THE

SPEECH

OF

MR. PONSONBY,

ON THE QUESTION RELATIVE TO THE

Privileges of the House of Commons,

AS CONNECTED WITH

THE COMMITTAL

OF

SIR FRANCIS BURDETT,

AND

GALE JONES.

LONDON:

Printed for R. DUTTON, Gracechurch Street.

1810.

SPEECH,

&c. &c.

THE Report of the Committee of Privileges being ordered to lie on the Table, Mr. DAVIES GIDDY, who brought it up to the House, proceeded to make a motion founded upon that Report. He stated to the House three modes of conduct, either of which it might pursue, viz. first the inhibition to the courts of law in proceeding in the action—secondly, as to the committal of every person concerned in suing out the writ against the Speaker; or in serving the notice of trial (which would not preclude the parties from proceeding in the action), and thirdly the pleading in extenuation or in

bar, to the action. He therefore should move that the Speaker and Serjeant might, as there was no time to be lost, be permitted to appear and plead, meaning to follow up that motion with another that the Attorney-General be directed to defend them. The honourable gentleman, after making some further observations, moved,

" That the Speaker and Serjeant be permitted to appear and plead to the said actions."

On the question being put,

Mr. PONSONBY arose. He presumed that the motion just made met with the concurrence of his Majesty's Ministers. Before he proceeded he wished to understand whether he was correct in that supposition.

Mr. PERCIVAL had no difficulty in answering in the affirmative.

Mr. PONSONBY then proceeded, and declared that if he stood in the situation of the Right Honourable Gentleman, he should not have advised the House to have placed itself in the dilemma it was now in; but being in it, he (Mr. P.) should be ashamed of himself if he did not give his advice how to get out of it. In giving that advice, he was aware that he was either making himself very po-

pular or very unpopular, but neither the fear of being unpopular, nor the love of popularity, should determine his conduct either one way or the other. He should be guided solely by what he conceived the strict line of duty which he owed to the people as one of their representatives. The case which was now under the consideration of the House was one in which the privileges, the liberties, and the power of the House, according to constitution, were involved to a certain extent. He had stated his opinion that the House was in possession of privileges which they had the right of exercising, which privileges, if endeavoured to be infringed by libel, they had the right of committing to prison the persons so offending. That was an opinion which he would not retract to gain popularity, for he would treat the King the same as he would the people, he would serve his King but he would not flatter either—he would serve both. The two Houses of Parliament were the sole judges of their own privileges and what they are. No court in the country, however respectable the Judges, could or ought to presume to meddle with decisions of either House. That was the first principle which

he should maintain. The next principle was, that whenever either House of Parliament has declared its privileges, that the courts of justice are bound to pay respect and obedience to them. That he might not be accused of having advanced any hasty or rude opinions of his own as to the privileges of Parliament, he had brought with him certain law books which contained doctrines on that head which must satisfy the House of the truth of his assertion. From these books he would read such extracts as would shew that he quoted fairly. The first book was my Lord Hale's treatise on the original institution, power and jurisdiction of Parliament, a book, which, from the eminent station of the writer, must be entitled to attention. My Lord Hale therein asserts, "that the law and constitution of Parliament were founded on the law of the land, and must be taken as such—that Parliament cannot be adjudged by any other court, and that the Judges of the land had so confessed in divers Parliaments." In this opinion, which was taken from Sir Edward Coke, another eminent judge, both these gentlemen were agreed; they distinctly state that the law of Parliament is not mere-

ly so, but is confessedly the *Lex Terræ*. The Right Honourable Gentleman observed, that he had heard it said out of doors that these two great lawyers had too much reverence for Parliament: but their opinion was not singular, for another eminent Judge, whose opinions were so often quoted by those persons who in modern times are such advocates for the new doctrine of no privilege, was of the same way of thinking. Blackstone concurred in sentiments with Judges Hale and Coke, and he would qute from his book, in opposition to what these writers had advanced. Sir W. Blackstone says, "the privileges of Parliament are large and indefinite;—that all Judges were of the same opinion;—that in the 32. Hen. VI. Sir H. Fortescue, Chief Justice of the King's Bench, said, that the privilege of Parliament was intended for the protection of the people, against the unjust attacks or oppressions of the crown." So far, therefore, was Sir W. Blackstone from thinking that any other jurisdiction could interfere with that of Parliament, that he states that no court can interfere with the decisions of Parliament. Those who thought that Parliament were bound to stick up a

