

**Excerpts from “The Trial of An Information Issuing out of the King’s Court Bench
on the Prosecution of William Baily, clerk, against Francis Newman and John Hunt Esqrs”,**

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Note: *The incidents referred to in the case took place in 1774. Francis Newman was finally convicted of perverting the course of justice in 1776.*

Mr Hotchkin, Council for the Prosecution

This is an information [*accusation*] against Mr Francis Newman and Mr John Hunt, two Justices of the Peace for the county of Somerset, which sets forth that the Rev. William Baily of South Cadbury, appeared before John Melliar Esq, Justice of the Peace, in pursuance of a warrant granted by Mr Hunt to answer the complaint and information [*accusation*] of Charles Newman (a brother of the said Francis Newman), for assaulting and abusing him, and for swearing four profane oaths and curses. When upon a full hearing he was acquitted of the charges, Mr Hunt who was also present, concurred therein. That afterwards Mr Newman and Mr Hunt issued another warrant to cause Mr Baily to appear before them to answer the same charge. That Mr Baily, appearing thereon, the defendants oppressively and maliciously convicted them upon the same information [*accusation*], notwithstanding that Mr Baily objected that he had already been acquitted, without taking the oath of the said Charles Newman, and to whom Mr Baily objected that he was not a credible witness, and refusing to examine any witness on the part of Mr Baily.

Mr Gould, on the same side

This is a prosecution carried on under the authority and direction of the Court of King’s Bench for the most flagrant prostitution of justice. Mr Baily is a worthy and respectable clergyman who lives at South Cadbury in this county. Mr Newman was an attorney (and) is now a Justice of the Peace. But I need not trouble you with an account of him: the fame of his proceedings has made him known throughout this county, almost as well as in the courts of Westminster Hall.

Mr Baily who lives within a mile of him is one of those who unfortunately fell under his resentment, for no other reason, I be bold to say, than because he could not endure the oppressions which were continually carrying on around him and, I rather say this, because Mr Baily is the least likely to give reasonable cause of offense to any man. He is, in his temper, free, generous and candid, and naturally inclined to acts of kindness and benevolence, and is the last, whom any man acting upon common principles of humanity, would think of cultivating a quarrel with. To this gentleman Mr Newman is a determined enemy. The method he took to wreak his vengeance was by employing Charles Newman, his brother, a man of the most infamous character and ready for any mischief. Him, after having been long neglected, reprobated by his family, even by the defendant himself, and left with the pittance of £20 a year to subsist upon, Mr Newman at length took up and planted in the Parish of South Cadbury to be a plague on Mr Baily. It was not long before he took an opportunity, from an accidental meeting with Mr Baily in the street, to lay an information [*accusation*] against him before Mr Hunt, neighbouring magistrate, for assaulting and abusing him, and swearing four profane oaths. Mr Hunt issued a warrant for Mr Baily to appear before him, or some other Justice of the Peace, on 31st May, the information

[*accusation*] being the 28th, at The Sun Inn at North Cadbury. Mr Baily accordingly appeared at the time and place appointed. A Petty Sessions being then holding there, Mr Melliar was the only Justice [to have] arrived. Having sat near two hours in expectation of Mr Hunt, and he not coming, Mr Melliar entered upon the complaint and having examined the informer and three out of the four witnesses whom Mr Baily brought with him, Mr Hunt came in. Mr Melliar then informed Mr Hunt of what the witnesses had sworn, and asked him if he would hear them again. Mr Hunt thought that unnecessary, whereupon the fourth witness was examined and Mr Melliar thereupon declared that he thought Mr Baily ought to be acquitted, to which Mr Hunt assented, saying "By all means acquitted," and he was acquitted.

Mr Baily then, hurt by this attack on his character, desired that the Justices would (what they might) bind him over to the Sessions in respect to the assault, that he might have the opportunity of clearing himself in a more public manner. This was accordingly done, and Mr Baily attended the whole Sessions, but Mr Charles Newman did not appear. Here one would have thought that it should have ended, but the defendant, Mr F. Newman, coming into the country [*from Town*] about a fortnight afterwards, (for he had been absent during the time of this transaction), and stung to the heart that Mr Baily should escape this snare, solicited, persuaded and at length prevailed upon Mr Hunt to join with him in another warrant to bring Mr Baily before them to answer the same charge of which he had thus been acquitted. This warrant was brought to Mr Baily's house at a time when he was absent from home at Oxford, so that it only then served the purpose of giving unease to his family, and to expose and disgrace him in his parish. But this, far from being sufficient, a month afterwards, on the 20th July, near two months after the former hearing, Mr Baily, walking the street with his friends, was accosted by John Davy, the tythingman, who had been employed in serving the former warrants, telling him that he had a warrant for him. Being asked for what? Why, for the old work, swearing the oaths. Mr Baily asked to see the warrant, but the tythingman for a long time refused him saying he was order not to show it; but at length, after much pressing, and upon the condition that it should not be mentioned to the Justices, thought proper to produce it.

