

## **The Office, Powers, and Jurisdiction, of His Majesty's Justices of the Peace and Commissioners of Supply" by Robert Boyd (published 1787) Pages 440-443**

In the case of Baily against Newman and Hunt, two of his Majesty's Justices of the Peace for the County of Somerset, (Trinity Term, 16<sup>th</sup> Geo. III<sup>1</sup>) an information was laid by a brother of the defendant Newman before the defendant Hunt, against the Rev. William Baily, clerk, for swearing four profane oaths. Mr Hunt granted his summons for Mr Baily to appear before himself, or some other Justice of the Peace for the said county, at a time and place appointed by the special sessions to be holden by the Justices for the dispatch of business relating to their office. On Mr Baily's attendance, no Justice at first appeared, but only Mr Mellier who declined entering into the cause until Mr Hunt should come, before whom the information was lodged. But having waited a considerable time and no other Justice appearing, Mr Mellier examined the informer in support of the charge, and also three out of four witnesses who attended on behalf of Mr Baily. At length Mr Hunt came in, and Mr Mellier acquainted him how far he had proceeded, and asked if he would have the witnesses examined again. Mr Hunt said, No it was not necessary; and Mr Mellier repeated to him what the other witnesses had sworn. Then they examined the fourth witness. In conclusion, Mr Mellier said to Mr Hunt, that in his opinion, Mr Baily ought to be acquitted, and asked Mr Hunt what he thought of the matter? Mr Hunt answered, By all means acquitted; and made some apology to Mr Baily for having granted the summons. Afterwards, the defendant Newman, having been informed of the said acquittal, said the Justices had done wrong in acquitting the defendant, and for in so doing they had forfeited £5; and by much importunity, and promising to take the whole upon himself, he prevailed upon Mr Hunt to join with him in a second summons, upon the same information, for Mr Baily to appear before another meeting of the Justices. At which meeting all the said three Justices attended. Mr Baily pleaded his acquittal by Mr Mellier and Mr Hunt; unto which they both assented: but Mr Newman contended that they had no right to acquit him and said "I am clear in what I do, and will take it all upon myself." Mr Baily then desired him to hear his witnesses in order to invalidate the credit of the informer. Mr Newman said "I will hear no witnesses; the act does not require that the witnesses shall be credible; the word *credible* is not in the act." Then he took the information and read it over to Mr Baily, and said, "Sir, you are convicted, and I convict you of swearing four oaths, which is twenty shillings, and one shilling to the clerk;" and added, with a kind of sneer, "Only one pound, Sir - that's all." Upon this, Mr Baily, being dissatisfied, said he would apply to the Court of King's Bench. Mr Newman answered, "I defy you; read the act of parliament, you will find no *certiorari* there." Afterwards, Mr Baily moved the court for an information against the defendants.

On showing cause, Lord Mansfield, after hearing the affidavits, said, "I shall always abide by the distinction between where an illegal act is done by a magistrate through ignorance, and where, through the corruption of the heart; here I am convinced it was of the heart. It is of no trifling consequence convicting a clergyman for profane swearing. It was not so much for the sake of twenty shillings; it was to slur him. It makes one bleed that the administration of justice should be in such hands." And an information was granted which was tried at the assizes for the County of Somerset; and the jury brought in their verdict Francis Newman Esq, guilty; John Hunt Esq, not guilty: upon which Mr Newman moved for a new trial; and a rule was made to show cause: but upon showing cause the rule was discharged. Afterwards he moved to arrest the judgement; but his objections were overruled. Finally Mr Newman attended court to receive sentence. Mr Justice Aston delivered the judgement of the court as follows: "Francis Newman Esq; You are found guilty on information that has been exhibited against you, for convicting the Rev. William Baily, clerk, in prostitution of your office as a magistrate, for swearing four profane oaths, after Mr Baily had been acquitted of that very offence by Mr Mellier, and another magistrate, of which you had full notice, and for refusing to examine the witnesses that he had produced on his behalf. The prosecutor, who is a clergyman, has, with a very becoming firmness, persisted in vindicating his own credit and character from this aspiration, which was brought against him by the information of your own brother, and from the circumstances that are reported by the judge; you said, when it was objected that your brother was a witness of no credit, and evidence was attempted to be produced to take off his character, that the act did not require a credible witness; and when Mr Baily represented to you that he would apply for protection and redress to this court, you returned for answer that a *certiorari* did not lie in this court, intimating that you thought yourself free from any interposition; and therefore, upon the whole, acted with partiality and motives of resentment instead of acting, as you ought, from principles of justice. The court have considered the case and they are of the opinion that your conduct has been of a partial and unjust magistrate; and

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<sup>1</sup> 16<sup>th</sup> year of George III would have been 1776.

your circumstances being very considerable, the court set a fine of £200 upon you, and you are to be imprisoned until that fine be paid; and further, the court think it will be proper for your conduct represented to the Lord High Chancellor of this kingdom, that you be no longer continued in that commission which you have already shown yourself unfit to bear. The court, likewise, upon affidavits of your subsequent conduct to this gentleman, his wife, and family at different times, whereby your behaviour appears to be such as shows a very deep hatred, malice and bitter revenge resting in your breast against the person of Mr Baily; that you have made use of words very unbecoming a gentleman as well as a magistrate, calling him many opprobrious names; the court think this conduct so very improper that you are to give security for your good behaviour for three years, yourself in the sum of £500, and two sureties in £250 each. – Unto which Lord Mansfield added, let there be a rule likewise drawn up, that this judgement be laid before the Lord Chancellor, and application be made to him that the defendant be struck off the commission of the peace; which Mr Justice Willes explained, by adding, “out of all commissions of the peace”; and rules were drawn up accordingly.”

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