catalogue of their privileges in the hall, might find from their favourite writer how far such an expectation was founded in reason. After such an authority he hoped he should never hear it said that the privlieges of Parliament were not the law of the land. In a tract published by Sir Robert Atkins, one of the Judges of the Common Pleas, on the power of Parliament, he says expressly, "that the power of Parliament consists of three heads—Legislative, Judicial, and a counselling power, and that the judicial power they have the right of exercising in support of their own privileges." Was it a new proceeding to attack the privileges of Parliament? If any person supposed so, he was wrong, for many writers a hundred years ago had attacked them. In the case of the Queen v. Patey in which the Judges differed as to the extent of privilege, my Lord Holt was of opinion, "that if the right of privilege in all cases was to be admitted, Parliament would set no limits, and the peoples liberties might be invaded." To that opinion the other eleven Judges replied—"That it was true, but still there was no limit to their authority, for the law of the land was such, and such

were the privileges of Parliament, because the law of the land trusted that parliament would not misuse the privileges with which they were invested." At that time, it must be supposed that though my Lord Holt was a great lawyer, there were others as great: indeed, he had never heard the legal characters of the other judges impeached; they were men of sound understandings, and great constitutional knowledge. The foundation of Lord Hale's argument was built on nothing, because to say that parliament must have a limited jurisdiction in respect of their privileges, was saying what never could be intended. According to the constitution of things, there never was a government in which some discetionary power was not invested. It must subsist somewhere. If the judges of the land were guilty of malversation in their judicial capacities, the House could punish them; but where was the higher authority than parliament?—there was none. It might be said that parliament was responsible, and so they were—to the people. If the House acted wrong, the people had their redress by election; and when the ap-

peal was made, they might remedy the mischief which the former House had created, by electing other members in their room—the remedy was not to be found in an attempt to take away their privileges—The people could, by an address to the throne, praying that the parliament might be dissolved on the ground of having abused their trust, obtain redress, and the next mode was to take legal and constitutional means of altering the construction of the new parliament; that was the way to get relief; but it was idle and silly, he said, to suppose, that parliament was to be mended by taking away its privileges.—(*Hear, hear,*) —It has been said, that the House had exceeded it privileges in committing two persons to prison for libelling them. He did not know where he was to look for their privileges except in the practice of them, and the journals furnished numerous instances of persons committed to prison for slandering the House both in words and in writings. The privileges of the House were not contrary to the law, and consequently the law had not the power or authority to direct that they should be

stopped, and this was the opinion of eminent men in former times, who as highly valued the liberties of the people as any men of the present day.

When he heard such doctrines broached as, that there exists a power more dangerous than the Crown, and that power was to be found in the privilege of this House, he would ask was any such language held in the time in which my Lord Somers lived? Did he think that it was necessary to destroy the privileges of Parliament, in order to preserve the people's liberties? Was not the representatives of the people then considered as the best guardians of their right? Were they considered as the only shield to protect them against the encroachments of the crown? At the revolution, was not that the opinion of all the most eminent lawyers? Did not Sir W. Maynard, who, as well as Lord Somers, was a supporter of the liberties of the people, and Sir Joseph Jekyll also, a strenuous assertor of their rights, did these men, when provoked to give an opinion on the Kentish Petition, did they in consequence attack the privileges of the House of Commons, or endeavour to controul them by an act of parliament? No! they

found that the only means which was left to the people to preserve the constitution was, to uphold the House of Commons, and such was the opinion of the judges, and such was the opinion of the greatest men that ever lived in this kingdom,—of men who would have protected the liberties of their country at the hazard of their lives. Such was the party who, when the liberties of the people were in danger, did protect them, and dethroned the house of Stuart. When he found none of those great men finding fault with the privileges of the House, was he to raise his hand and tear down the fabric of parliamentary constitution—(*hear, hear,*)—With respect to the doctrine of not committing for contempt, he could not agree, for it was to be presumed, that from the earliest periods when the two houses sat together, they possessed that privilege collectively.

The Right Hon. Gentleman than referred to a case of contempt which came before the Court of King's Bench, when Chief Justice Wilmot presided. The judge was a man of admirable urbanity of manners, of great legal learning, of unexampled integrity, and warmly attached to the principles of

public liberty. He had prepared a judgment to have been given in that case, but the case did not go on to judgment. In this judgment, which Mr P. read at at some length, the Learned Judge was of opinion that the power of committal by courts of Law was coevel with the first foundation and institution of British jurisprudence. So, said Mr. Ponsonby, I contend is the privileges of parliament, and that it is founded on immemorial usage, the same as the trial by jury. With this opinion the Right Honourable Gentleman perfectly agreed.