Upon this warrant, and observation or two arises. First: it is a Warrant of Summons, as Mr Newman has sworn, but it is to *cause* Mr Baily to appear. To cause him ... by what means? By force, no doubt, to drag him before Mr Newman if he should not pay obedience to his mandate. Why else varied from the former warrant? Next: though said to be a Warrant, it is not an entire one, for it does not mention when or where Mr Baily is to appear. That is left to be filled out by the confidential tythingman. So that here is a Warrant half written, and half parol [*i.e. by oral declaration*]. What was meant by this on the present occasion you must be left to conjecture, but this it will give you clearly to understand in what manner Mr Newman carries on his Proceedings, who founds them on warrants so utterly illegal. However, Mr Baily appeared, when he was detained an hour, exposed amongst the multitude of people who were attending on justice business, for it was again a Petty Sessions.

Here it will be proper to inform you what this scene of Justice is. It is held in a little public house belonging to Mr Newman, and which he lets at double the former rent, the additional rent to be made good by means of the concourse of people who resort there on the business of justice: for Mr Newman does not confine his practice to a particular district, but extends it throughout the county, and you will

be surprised to be told that no less than 70 or 80 warrants have been returned to a Petty Sessions which is held here every three weeks. So that if the business had gone on, the good will of the house could have been worth some hundreds.

At length, Mr Newman proceeds on the complaint. That is, he took up the information [*accusation*], the same on which Mr Baily had been acquitted, and read it, and immediately pronounced that Mr Baily was convicted. "You are convicted 20s [*£1*] for the oaths and 1s [*5 pence*] the clerk", adding with a sneer "One pound, Sir!" Upon this, Mr Baily objected and remonstrated, alleging that he had been before acquitted, Mr Melliar likewise declaring the same. But Mr Newman, paying no regard to this, insisted on his proceeding, declaring that he would take it on himself. Then, says Mr Baily, "Let me not be convicted without evidence. I have brought my witnesses here which were at the former hearing, together with others, particularly to impeach the character of Charles Newman, the informer, and to prove that he is not fit to be believed on his oath." Would you conceive his answer to this? "I know well enough there must be a witness to the charge, but the Act of Parliament, which requires there should be a witness, does not require he should be credible."

I am the farthest from being inclined to throw out general invectives against any man, but where facts call upon me, I must not withhold the observation. What then will you think of a man who can avail himself of so barefaced a pretence to execute his vengeance at the expense of Justice? What wickedness, what villainy, let me say, is not such a man capable of?

Then, as to Mr Baily's witnesses, he said that Charles Newman, the informer, had asserted the charge and he would hear no negative evidence; that is, the charge had been made, and he would hear no evidence in contradiction to it. Are you not astonished at this? Is this man fit to continue in the Commission of the Peace? Is he fit to live in human society? In conclusion, without hearing any evidence, not even the oath of the informer which he had never heard, he convicted Mr Baily, declaring and repeating "I will hear no evidence. You are convicted. I insist upon your being convicted," and accordingly awarded the penalty which Mr Baily paid.

There is a circumstance which shows almost as strongly as any, the principles and character of this man: Mr Baily, grieved, exasperated, as he must be, to find himself thus ensnared, declared his resolution as his last resource, that he would seek redress through the Court of King's Bench. To this Mr Newman, who well knew the weight of that court, was prepared with an answer. He immediately turned to the statute and cried out: "There is no Certiorari here. See the clause," and instantly read out the clause of the act against profane swearing, which provides that convictions on that statute shall not be removed by Certiorari, vainly imagining that hands of the Court of King's Bench were tied by that means. Here you see the tyrant. To what lengths would not this man proceed, what outrages would he not be guilty of were there not a superior court, were it not for you, Gentlemen, before whom his actions are to pass in review?

