

## Erskine May, Vol. II, Chapter VII, pp. 13-27

### Wilkes, Continued

Up to this time, whatever may have been the injustice and impolicy of their proceedings, the Commons had not exceeded their legal powers. The grounds on which they had expelled a member may have been insufficient; but of their sufficiency, they alone were competent to judge.

### His Election Declared Void

They were now, however, about to commit unwarrantable excesses of jurisdiction, and to violate the clearest principles of law. As Mr. Grenville had predicted, Wilkes was immediately re-elected without opposition. The next day, on the motion of Lord Strange, the House resolved that Mr. Wilkes 'having been, in this session of Parliament, expelled the House, was and is incapable of being elected a member, to serve in this present Parliament.' The election was accordingly declared void, and a new writ issued. There were precedents for this course; for this was not the first time the Commons [14] had exceeded their jurisdiction; but it could not be defended upon any sound principles of law. If by a vote of the House, a disability, unknown to the law, could be created,—any man who became obnoxious might, on some ground or other, be declared incapable. Incapacity would then be declared,—not by the law of the land, but by the arbitrary will of the House of Commons. On the other hand, the House felt strongly that their power of expulsion was almost futile, if their judgment could be immediately set aside by the electors; or, as it was put by General Conway, 'if a gentleman who returns himself for any particular borough, were to stand up and say that he would, in opposition to the powers of the House, insist upon being a member of Parliament.'

### Colonel Luttrell Seated

Again, with still increasing popularity, Wilkes was re-elected without opposition; and again a new writ was issued. In order to prevent a repetition of these fruitless proceedings, an alternative,—already pointed out by Mr. Grenville,—was now adopted. Colonel Luttrell, a member, vacated his seat, and offered himself as a candidate. Wilkes was, of course, returned by a large majority. He received one thousand one hundred and forty-three votes: Colonel Luttrell only two hundred and ninety-six. There were also two other candidates, Mr. Serjeant Whitaker and Mr. Roache, the former of whom had five votes, and the latter none. The Commons immediately pronounced the [15] return of Wilkes to be null and void; and, having called for the poll-books, proceeded to vote,—though not without a strenuous opposition,—that Henry Lawes Luttrell ought to have been returned. To declare a candidate, supported by so small a number of votes, the legal representative of Middlesex, was a startling step in the progress of this painful contest; but the ultimate seating of another candidate, notwithstanding Wilkes' majorities, was the inevitable result of the decision which affirmed his incapacity.

Leave was given to petition the House against Colonel Luttrell's election, within fourteen days. Of this permission the electors soon availed themselves; and, on the 8th May, they were heard by counsel, at the bar of the House. Their arguments were chiefly founded upon the original illegality of the vote, by which Wilkes' incapacity had been declared; and were ably supported in debate, particularly by Mr. Wedderburn, Mr. Burke, and Mr. George Grenville: but the election of Colonel Luttrell was confirmed by a majority of sixty-nine.

Wilkes was now effectually excluded from Parliament; but his popularity had been increased, while the House, and all concerned in his oppression, were the objects of popular indignation. As some compensation for his exclusion from the House of Commons, Wilkes was elected an alderman of the city of London. A liberal subscription was also raised, for the payment of his debts.

### **Attempts to Reverse these Proceedings**

[16] So dangerous a precedent was not suffered to rest unquestioned. Not only the partisans of Wilkes, but the statesmen and lawyers opposed to the government, continued to protest against it, until it was condemned.

On the 9th January, 1770, Lord Chatham,—reappearing in the House of Lords after his long prostration,—moved an amendment to the address, denouncing the late proceedings in the House of Commons, as 'refusing, by a resolution of one branch of the legislature, to the subject his common right, and depriving the electors of Middlesex of their free choice of a representative.' Lord Camden, the chancellor, now astonished the Lords by a statement 'that for some time he had beheld with silent indignation, the arbitrary measures which were pursuing by the ministry;' and, 'that as to the incapacitating vote, he considered it as a direct attack upon the first principles of the constitution.' Lord Mansfield, while he said that his opinion upon the legality of the proceedings of the House of Commons was 'locked up in his own breast, and should die with him,' (though for what reason it is not easy to explain,) argued that in matters of election the Commons had a complete jurisdiction, without appeal; that their decisions could only be reversed by themselves, or by Act of Parliament; and that except in discussing a bill, the Lords could not inquire into the question, without violating the privileges of the other House.

