

1819.

THE KING
against
THE JUSTICES
AND TREASURER OF HE-
REFFORDSHIRE.

ing them to make a fresh appointment. This office is full *de facto*, and we cannot say that the act of the Justice, who had not taken the qualification oath, is void. In a very few weeks (*a*) the acts of this magistrate would be rendered completely valid by an indemnity act, and he will be a good Justice.

BAYLEY J. The acts of the Justice are valid, although he may be liable to certain penalties. Can it be contended that if a magistrate who has taken the qualification oath, that he is worth 100*l.* *per annum*, and from circumstances is afterwards reduced to 80*l.* and he commits a man after his income is so reduced, an action will lie against a gaoler for taking the man into his custody? If that cannot be contended, the argument here fails. The construction to be put upon the 18 G. II., c. 20 is, that the magistrate shall be only so far disqualified from acting that he shall be subject to certain penalties if he does act. In this case the acts of the Justice are valid, though he may be liable to penalties for not having taken the oath prescribed by the statute.

HOLROYD J. The statute merely operates as a personal prohibition, declaring that it shall be unlawful for the magistrate himself to act, and he is punishable for doing that which the statute prohibits him from doing; but his acts are not void.

Rule refused. (*b*)

(*a*) Parliament was sitting.

East J. was absent.

Saturday,
Nov. 27th.

THE KING *against* FRIAR.

The surveyor
of a high road
having impro-
perly expended
a large sum of

PEARSON moved for a rule to shew cause why a criminal information should not be filed against this person, a surveyor of a public road, for the alleged

misapplication of the funds deposited in his hands by the trustees of the road. He made this motion upon three grounds; first, that the defendant had acted contrary to the express provisions of the act of parliament for improving the line of road in question; second, that whether he had or not acted contrary to the provisions of that statute, he was guilty of a lavish expenditure of the public money; and third, that his appointment being of the nature of a public employment, he was criminally amenable to the cognizance of this Court, for any abuse of the powers entrusted to him. The case alleged was in substance this. By an act of parliament, certain trustees were appointed to effect the repair of the line of road in question, with power to borrow money by exchequer bills for that purpose. The act empowered the trustees to treat with the owners of lands and houses for the purchase of such parts of their property as were necessary for the completion of the intended work; but it expressly declared that the unanimous approbation of nine trustees was necessary to ratify such purchases, or any treaty for such purchases. Part of the money borrowed by virtue of this act, was deposited in the hands of a banking company, of which the defendant was a member. In contravention of the last mentioned provision of the act of parliament, the defendant, without the consent of the trustees, treated with the owner of some land in the line of the intended road, for an acre thereof, the price of which was to be five hundred guineas. This treaty afterwards came to the knowledge of the trustees, who decidedly objected to it, on the ground of the exorbitant amount of the price demanded for the land. The treaty was in consequence discontinued for the time, but was afterward renewed by the defendant, under the like state of ignorance on the part of the trustees, when the defendant concluded a bargain, by which the owner received a thousand guineas for half

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money, borrowed by the trustees under an act of parliament, without the consent of the trustees, which the act required to sanction the expenditure: The Court refused a criminal information against the surveyor, in the absence of any corrupt motive expressly alleged. The Court will not convert a civil, into a criminal remedy.

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an acre of the same land. Under these circumstances the question was, whether the defendant was criminally answerable by information.

The COURT said this was not a case in which they could so interfere. No criminal motive appeared to result from the case as stated. The defendant might have laid out money without lawful authority, and he was answerable for that money; but that circumstance could not be a foundation for a criminal accusation. As no criminal motive could be discovered, this would be converting a civil remedy into a criminal charge. This was not the application of money for purposes to which, generally speaking, by law, it might not be applied; but the ground of the complaint was, that he had applied the money for the purpose stated, without previously obtaining the consent of a certain number of the trustees, as was necessary by the provisions of the act. The defendant might be liable to make good the money if he had wrongfully applied it; but it was impossible to convert a civil into a criminal remedy, in the absence of any corrupt motive.

Rule refused.

*Monday,
Nov. 29th.*

HOLME against DALBY, GENT. ONE, &c.

A bill was filed in *Trinity* vacation against an attorney as of the preceding Term, with a special memorandum of a subsequent day in vacation. The defendant pleaded a plea in abatement, entitled of the following Term, without a special imparlance: Held that this was regular, and judgment signed for want of a plea was set aside. (a)

(a) The Courts, with a view to discourage dilatory pleading, require