This is the case we have to lay before you, with this further: that Mr Newman, ever mindful of his duty, draws up the conviction and returns it to the Quarter Sessions, to remain of record as a perpetual stain on the character of Mr Baily. And what is to be Mr Newman's defence? No a denial of those facts: they

cannot be denied. Not that they were not founded in malice: that the facts too strongly speak. But I tell you what it will be: it will consist of what you have already had a taste of – in quibble and evasion. But it won't do. The learned judge who tries the case will let the evidence be gone through and the defendant will be at liberty to take his objections in the Court of King's Bench from whence this record issues: where he will have the full benefit of chicane.

I will not trouble you with general observations of my own but will take the liberty to repeat what was said on this subject by a great Judge who sees with infallibility into the human heart: "I shall always abide by the distinction (says Lord Mansfield) between where an illegal act is done by a magistrate through ignorance, and where through corruption of the heart. Here I am convinced it was the heart. It is no trifling consequence, the conviction of a clergyman for profane swearing. It was not so much for the sake of 20 shillings; it was to slur him, hence the false reasoning. It makes one bleed that the administration of justice should be in such hands.

There followed cross-examination of the Francis Newman, William Baily and several witnesses. Those who were called by the defence seemed prepared to perjure themselves to help acquit Francis. It appears that they were either his tenants or otherwise to some extent subservient to or dependent on him. Some telling excerpts include:

- Mr Baily: "I believe Mr Melliar said to Mr Hunt, as well as I can remember, that he wondered who would grant a warrant against a gentleman upon the testimony of so bad a man as Charles Newman."
- Cross-examination of John Slade by Mr Hotchkin: Q: "Were you there to have proved the character of Charles Newman, if it was enquired into?" A: "Yes." Q: "What sort of character is it?" Defence lawyer: "I object to that question." Q: "Was there anybody else there to have proved his character?" A: "Yes, to have proved him false sworn before."
- Counsel for Francis Newman: That he admitted with the Counsel of the Prosecution, the enormity of the offence of a magistrate's prostituting the duty of his office, where a man entrusted with the most sacred and important office, and holding the sword of justice, makes use of it to execute his own malice and revenge; so that no language could express the guilt, no punishment could be equal to it. His defence was that his client was not an object of the charge; that in a prosecution for so flagrant an offence, nothing but the clearest evidence should be sufficient to convict.
- Mr Baily vilified vilified Mr Charles Newman much, and (said) that there was a warrant against him for felony at Hinkley in Leicestershire". [*Hinkley, Leicestershire, was the village where Charles's brother Henry married and where his nephew Francis Newman (the younger) was born in 1759.*]

In his summing up, Mr Justice Aston said as follows:

Francis Newman, Esquire, you are found guilty upon an information [*accusation*] that has been exhibited against you, for convicting the Reverend William Baily, Clerk, in prostitution of your office as a magistrate, for swearing four profane oaths or curses, after Mr Baily had been before acquitted of that very offence by Mr Melliar and another magistrate, of which you had full notice, and for refusing to examine the witnesses which he produced on his behalf. The prosecutor, who is a clergyman, has with very becoming firmness, persisted in vindicating his own credit and character from this aspersion which was brought upon him by the information [*accusation*] of your own brother as a witness of no credit, and (when) evidence was attempted to be produced to take of his character, that the Act did not require a credible witness; and when Mr Baily represented to you that he should 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 of this court, and therefore upon the whole, acted with partiality and from motives of resentment, instead of acting, as you ought, from principles of justice.

The court have considered this case and are of the opinion that your conduct has been that of a partial and unjust magistrate, and your circumstances being very considerable, the court set a fine of £200 upon you, and you are imprisoned until the fine is paid, and further, the court think it will be proper to have your conduct to be represented to the Lord High Commissioner for this kingdom, that you be no longer continued in that commission for which you have already shown yourself unfit to bear.

The court likewise, on the 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, still against the person of Mr Baily, that you have made use of words very unbecoming of a gentleman as well as a magistrate, threatening to do for Mr Baily, threatening revenge, calling him so many opprobrious names ... the court thinks 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 your two sureties of £250 each.

Lord Mansfield added: "Let there be a rule drawn up that this judgment be laid out before the Lord Chancellor and application made to him that the defendant be struck out of the Commission for Peace", which Mr Justice Willis explained, by adding, "Out of ALL Commissions for Peace".