[17] Lord Chatham replied in his finest manner. Lord Mansfield's remarks on the invasion of the privileges of the other House, called forth this comment: 'What is this mysterious power, —undefined by law, unknown to the subject, which we must not approach without awe, nor speak of without reverence,—which no man may question, and to which all men must submit? My Lords, I thought the slavish doctrine of passive obedience had long since been exploded; and when our kings were obliged to confess that their title to the crown, and the rule of their government, had no other foundation than the known laws of the land, I never expected to hear a divine right, or a divine infallibility attributed to any other branch of the legislature.' He then proceeded to affirm that the Commons 'have betrayed their constituents, and violated the constitution. Under pretence of declaring the law, they have made a law, and united in the same persons, the office of legislator and of judge.' His amendment was negatived; but the stirring eloquence and constitutional reasoning of so eminent a statesman, added weight to Wilkes' cause.

In the Commons also, very strong opinions were expressed on the injustice of Wilkes' exclusion. Sir George Savile especially distinguished himself by the warmth of his language; and accused the House of having betrayed the rights of its constituents. Being threatened with the Tower, he twice repeated his opinion; and,—declining the friendly intervention [18] of Colonel Conway and Lord North, who attributed his language to the heat of debate,—he assured the House that if he was in a rage, 'he had been so ever since the fatal vote was passed, and should be so till it is rescinded.' Mr. Sergeant Glynn thought 'his declaration not only innocent, but laudable.' A formidable opposition showed itself throughout the debate; and while in the Lords, the Chancellor had pronounced his opinion against the incapacitating vote,—in the Commons, the Solicitor-General, Mr. Dunning, also spoke and voted against the government. The question had thus assumed a formidable aspect, and led to changes which speedily ended in the breaking up of the Duke of Grafton's administration.

On the 25th January, 1770, Mr. Dowdeswell moved a resolution in a committee of the whole

House, 'That this House in its judicature in matters of election, is bound to judge according to the law of the land, and the known and established law and custom of Parliament, which is part thereof.' This premiss could neither be denied nor assented to by the government without embarrassment; but Lord North adroitly followed it out by a conclusion, 'that the judgment of this House was agreeable to the said law of the land, and fully authorised by the law and custom of Parliament.' On the 31st January, Mr. Dowdeswell repeated his attack in another form, but with no better success.

[19] The matter was now again taken up in the House of Lords. On the 2nd February, in committee on the state of the nation, Lord Rockingham moved a resolution similar to that of Mr. Dowdeswell. Though unsuccessful, it called forth another powerful speech from Lord Chatham, and a protest signed by forty-two peers. The rejection of this motion was immediately followed,—without notice, and after twelve o'clock at night,—by a motion of Lord Marchmont, that to impeach a judgment of the House of Commons would be a breach of the constitutional right of that House. Lord Camden, being accused by Lord Sandwich of duplicity, in having concealed his opinion as to the illegality of the incapacitating vote, while a member of the cabinet, asserted that he had frequently declared it to be both illegal and imprudent. On the other hand, the Duke of Grafton and Lord Weymouth complained that he had always withdrawn from the Council Board to avoid giving his opinion,—a circumstance explained by Lord Camden on the ground that as his advice had been already rejected, and the cabinet had resolved upon its measures, he declined giving any further opinion. In either case, it seems, there could have been no doubt of his disapproval of the course adopted by ministers.

The next effort made in Parliament, in reference to Wilkes' case, was a motion by Mr. Herbert for a bill to regulate the consequences of the expulsion of members. But as this bill did not reverse, or [20] directly condemn the proceedings in the case of Wilkes, it was not very warmly supported by the opposition; and numerous amendments having been made by the supporters of the government, by which its character became wholly changed, the bill was withdrawn.