As to what had been said about Magna Charta, and that no man could legally be imprisoned by the law of the land, unless tried by this peers, it might as well be said, that many of the laws were contrary to Magna Charta; for instance, the Canon and the Ecclesiastical Laws, which are not to be found in Magna Charta, but nevertheless they are the *Lex Terræ*, and from immemorial usage as much so as if entered in Magna Charta.—The privileges of parliament acted upon from time immemorial, were he must contend, as the *Lex Terræ* as any of the written laws; but then it has been said that House could not exercise their privileges, and commit to

prison libellers, because they would become judges, jurors, and executioners in their own cause, and Magna Charta would not permit such a mode of proceeding. This was very true, but did it ever occur to these modern writers, when they saw daily the judges of the land punish persons for contempt of Court, by committing them to prison, to question their privileges? Did it ever occur to them that the judges were judges, jurors, and executioners in their own cause? (*Hear! hear!*) This, he conceived, was a pretty good argument, in reply to those who doubted the propriety of the House protecting their own rights. Yet they must know that they do exercise that right, and were they not justified in so doing? Did these writers expect that the judges should wait for a trial by jury before they could punish for a contempt of their authority? Were they to stand waiting at the door of a grand jury room for their finding a bill, subject all the time to the virulence of popular clamour, and without remedy perhaps for six, twelve, or eighteen months, until relieved by the verdict of a jury?

Having stated at some length the opinions of the

most eminent men on the privileges of Parliament, he would now come to the case before the House, and state his opinions as to the line which ought to be pursued. The law of parliament, it would be seen, according to the opinion of the judges of the land, is the law of the land; they had always thought so; and without stating the more recent case of Oliver, he would proceed to state his humble opinions, if called upon by the House, though at the same time he must say, that ministers having placed the House in the present difficulty and having disregarded formerly the advice which he had given, had no right to call upon him now for advice.—The safe course then to adopt would be to go as near to ancient practice as possible. The course was this; supposing he was called on to give ministers his opinion he would advice them to call upon the House to commit the Attorney who sued out the process; he would not be deterred through fear of popular clamour being raised against him.—(*Hear, hear!*)—He should conscientiously be discharging his duty both to the House and the Public; and while so engaged

he could not fear—he would never leave it in the power of posterity to say, " Here was a man who fearful of the clamour of the few, betrayed the privileges of the Commons, and neglected to give his advice to assert what in reality are the rights of the people."—(*Hear* ! *hear* !)—In giving this advice, he was conscious that the rights of the Plaintiff would not be infringed; though the parties were committed, the action would still go on. In the Court of Chancery, when the Lord Chancellor finds it expedient to issue an injunction, restraining the party from proceeding in any law courts, and the party, notwithstanding the injunction, proceeds, his lordship commits him to prison. In the present case, though it was a novel one, with respect to the Speaker, he was bound to declare as his opinion that the Speaker ought to appear in the court in which the action is brought, and plead to it. That was a proceeding which was not fraught with such great danger as might be imagined. As to the parties concerned in suing out process, they, he was clearly of opinion, should be committed. If a man, when he had the honour to hold the seals in Ireland, had

chosen to bring his action against him for committing him to prison for contempt of the authority of the court, he would have committed the attorney who sent him the notice of action immediately to prison, and then would have put in an appearance to the action and pleaded thereto, because there was nothing more distinct than committing any person for a breach of the authority of a court of justice, and the contemning the law of the land. He was of opinion that the courts below are competent to inform themselves of the cause of any action brought of the kind, but he never had heard, as was now proposed to issue from this house, a prohibition against the action being proceeded on. That was a mode of proceeding not known to the law. If he was one of the judges, and the Speaker to send him a letter to that effect, he should pay no more attention to it, indeed he was bound not to notice it, the ordinary way was to plead to the action.

There was nothing so dangerous as to strike at privileges, and the Judges might, if they attempted so to act, be blamed by the people, and be charged consistently with truth with having acted culpably and tyrannically. The Speaker, therefore, must

plead to the action, by informing the court that the House was sitting, that the House ordered certain acts to be done, that he as Speaker enforced that order, and that he did so by their authority, and that having done so by order of the House, he pleads in abatement, and denies the authority of the court to interfere. If the court after this plea goes on to examine the nature of the trespass (and here he must speak with frankness), they would exceed their jurisdiction, and be wielding a power which the law had not clothed them with —(*Hear, hear* !) but he could not for a moment imagine, that the judges had a wish or desire to interfere with the privileges of Parliament, because they would thereby be acting in gross violation of their duty, and contrary to the law of the land—(*Hear, hear*) He trusted that he should not be accused of withholding his opinion on account of the fear of becoming unpopular. He was bound to tell the people of England that they would be most fatally misled if they formed a plan to undermine their liberties—(*Hear, hear* !) It was not because this or that vote was contrary to their opinion, that they should attempt to undermine

