compel an appearance; nor, till this act passed, could it have been done at any time after the rising of Parliament, during the time of privilege. This construction of the act is so obvious, that, upon

any other, almost all the provisions in it would have been nugatory; and it fully accounts for the seeming doubt in Col. Pitt's case in *Strange*, whether he should be discharged on common bail, or be discharged altogether; it being after the dissolution of Parliament, the plaintiff had a right, by the act, to commence a suit against him; and, therefore, it seemed, at first, that he should only be discharged on common bail; but as he had commenced his suit by arresting his person, before his time of privilege expired, the Judges, that they might not seem to countenance the arrest, discharged him entirely. If it were possible to doubt of this being the true construction of the act of 12 and 13. W. 3. it is made still clearer by the act of 2. and 3. Ann. c. 18. which directs that any action may be commenced against a member of Parliament employed in the revenue, or other place of public trust, even during the sitting of Parliament, for any misdemeanor, breach of trust, or penalty, relating to such public trust, provided his person be not arrested. This act was made for this single purpose, and would have been likewise nugatory, if an action could have been brought before, against any member of Parliament during the sitting of the House. Black. Com. 165. was cited to shew, that a member of Parliament might be sued for his debts, though not arrested, during the sitting of Parliament. This will appear to be expressly confined to actions at the suit of the King, under a particular provision in the statute of W. 3.

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and, by the strongest implication, shews, that it could not be done as the suit of a private person. A little higher, in the same page, a general position of Judge Blackstone will be found, which fully reaches the case in question. 'Neither (says he) can any member of either House be arrested, or taken into custody, nor served with any process of the Courts of Law, nor his servants arrested &c.; without a breach of the privilege of Parliament.'

In the case before us, the Defendant appears to have been served with a Summons out of this Court, during the time of the actual sitting of the Convention. Whether we take the law to be, as it stood in England before, and at the time of passing the act of W. 3.; or as it stood after the passing that act down to the 10th of Geo. 3. about six years before our revolution, it is clear that no member of

Parliament, other than those particularly excepted, could be arrested or served with any process out of the Courts of Law, during the sitting of Parliament.

We cannot but consider our Members of Assembly, as they have always considered themselves, intitled by law to the same privileges. They ought not to be diverted from the public business by law suits, brought against them during the sitting of the House; which, though not attended with the arrest of their persons, might yet oblige them to attend to those law suits, and to bring witnesses from a distant county, to a place whither they came, perhaps solely, on account of that public business.

The Defendant, therefore, must be discharged from the action. [*](#)

The rule was discharged. Footnotes

[[Footnote *](#)] See Co. Litt. 131.

[[Footnote *](#)] See 7 Ann. c. 12. and the history of that statute in 1 Bl. Com. 255.

[[Footnote *](#)] See 1 State Laws 114. and 338.

[[Footnote *](#)] Since these Reports were committed to the Pres, I have been favored with a note of another case in this Court, upon the question of privilege; and, I hope, I shall be excused for introducing it here.

Caldwell versus Barclay et al.

Foreign Attachment. Moylan obtained a rule to shew cause why this Attachment should not be quashed, on the ground that one of the Defendant's, Barclay, being an American consul, and in that character actually residing abroad in the public service, was not within the description of persons, whose effects were made liable to a Foreign Attachment by the act of Assembly.

The rule was opposed by Wilson, Bradford, and Sergeant, who contended, that as a Consul, Barclay was not entitled, by the law of nations, to any privilege, or exemption from legal process; that, even if he was privileged on account of his official character, he had lost that advantage, by his partnership with the other Defendant, who was not entitled to it; and that the act of Assembly makes no difference between persons serving their country abroad, and any other non-residents.

After the able argument, the opinion of the Court was delivered by Mr. President, Shippen; agreeably to which

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