## **The City Address to the King**

The scene of this protracted contest was now varied for a time. Appeals to Parliament had been made in vain; and the city of London resolved to carry up their complaints to the throne. A petition had been presented to the king in the previous year, to which no answer had been returned. And now the Lord Mayor, aldermen, and livery, in Common Hall assembled, agreed to an 'address, remonstrance, and petition' to the king, which, whatever the force of its statements, was conceived in a tone of unexampled boldness. 'The majority of the House of Commons,' they said, 'have deprived your people of their dearest rights. They have done a deed more ruinous in its consequences than the levying of ship-money by Charles I., or the dispensing power assumed by James II.' They concluded by praying the king 'to restore the constitutional government and quiet of his people, by dissolving the Parliament and removing his evil ministers for ever from his councils.'

In his answer, his Majesty expressed his concern that any of his subjects 'should have been so far misled as to offer him an address and remonstrance, [21] the contents of which he could not but consider as disrespectful to himself, injurious to Parliament, and irreconcilable to the principles of the constitution.'(1)

The Commons, whose acts had been assailed by the remonstrance, were prompt in rebuking the city, and pressing forward in support of the king. They declared the conduct of the city 'highly unwarrantable,' and tending 'to disturb the peace of the kingdom;' and having obtained the concurrence of the Lords, a joint address of both Houses, conveying this opinion, was presented to the king. In their zeal, they had the unseemliness of lowering both Houses of

Parliament to a level with the corporation of the city of London, and of wrangling with that body, at the foot of the throne. The city was ready with a rejoinder, in the form of a further address and remonstrance to the king.

Lord Chatham, meanwhile, and many of the leaders of the Whig party, saw, in the king's answer, consequences dangerous to the right of petitioning. Writing to Lord Rockingham, April 29th, Lord Chatham said: 'A more unconstitutional piece never came from the throne, nor any more dangerous, if left unnoticed.' And on the 4th of May, not deterred by the joint address already agreed to by both Houses, he moved a resolution in the House of Lords, that the advice [22] inducing his Majesty to give that answer 'is of the most dangerous tendency,' as 'the exercise of the clearest rights of the subject to petition the king for redress of grievances, had been checked by reprimand.' He maintained the constitutional right of the subject to petition for redress of all grievances; and the justice of the complaints which the city of London had laid at the foot of the throne. But the motion provoked little discussion, and was rejected. And again, on the 14th May, Lord Chatham moved an address for a dissolution of Parliament. But all strangers, except peers' sons and members of the House of Commons, having been excluded from this debate, no record of it has been preserved. The question was called for at nine o'clock, and negatived.

On the 1st of May, Lord Chatham presented a bill for reversing the several adjudications of the House of Commons, in Wilkes' case. The bill, after reciting all these resolutions, declared them to be 'arbitrary and illegal;' and they were 'reversed, annulled, and made void.' Lord Camden said, 'The judgment passed upon the Middlesex election has given the constitution a more dangerous wound than any which were given during the twelve years' absence of Parliament in the reign of Charles I.;' and he trusted that its reversal would be demanded, session after session, until the people had obtained redress. Lord Mansfield deprecated any interference with the [23] privileges of the Commons, and the bill was rejected by a large majority.

The next session witnessed a renewal of discussions upon this popular question. On the 5th December, Lord Chatham moved another resolution, which met the same fate as his previous motions on the subject. On the 30th April, the Duke of Richmond moved to expunge from the journals of the House the resolution of the 2nd of February, 1770, in which they had deprecated any interference with the jurisdiction of the Commons, as unconstitutional. He contended that if such a resolution were suffered to remain on record, the Commons might alter the whole law of elections, and change the franchise by an arbitrary declaration; and yet the Lords would be precluded from remonstrance. Lord Chatham repeated his opinion, that the Commons 'had daringly violated the laws of the land;' and declared that it became not the Lords to remain 'tame spectators of such a deed, if they would not be deemed accessory to their guilt, and branded with treason to their country.' The ministers made no reply, and the question was negatived.

A few days afterwards, Lord Chatham moved an address for a dissolution, on the ground of the violations of law by the Commons in the Middlesex election, and the contest which had lately arisen [24] between them and the city magistracy;(2) but found no more than twenty-three supporters.