their liberties; their privileges were involved by their conduct, both in this House or any other house which might sit, if they thought that opposing the exercise which the House assumed was the way to secure their liberties. But then he might be told that this assumption was too much for the people to bear. What! was it too much for them to bear when their ancestors, certainly as high mettled, as watchful for the protection of their rights, which had been asserted by the greatest men then, at the hazard of their lives (and he trusted would be so now), bore it?—When they declared that one power and privilege vested in the Commons defended the liberty of the people. (*Hear, hear* !) It had been argued that the Crown would protect the people's rights. What! in a constitution framed like ours, was the Crown to be the defender of the liberties of the people? He loved the Monarch on the throne, and was convinced there never reigned a King who possessed the affections of his subjects in a more eminent degree than the present Sovereign; but was not the Monarch (he did not mean essentially), to a certain extent, the enemy of liberty? Why else was

the controul of the two other branches of the Executive placed over him? And very properly, because it was not in the nature of man to love controul over his power, and therefore not natural to expect submission. The constitution very wisely had placed this check, not that he apprehended the House of Brunswick would at any future period attempt to invade the rights of the subject. In making these observations he was actuated solely by that reverence for the constitution, which, with the Monarch he loved, he was bound to support. In former times when contests had occurred, were they not between the Crown and the people? Would the unfortunate House of Stuart submit to the Parliament? And where was the security that at some distant time similar contests might not take place? The House of Commons therefore on every principle of regard to the constitution, and of duty to the people, were bound to do their duty. If at any time it should be found that the House was too much an instrument in the hands of Ministers, the remedy was easy; it was only to alter the construction of it; but never let discretionary power be wrested

from it. If the Court of King's Bench are to decide on this question of privilege, they might with equal propriety decide on all the privileges of the House, if called into question. If the Serjeant at Arms was entrusted to execute the orders of the House, and the person on whom they were to be executed chose to resist, and to beat the Serjeant or the messenger, and actions were to be entered against the party offending, the party might say—"Why, your officer behaved impertinent, and I beat him." And then the law courts must decide on this and all the privileges.

Was public opinion, he would ask, to be the limiter of the judicature of the House? See what would be the consequence. Why, one set of men, would start up and say, "Well, we think that we may as well allow the House a few privileges."—Up starts another set and exclaim, "Oh you have done wrong, they ought to have no privileges, and none we will allow them." So between these factions at their bidding against each other at this auction of popularity the House sinks into contempt.—(*Hear, hear!*)—He hoped, however, the House would continue to be the assertor

of the rights of the people against the inroads of the Crown, and not give way to these factions which were starting up, if they did they might expect to succeed a sort of democracy, than a proscription amounting nearly to extinction, and last of all nothing.—(*Hear, hear* !)—The House would recollect the fate of former Parliaments; they would remember how all good men combined together to prevent the fate which awaited Charles the First, when they compelled him to quit the throne; to them succeeded a set of men professing to have nothing but the liberties of the people in view, when the unfortunate Monarch was proscribed, the cloak was cast aside, and then it was seen that their only object was their own selfish gratifications.—(*Hear* ! *hear* !)—That when they talked of liberty, they meant despotism; and that when they sought the Lord they found the Crown.—(*Loud cries of hear* ! *hear* !)—"If the people of this country chose to be misled (said Mr. P. in conclusion) they may expect to suffer calamity greater than that I have described; but if they do suffer they will suffer unpitied, unregretted, and unrelieved."—(*Loud cries of hear* ! *hear* !)

Plummer and Brewis, Printers, Love Lane, Little Eastcheap.

This Speech, from the luminous, constitutional, and convincing arguments it contains, on a great national question, is particularly recommended to the Subscribers to the HARLEIAN MISCELLANY, as worthy of their attention, to form a part of, and bind up with that important selection of National Records, now publishing in octavo.

THIS DAY IS PUBLISHED,

PRICE ONE SHILLING,

THE

MIRROR OF REFORM;

REFLECTING A CLEAR AND FAITHFUL

PORTRAITURE

OF ITS

SOURCE AND OBJECT.

LONDON:
Printed by R. Dutton, Grace church-street.