

PARLIAMENTARY PENAL- TIES.

Major Astor, M.P., Sued.

In the King's Bench Division, before Mr. Justice Low, the second day's hearing of the action, *Tranton v. Astor*, to recover penalties from a member of Parliament for alleged breaches of statutes, was mainly devoted to interesting legal argument.

Mr. Charles Tranton, of Bernard-street, W., in the capacity of common informer, brought the action under statutes of 1783 and 1801, to recover from Major the Hon. Waldorf Astor, M.P. for Plymouth, penalties amounting in the aggregate to £29,000, being £500 for each day he was alleged to have sat and voted in Parliament while holding contracts for War Office and Treasury advertisements in "The Observer" during the time he was proprietor of that newspaper. The defence was a denial of liability.

Mr. J. A. Foote, K. C., and Mr. Cannon (instructed by P. Bono and Co.) are the plaintiff; Mr. Disturnal, K. C., and Mr. Eustace Hills (instructed by Lewis and Lewis) for the defendant.

Official evidence was given on the first day showing that Major Astor had taken part in divisions in May, June, July, and August 1916.

A number of members of the reporting staff of the Official Debates were now called, and testified to the defendant having also sat in the House on five occasions between March and August, 1916.

Mr. Foote said he only intended to press for penalties in respect of the dates on which proof was given of Major Astor having sat and voted—namely, fourteen on which he had voted and five on which he had sat.

Mr. Disturnal, opening the defence, and without calling evidence, asked for judgment for the defendant in respect of these days with reference to which no evidence had been given, inasmuch as the plaintiff had set up a separate cause of action as regarded each of the days specifically mentioned in the claim.

His lordship said he would consider the point.

No Knowledge.

Mr. Disturnal then proceeded to submit that the plaintiff had no cause of action at all. The action was founded upon a statute of 1782, the important preamble of which set out that it was "further to secure the freedom and independence of Parliament." Not until the defendant had rendered himself incapable of sitting in Parliament did he become liable to attack from any common informer by means of an action to secure heavy penalties. There was no evidence that Major Astor knew or heard of a single one of these so-called contracts; he had nothing whatever to do with them personally. As a matter of law he must be shown to have had knowledge of them, and have voted and sat with that knowledge before he could be made liable. Counsel submitted that this class of contract was not contemplated by the statute. The newspapers took these advertisements at less than the ordinary rates for Government orders; each was "doing his bit." The defendant was sued on the ground that he was doing something which would interfere with the "freedom and independence of Parliament," and there must be strict proof of every act alleged.

The statute dealt with two classes of persons. Section 1 dealt with persons who were not members of Parliament when they entered into the contracts, but were elected members while they were enjoying the contracts. Section 2 dealt with persons who were members when they made the contracts. Section 9, which contained the penalties, and Section 6 of the Act of 1801, which applied the earlier Act to the "Parliament of the United Kingdom, but only with non-members, and the penalties only applied to them. That section referred to people who were "disabled" from sitting in Parliament.

His Lordship: Why does not that bring in persons under Section 2? Was that point raised in the Samuel case?

Mr. Foote: Yes, and expressly decided.

Mr. Disturnal disputed that statement. It could not be suggested that a member of Parliament was to be penalized in respect of every contract that a subordinate might have entered into. It was of importance whether the contract was for cash or credit.

His Lordship: I do not see how the fact that the payment is postponed by the Government makes a contract executory on the part of the person who performs it.

Mr. Disturnal: No; and that is a complete answer to this case. Counsel further submitted that a contract to come within Section 10 must be in writing and an executory contract. In this case there was no written contract. The order was given to the manager of "The Observer," and the acceptance of the order was the insertion of the advertisement. There was never really a subsisting or executory contract. There could have been no ground of action for breach of contract if the advertisement had not been inserted. The present contract was not entered into with the Government, but with the Caxton Advertising Agency; there was not a rag of evidence to show any privity of contract between Major Astor and the Government.

His lordship recalled that Sir Hedley Le Bas had stated in his evidence that his firm, the Caxton Advertising Agency, were the principals in the transaction. He also observed that there was nothing to show the defendant or anybody what Government department the advertisement came from unless it was on the face of the advertisement itself.

Status of Common Informer.

Mr. Disturnal next took up a point which he described as of the gravest importance, namely the bringing of actions by common informers. He pointed out that the plaintiff had not gone into the box, and it was not known whether such a person as Mr. Charles D. Tranton really existed. It was important to know who was suing, because it might happen that a plaintiff really represented a syndicate who were promoting an action for their own profit. They did not know whether the plaintiff in this case was British or an alien.

Mr. Foote, replying, assured the Court that the plaintiff had an existence, as vouched for by the solicitor who issued the writ.

His Lordship: Can anybody be a common informer?

Mr. Foote: Yes.

His Lordship: A married woman?

Mr. Foote: Probably she is not a "person" within the section.

His Lordship: Unless anybody can be a common informer, there might be substance in it.

Mr. Foote protested that the term common informer was used against him as a term of abuse. It did not appear in the statute. In respect of the calling of the plaintiff to give evidence, this kind of case was not to be distinguished from others. Counsel next dealt with the submission that this contract was not of a kind contemplated by the statute.

His Lordship: Is there not a good deal to be said for the argument that what was sought to be stopped were not merely casual transactions of buying and selling, or even orders for such things as advertisements, but something in the nature of formal and continuing contracts?

Mr. Foote: The line between casual orders and contracts of this sort is not very distinct. I should say the statute means what it says.

His Lordship: Acts of Parliament always mean what they say; the difficulty is, what do they say. (Laughter.)

Mr. Foote said the words in the statute were "public contract" on account of the public service, therefore it did not matter if the contract was a small one. If it was made "with, under, or from" a Government department it involved penalties. On the point whether or not it must be an executory contract, counsel made the negative submission, and contended that insertion of the advertisement was not acceptance, but evidence of acceptance. The test was not whether the contract was executory, but whether the defendant held and enjoyed it.

His Lordship: I cannot understand your contention that it is being held and enjoyed merely because the money has not passed; that liability depends upon the mere accident whether it was cash or credit.