The concluding incidents of the Middlesex election may now be briefly told, before we advert to a still more important conflict which was raging at this time, with the privileges of the Commons; and the new embarrassments which Wilkes had raised.

In the next session, Sir George Savile, in order to renew the annual protest against the Middlesex election, moved for a bill to secure the rights of electors, with respect to the eligibility of persons to serve in Parliament. Lord North here declared, that the proceedings of the Commons had 'been highly consistent with justice, and the law of the land; and that to his dying day he should continue to approve of them.' The motion was defeated by a majority of

forty-six.

In 1773, Mr. Wilkes brought his case before the House, in the shape of a frivolous complaint against the Deputy-Clerk of the Crown, who had refused to give him a certificate, as one of the members for Middlesex. Sir G. Savile, also, renewed his motion for a bill to secure the rights of electors, and found one hundred and fifty supporters. Mr. Burke took this occasion to predict that, 'there would come a time when those now in office would be reduced to their penitentials, for having turned a deaf ear to the voice of the people.' In 1774, Sir G. Savile renewed his [25] motion for a bill to secure the rights of electors, with the usual result.

## Wilkes Takes His Seat

The Parliament, which had been in continual conflict with Wilkes for five years, was now dissolved, and Wilkes was again returned for Middlesex. According to the resolution of the Commons, his incapacity had been to the late Parliament; and he now took his seat without further molestation. Before the meeting of Parliament, Wilkes had also attained the civic honour,—being elected Lord Mayor of London.

He did not fail to take advantage of his new privilege; and on the 22nd February, 1775, he moved that the resolution which had declared his incapacity, be expunged from the journals, 'as subversive of the rights of the whole body of electors.' He said, 'the people had made his cause their own, for they saw the powers of the government exerted against the constitution, which was wounded through his sides.' He recapitulated the circumstances of his case; referred very cleverly to the various authorities and precedents;—and showed the dangerous consequences of allowing a resolution to remain upon the journals, which was a violation of the law. He was ably supported by Mr. Sergeant Glynn, Sir George Savile, and Mr. Wedderburn; and in the division secured one hundred and seventy-one votes.

He renewed, this motion in 1776, in 1777, in [26] 1779, and in 1781. At length, on the 3rd of May, 1782, he proposed it for the last time, and with signal success. The Rockingham ministry was in office, and had resolved to condemn the proceedings of the Commons, which its leading members had always disapproved. Mr. Fox was now the only statesman, of any eminence, by whom Wilkes' motion was opposed. He had always maintained that the Commons had not exceeded their powers; and he still consistently supported that opinion, in opposition to the premier and the leaders of his party. Wilkes' motion was now carried by a triumphant majority of sixty-eight; and by order of the House, all the declarations, orders, and resolutions, respecting the Middlesex election, were expunged from the journals, as being subversive of the rights of the whole body of electors in this kingdom.

Thus at length, this weary contest was brought to a close. A former House of Commons, too eager in its vengeance, had exceeded its powers; and now a succeeding Parliament reversed its judgment. This decision of 1782 stands out as a warning to both Houses, to act within the limits of their jurisdiction, and in strict conformity with the laws. An abuse of privilege is even more dangerous than an abuse of prerogative. In the one case, the wrong is done by an irresponsible body: in the other the ministers who advised it, are open to censure and punishment. The judgment of [27] offences especially, should be guided by the severest principles of law. Mr. Burke applied to the judicature of privilege, in such cases, Lord Bacon's description of the Star Chamber,—'a court of criminal equity:' saying, 'a large and liberal construction in offences, and a discretionary power in punishing them, is the idea of criminal equity, which is in truth a monster in jurisprudence.'<sup>(3)</sup> The vindictive exercise of privilege,—once as frequent as it was lawless,—was now discredited and condemned.

## Footnotes.

1. Having returned this answer, the king is said to have turned round to his courtiers, and

- burst out laughing.—Public Advertiser, cited in Lord Rockingham's Mem., ii. 174.
2. See [infra, p.41.](#)
  3. Present Discontents; Works. ii. 297.

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